

1999 HOUSE JUDICIARY

HB 1447


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1447

House Judiciary Committee

Conference Committee

Hearing Date : February 2, 1999

Tape Number	Side A	Side B	Meter #
2		X	30.2
Committee Clerk Signature 			

Minutes:

REP. WEISZ : Under current law if a person has ever been confined for mental problems he or she can never own a firearm, even if the proceeding was dismissed. This will change that. Also, it adds the federal law to the state statute.

BOB HELTEN (BCI) Submitted written testimony, a copy of which is attached.

BOB BENNETT (AG) Submitted written testimony, a copy of which is attached.

COMMITTEE ACTION: February 2, 1999

REP. KOPPELMAN moved to amend the bill by adding an emergency clause. Rep. Delmore seconded and the motion passed on a unanimous voice vote.

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS. Rep. Meyer seconded and the motion passed on a roll call vote with 14 ayes, 1 nay and 0 absent. Rep. Meyer was assigned to carry the bill on the floor.

Date: 2/2
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1447

House JUDICIARY Committee _____

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Koppelman Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN		✓
REP. HAWKEN	✓				

Total Yes 14 No 1

Absent _____

Floor Assignment Meyer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1447: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1447 was placed on the Sixth order on the calendar.

Page 1, line 2, after "weapons" insert "; and to declare an emergency"

Page 2, after line 20, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

1999 SENATE NATURAL RESOURCES

HB 1447

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1447

Senate Natural Resources Committee

Conference Committee

Hearing Date February 26, 1999

Tape Number	Side A	Side B	Meter #
1	x		5841-6208
1		x	0-2475
1	x		2356-3870
Committee Clerk Signature <i>Sylvia A. Ziegen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1447: a bill for an act to amend and reenact section 62.1-02-01 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO POSSESSION OF WEAPONS; AND TO DECLARE AN EMERGENCY.

REP. WEISZ explained changes which include if a person is committed for mental reasons and the case was dismissed, a firearm can be purchased by that individual; and the ability to obtain a concealed weapon permit and not having to go through the background check. Under the old law and the old federal law, all holders of concealed weapons permits do not have to go through the 5-day waiting period. With the new federal law with the instant background check, the state is not in compliance with that law so if we do not change the law, concealed weapon permit owners will have to go through the background check again every time they purchase a firearm.

JOE HERSLIP, Bureau of Criminal Investigation testified in support of HB1447. (See attached testimony)

SENATOR CHRISTMANN asked what are the classifications of people who under our law currently would qualify to buy firearms but are not allowed to under federal law.

JOE HERSLIP replied under ND law we have restrictions on persons who are convicted of a felony or misdemeanor that was committed while having a weapon in your possession, a misdemeanor that was violent in nature. Under the federal law it involves a fugitive from justice; someone who is illegally or unlawfully in the US; someone discharged from the armed services under dishonorable conditions; renounced citizenship; restraining orders; or someone convicted of a crime of domestic violence. These are the additional ones that federal law places beyond ND.

SENATOR CHRISTMANN asked what happens now as the law stands if someone is caught in possession of a firearm, the federal law says they can't have one, but state law says they can, how is that prosecuted.

JOE HERSLIP replied this would be handled by the ATF vs. a prosecutor under our state law because it would be a federal crime.

ROBERT P. BENNETT Ass't Attorney General testified. (See attached testimony) People who have been determined to be mentally ill and placed by court order into an institution would not be able to possess or control a firearm for at least 3 years after their release to insure there would not be problems in the future. Each of the statutes listed on page 1, line 23 of HB1447 involve a 3-state process in a commitment procedure. To insure there is not any confusion, this amendment was put in.

SENATOR TRAYNOR asked if the new language on page 2 is conformed to federal law so the ND people do not have to go through the checks every time they buy a firearm.

ROBERT P. BENNETT replied the federal people want to have a listing of all of the federal laws. There is a federal listing of every instance when the federal law prohibited it. The domestic violence of the federal law has been applied to law enforcement officers where if a law enforcement officer has ever been convicted of an offense of domestic violence, they are barred from possession of firearms. Most prosecutions for firearms violations are federal as opposed to state.

SENATOR CHRISTMANN asked if in a case of a convicted domestic violence person, if this was passed, and the person has a firearm, would it be the county sheriff that prosecutes that person because it is a violation of state law or does that automatically get turned over to the US Attorneys Office because it is also a federal law.

ROBERT P. BENNETT replied it would be the same decision that they would make on any other statutes that might overlap like drug offenses, and that would be a local law enforcement decision as to whether or not they would refer it over or they might handle it themselves.

SENATOR CHRISTMANN asked if someone has owned firearms for many years, would this put them out of being legal possessing firearms or are they grandfathered in.

ROBERT P. BENNETT replied this bill would not, the federal law has already done that.

SENATOR CHRISTMANN asked what is the responsibility of a county sheriff or game wardens, do they have the responsibility to arrest somebody if they are violating federal law that is not state law.

ROBERT P. BENNETT replied they probably have no authority except as a private citizen to make an arrest, under federal law, they would not be enforcing federal laws.

SENATOR FREBORG asked in domestic violence, if they own guns, they are in violation the minute they are convicted, what happens to the guns.

ROBERT P. BENNETT replied they will sell the guns or give up any control of it to someone else.

SENATOR TRAYNOR asked if the attached emergency clause is to take care of the background checks that are now required.

ROBERT P. BENNETT replied that was done because of the fact that the federal requirements requires some compliance. This will also allow us to give them compliance at an earlier possible date to show it is in effect.

SENATOR REDLIN asked for definition of a firearm.

ROBERT P. BENNETT replied this would be defined in 62.1-01-01 as any weapon that expels a projectile by the use of an explosive.

SENATOR REDLIN asked if pellet guns are covered.

ROBERT P. BENNETT replied under this bill it would not be.

SENATOR TRAYNOR closed the hearing on HB1447.

COMMITTEE ACTION-March 4, 1999-(Tape 1, Side A, (Meter# 2356-3870) A discussion was held on amendments. SENATOR CHRISTMANN moved for a MOTION TO AMEND, seconded by SENATOR HEITKAMP. Roll call vote indicated 4 YEAS, 2 NAYS, 0 Absent and not voting. SENATOR CHRISTMANN moved for a DO PASS AS AMENDED, seconded by

Page 5

Senate Natural Resources Committee

Bill/Resolution Number Hb 1447

Hearing Date February 26, 1999

SENATOR FREBORG. Roll call vote indicated 5 YEAS, 1 NAY, 0 Absent and not voting.

SENATOR CHRISTMANN volunteered to carry the bill.

90649.0201
Title.0300

Adopted by the Natural Resources
Committee

March 4, 1999

QNN
3/5/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1447
SENATE AMENDMENTS TO ENGR. HB 1447 NAT. RES. 3/5/99

Page 2, remove lines 8 through 10

Page 2, line 11, remove the overstrike over "~~er~~", remove the first underscored comma, and
remove ", or 5"

Renumber accordingly

Roll Call Vote #: /

Date: 3-4-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1447

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken MOTION TO AMEND

Motion Made By Christmann Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr		✓			
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin		✓			

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-4-99

Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1447

Senate Natural Resources Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By Christmann Seconded By Freborg

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin		✓			

Total (Yes) 5 No 1

Absent 0

Floor Assignment Christmann

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 8, 1999 8:58 a.m.

Module No: SR-41-4191
Carrier: Christmann
Insert LC: 90649.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1447, as engrossed: Natural Resources Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1447 was placed on the Sixth order on the calendar.

Page 2, remove lines 8 through 10

Page 2, line 11, remove the overstrike over "er", remove the first underscored comma, and remove ",or 5"

Renumber accordingly

1999 HOUSE JUDICIARY

HB 1447

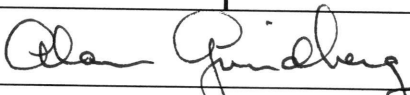
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1447

House Judiciary Committee

Conference Committee

Hearing Date :March 24, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature 			

Minutes:

SEN. CHRISTMANN explained the Senate amendments. He stated the purpose is to send a message to Washington that we will no longer rubber stamp what the federal law is, North Dakota will draw its own gun laws. Sen. Christmann also presented a proposed resolution calling for a study of gun laws.

ROBERT BENNET (Asst. AG) As originally written this bill gave the Attorney General the power to deny a concealed weapons permit. Without that authority we cannot deny a permit based on Federal law. The federal government wants state laws to be consistent so we can have some reciprocity, and the Senate amendments may jeopardize that. With the Senate amendments, this bill may cause the Federal government to not recognize a North Dakota permit.

SEN. LYSON I agree with Sen. Christmann that we should resist the Federal government's dictating what our laws should be, but I don't think this is the proper vehicle to use to do that.

Page 2

House Judiciary Committee

Bill/Resolution Number 1447

Hearing Date : March 24, 1999

COMMITTEE ADJOURNED TO GET AMENDMENT DRAWN

MARCH 29, 1999

COMMITTEE MEETS AGAIN.

REP. KOPPELMAN moved that the House accede to the Senate amendments and further amend the bill as suggested by Bob Bennett. Rep. Meyer seconded. That motion passed on a roll call vote with 5 ayes, 1 nay and 0 absent.

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS AS AMENDED. Sen. Heitkamp seconded and the motion passed on a roll call vote with 6 ayes, 0 nays and 0 absent. Rep. Koppelman was assigned to carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1447

That the House accede to the Senate amendments as printed on page 810 of the House Journal and page 664 of the Senate Journal and that Engrossed House Bill No. 1447 be further amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subdivision to subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to who may have a concealed weapons permit; to"

Page 2, after line 20, insert:

"SECTION 2. A new subdivision to subsection 1 of section 62.1-04-03 is created and enacted as follows:

The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control."

Renumber accordingly

(Bill Number) HB 1447 (, as ~~XXXX~~ engrossed):

Your Conference Committee

For the Senate: *Am Bill*

SEN CHRISTMANN	<i>SD</i>	<i>Y</i>
SEN TRAYNOR	<i>Yes</i>	<i>Y</i>
SEN HEITKAMP	<i>Yes</i>	<i>Y</i>

For the House: *Bill*

REP DEKREY	<i>Yes</i>	<i>Y</i>
REP KOPPELMAN	<i>Yes</i>	<i>Y</i>
REP MEYER	<i>Yes</i>	<i>Y</i>

recommends that the (~~SENATE~~ HOUSE) (ACCEDE to) (~~RECEDE from~~)
723/724 725/726 S724/B726 S723/B725
 the (Senate/~~House~~) amendments on (SJ/HJ) page(s) 810 - _____

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
1447 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.
690/515

~~XXXX~~ Engrossed) 1447 was placed on the Seventh order of business on the calendar.

DATE: ___/___/___

CARRIER: Koppelman

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1447, as engrossed: Your conference committee (Sens. Christmann, Traynor, Heitkamp and Reps. DeKrey, Koppelman, Meyer) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 810, adopt further amendments as follows, and place HB 1447 on the Seventh order:

That the House accede to the Senate amendments as printed on page 810 of the House Journal and page 664 of the Senate Journal and that Engrossed House Bill No. 1447 be further amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subdivision to subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to who may have a concealed weapons permit; to"

Page 2, after line 20, insert:

"SECTION 2. A new subdivision to subsection 1 of section 62.1-04-03 is created and enacted as follows:

The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control."

Renumber accordingly

Engrossed HB 1447 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1447

TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 1447

February 2, 1999

Mr. Chairman, members of the committee, my name is Bob Helten, and I am Manager of Information Services with the Bureau of Criminal Investigation, which is a division within the Office of Attorney General.

House Bill 1447 incorporates into North Dakota law all federal restrictions on ownership or possession of firearms. This will allow the holder of a North Dakota concealed weapons permit to be exempt from the Brady Act requirements that a background check be performed each time the permit holder purchases a firearm.

Until November 30, 1998, the Bureau of Alcohol, Tobacco, and Firearms (ATF) allowed a holder of a North Dakota concealed weapon permit to present the permit to a North Dakota gun dealer and forego a background check because the permit holder had undergone a background check when he or she obtained the permit. However, because current North Dakota law would permit some persons who are prohibited under federal law from owning or possessing firearms to obtain concealed weapons permits, ATF will not exempt the holder of a North Dakota concealed weapon permit issued after November 29, 1998, from background check

requirements when purchasing a firearm. The ATF, in essence, has allowed a waiver for the permits issued prior to November 30, 1998, until those permits expire. Concealed weapon permits are issued for a three-year period. Anyone with a valid permit issued on or before November 29, 1998, can still present the permit to a gun dealer and forego the background check. However, as current concealed weapon permit holders renew their permits, they will no longer be exempt, and will be required to undergo background checks for gun purchases despite having a concealed weapon permit.

By amending North Dakota state law to impose the same restrictions as federal law on the ownership and possession of firearms, holders of North Dakota concealed weapons permits will again be exempt from undergoing a background check each time they purchase a firearm.

We urge your support for this bill.

I would be happy to answer any questions.

TESTIMONY OF
ROBERT P. BENNETT,
ASSISTANT ATTORNEY GENERAL

CONCERNING HOUSE BILL NO. 1447
BEFORE THE HOUSE JUDICIARY COMMITTEE

This testimony concerning House Bill 1447 is limited to the amendments to subsection 3 of section 62.1-02-01 found on page 1, lines 21-24.

This past fall, I received a telephone call from an attorney in the northeastern part of the state who expressed concerns about the scope of the firearms prohibition in this subsection. He stated that he had represented clients in mental health proceedings where a court had dismissed the mental health petition finding no probable cause to support the petition for a treatment order. The attorney stated that, based upon the current law, a person could be ineligible from possessing or controlling a firearm because of the very temporary commitment in a hospital or other institution prior to a hearing or determination of probable cause to justify further treatment. He believed it to be unfair that this person, after a dismissal of all proceedings, would be treated the same as to further weapons possession as a person who would be finally adjudged mentally ill and actually committed for treatment. This amendment excludes from the firearm possession or control prohibitions those persons who have had mental health proceedings dismissed against them by a court.

N.D.C.C. § 25-03.1-17 authorizes a court to dismiss a petition for involuntary treatment if a court finds, after a hearing, that probable cause does not exist to believe that an individual is a person requiring treatment. N.D.C.C. § 25-03.1-18 authorizes a court

to dismiss a petition if a person is released from evaluation or treatment because the person does not meet the criteria of a person requiring treatment under the mental health commitment laws. The last section, N.D.C.C. § 25-03.1-19, authorizes the court to order a dismissal of the proceedings if, at the completion of an involuntary treatment hearing, the court finds that the petition for involuntary treatment has not been proven by clear and convincing evidence. In each of these cases, by its dismissal of the proceedings, the court will conclude that the person is not a mentally ill person subject to the mental health commitment laws. The justification for the firearms prohibitions is no longer present under these circumstances.

House accedes . . .

Page 2, after line 17 insert:

Section 2. Subdivision e of subsection 1 to section 62.1-04-03 of the North Dakota Century Code is created and enacted as follows:

e. The applicant is not prohibited by federal law from owning a firearm, possessing a firearm, or having a firearm under that person's control.

Page 2, line 18 replace "2" with "3"

From Bob Bennett

HB 1447

CHAPTER 62.1-04

CONCEALED WEAPONS

62.1-04-01. Definition of concealed. A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the firearm or dangerous weapon, merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
2. Locked in a closed trunk or luggage compartment of a motor vehicle;
3. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not; or
4. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair, or back from those locations.
5. A bow and arrow, an unloaded rifle or shotgun, or an unloaded weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO₂ gun, while carried in a motor vehicle.

62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited. No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this chapter. For purposes of this chapter, dangerous weapon does not mean a spray or aerosol containing CS (ortho-chlorobenzamalonitrile), CN (alpha-chloroacetophenone), or other irritating agent intended for use in the defense of a person.

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
 - b. The applicant is not a person specified in section 62.1-02-01.
 - c. The applicant has the written approval for the issuance of such a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has attended a testing procedure conducted pursuant to rules adopted by the attorney general. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and

attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the criminal justice training and statistics division of the attorney general's office. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. A weapons instructor certified by the attorney general shall conduct the testing procedure. The attorney general shall develop rules that ensure that this testing will be conducted periodically. The local agency conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license.

- d. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of its receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
3. The license fee for a concealed weapons license is twenty-five dollars. Ten dollars of this fee must be credited to the state general fund and fifteen dollars of this fee must be credited to the attorney general's operating fund up to a total of fifty thousand dollars each biennium. Any collections from fifteen dollars of this fee in excess of the fifty thousand dollars credited to the attorney general's operating fund each biennium must be credited to the state general fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.
4. The chief of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
5. The chief of the bureau of criminal investigation may deny an application or revoke or cancel such a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.
6. The applicant may appeal a denial or revocation of this license to the district court of the applicant's county of residence.
7. The attorney general may adopt rules to carry out this title.

**Asset Forfeiture Report
1996-1998**

	1996	1997	1998	Total
Bureau of Criminal Investigation	3,906	13,843	17,353	35,102
Grand Forks/Pembina/Walsh County Local Law Enforcement	-	-	49,000	49,000
Burleigh/Morton County Local Law Enforcement	4,631	7,710	25,853	38,194
Stutsman/Barnes/Eddy/LaMoure/Foster County Local Law Enforcement	515	-	1,685	2,200
Williams/Divide/McKenzie County Local Law Enforcement	-	-	-	-
Mercer/Stark/Dunn/McLean/Sheridan/Oliver County Local Law Enforcement	240	200	-	440
Richland County Local Law Enforcement	-	-	5,750	5,750
Ward/Burke County Local Law Enforcement	17,760	5,000	15,179	37,939
Total	27,052	26,753	114,820	168,625

Post-It® Fax Note	7671	Date	2/5	# of pages	1
To	Bob Bennett	From	Tammy		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

TESTIMONY BEFORE
SENATE NATURAL RESOURCES COMMITTEE
ON HOUSE BILL NO. 1447

February 26, 1999

Mr. Chairman, members of the committee, my name is Joe Herslip, and I am the Criminal Records/Identification Manager with the Bureau of Criminal Investigation, which is a division within the Office of Attorney General.

House Bill 1447 incorporates into North Dakota law all federal restrictions on ownership or possession of firearms. This will allow the holder of a North Dakota concealed weapons permit to be exempt from the Brady Act requirements that a background check be performed each time the permit holder purchases a firearm.

Until November 30, 1998, the Bureau of Alcohol, Tobacco, and Firearms (ATF) allowed a holder of a North Dakota concealed weapon permit to present the permit to a North Dakota gun dealer and forego a background check because the permit holder had undergone a background check when he or she obtained the permit. However, because current North Dakota law would permit some persons who are prohibited under federal law from owning or possessing firearms to obtain concealed weapons permits, ATF will not exempt the holder of a North Dakota concealed weapon permit issued after November 29, 1998, from background check

requirements when purchasing a firearm. The ATF, in essence, has allowed a waiver for the permits issued prior to November 30, 1998, until those permits expire. Concealed weapon permits are issued for a three-year period. Anyone with a valid permit issued on or before November 29, 1998, can still present the permit to a gun dealer and forego the background check. However, as current concealed weapon permit holders renew their permits, they will no longer be exempt, and will be required to undergo background checks for gun purchases despite having a concealed weapon permit.

By amending North Dakota state law to impose the same restrictions as federal law on the ownership and possession of firearms, holders of North Dakota concealed weapons permits will again be exempt from undergoing a background check each time they purchase a firearm.

We urge your support for this bill.

I would be happy to answer any questions.

TESTIMONY OF
ROBERT P. BENNETT,
ASSISTANT ATTORNEY GENERAL

CONCERNING ENGROSSED HOUSE BILL NO. 1447
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

This testimony concerning Engrossed House Bill 1447 is limited to the amendments to subsection 3 of section 62.1-02-01 found on page 1, lines 21-24.

Concerns have been raised about the scope of the firearms prohibition in this subsection. Based upon the current law, a person could be ineligible from possessing or controlling a firearm because of the very temporary commitment in a hospital or other institution prior to a hearing or determination of probable cause to justify further treatment. It may be unfair that a person, after a dismissal of all proceedings and the mental health petition after a court has found insufficient proof to support a treatment order, would be treated the same as to further weapons possession as a person who would be finally adjudged mentally ill and actually committed for treatment. This amendment excludes from the firearm possession or control prohibitions those persons who have had mental health proceedings dismissed against them by a court.

N.D.C.C. § 25-03.1-17 authorizes a court to dismiss a petition for involuntary treatment if a court finds, after a hearing, that probable cause does not exist to believe that an individual is a person requiring treatment. N.D.C.C. § 25-03.1-18 authorizes a court to dismiss a petition if a person is released from evaluation or treatment because the person does not meet the criteria of a person requiring treatment under the mental health commitment laws. The last

section, N.D.C.C. § 25-03.1-19, authorizes the court to order a dismissal of the proceedings if, at the completion of an involuntary treatment hearing, the court finds that the petition for involuntary treatment has not been proven by clear and convincing evidence. In each of these cases, by its dismissal of the proceedings, the court will conclude that the person is not a mentally ill person subject to the mental health commitment laws. The justification for the firearms prohibitions is no longer present under these circumstances.

*9165 N.D. Code § 25-03.1-17

**WEST'S NORTH DAKOTA CODE
TITLE 25. MENTAL AND
PHYSICAL ILLNESS OR
DISABILITY
CHAPTER 25-03.1. COMMITMENT
PROCEDURES**

*Current through the 1997 Regular Session of the
55th Legislative Assembly (1997)*

**§ 25-03.1-17. Involuntary treatment--
Right to preliminary hearing**

A respondent who is in custody under section 25-03.1-25 and who is alleged to be mentally ill or to be suffering from a combination of chemical dependency and mental illness is entitled to a preliminary hearing. At the preliminary hearing the magistrate shall review the medical report. During the hearing the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence

that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The person must be ordered discharged from the treatment facility if that person has been detained before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it shall consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it finds that alternative treatment is not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent and give written notice that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

Search this disc for cases citing this section.

*9166 N.D. Code § 25-03.1-18

**WEST'S NORTH DAKOTA CODE
TITLE 25. MENTAL AND
PHYSICAL ILLNESS OR
DISABILITY
CHAPTER 25-03.1. COMMITMENT
PROCEDURES**

*Current through the 1997 Regular Session of the
55th Legislative Assembly (1997)*

**§ 25-03.1-18. Involuntary treatment--
Release**

The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a seven-day emergency order if, in the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, before the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court must be notified of the release and the reasons therefor. If the respondent is released because the respondent does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

Search this disc for cases citing this section.

*9169 N.D. Code § 25-03.1-19

**WEST'S NORTH DAKOTA CODE
TITLE 25. MENTAL AND
PHYSICAL ILLNESS OR
DISABILITY
CHAPTER 25-03.1. COMMITMENT
PROCEDURES**

*Current through the 1997 Regular Session of the
55th Legislative Assembly (1997)*

§ 25-03.1-19. Involuntary treatment hearing

The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within seven days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing must be held in the county of the

respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

Search this disc for cases citing this section.