

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1092

2001 HOUSE JUDICIARY

HB 1092

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1092

House Judiciary Committee

Conference Committee

Hearing Date 01-15-01

Tape Number	Side A	Side B	Meter #
Tape I	x		4101 to 5412
		x	1253 to 1513
Committee Clerk Signature <i>Juan Rivera</i>			

Minutes: Chr DeKrey opened the hearing on HB 1092.

Ken Sorenson - Assistant Attorney General - (see attached testimony).

Rep Kretschmar: Would this bill take care of the situation when Kyle Bell got away?

Ken Sorenson: That is what prompted the bill.

Chr DeKrey: Any other questions, is there anyone else here to testify for or against HB 1092?

We will close the hearing on HB 1092.

Chr DeKrey: We will take up HB 1092. Rep Maragos moved the amendments submitted on HB 1092, second by Rep Delmore. Chairman called for a voice vote on the amendments.

Amendments carried. What are the wishes of the committee? Rep Delmore moved a DO PASS as amended, seconded by Rep Maragos, the clerk will take the roll call vote. Motion passes 15 yes, 0 no, 0 absent. Floor assignment is Rep Gunter.

PROPOSED AMENDMENTS TO HOUSE BILL 1092

Page 1, line 1, remove "12-47-36 and a new"

Page 1, line 2, remove "subsection to section" and "from"

Page 1, line 3, remove "the custody of the warden"

Page 1, Line 8, remove lines 8 through 15⁴

Page 1, line 16, replace "SECTION 2" with "SECTION 1"

Page 1, line 21, after "state", insert a comma; after "Burleigh County" insert "or in the county in which the order committing the person to official detention was entered"

Page 1, line 22, remove "in all other cases, the jurisdiction of a violation of this section is within"

Page 1, remove lines 23 and 24

Page 2, line 1, replace "SECTION 3" with "SECTION 4"

Page 2, line 13, replace "SECTION 4" with "SECTION 3"

Page 2, line 15, replace "SECTION 5" with "SECTION 4"

VR
1/15/01

House Amendments to HR 1002 House Judiciary 01-16-01

Page 1, line 1, remove "12-47-34 and a new"

Page 1, line 2, remove "subsection to section" and remove "from"

Page 1, line 3, remove "the custody of the warden"

Page 1, remove lines 8 through 15

Page 1, line 20, remove the underscored comma

Page 1, line 21, after "state" insert an underscored comma, after "and" insert "is", and after "County" insert "or in the county in which the order committing the person to official detention was entered"

Page 1, line 22, remove "In all other cases, the jurisdiction of a violation of this section is within"

Page 1, remove lines 23 and 24

Renumber accordingly

Date: 01-15-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1092

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep Delmore Seconded By Rep Maragos

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Hunter

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

REPORT OF STANDING COMMITTEE

HB 1092: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1092 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "12-47-34 and a new"

Page 1, line 2, remove "subsection to section" and remove "from"

Page 1, line 3, remove "the custody of the warden"

Page 1, remove lines 8 through 15

Page 1, line 20, remove the underscored comma

Page 1, line 21, after "state" insert an underscored comma, after "and" insert "is", and after "County" insert "or in the county in which the order committing the person to official detention was entered"

Page 1, line 22, remove "In all other cases, the jurisdiction of a violation of this section is within"

Page 1, remove lines 23 and 24

Renumber accordingly

2001 SENATE JUDICIARY

HB 1092

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1092

Senate Judiciary Committee

Conference Committee

Hearing Date JANUARY 31ST, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-17.0
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on HB 1092: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SUBSECTION TO SECTION 12-47-34 AND A NEW SUBSECTION TO SECTION 12.1-08-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO ESCAPES FROM THE CUSTODY OF THE WARDEN AND JURISDICTION OVER ESCAPES; TO AMEND AND REENACT SUBSECTION 1 OF SECTION 12.1-08-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO ESCAPES; TO REPEAL SECTIONS 29-03-15 AND 29-03-16 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO ESCAPES; AND TO DECLARE AN EMERGENCY.

Ken Sorenson, Assistant Attorney General submitting testimony on behalf of the North Dakota Department of Corrections and Rehabilitation. (testimony attached)

Senator Bercler, how does this effect subcontractors?

Ken Sorenson, sheriff is using a transporter, they are sill officially detained. We're changing the language.

Senator Traynor, Bell escaped in New Mexico. If we had this bill, how would it differ from the present law?

Ken Sorenson, it wouldn't because we have the Federal Fugitive Warrant.

Senator Nelson, in section 1, why is the warden of the pen only here?

Ken Sorenson, I don't think that changes much.

Senator Nelson, how about "a warden" instead of "the warden?"

Senator Lyson, I think what is done here is excellent.

Senator Bercler, a private contractor, who was doing this? How would this bill help?

Ken Sorenson, this won't help in the apprehension. This will help with jurisdiction. HB 1350 deals with subcontractors.

Senator Traynor what about the escape from a law enforcement center?

Ken Sorenson, their under official detention. Line 11, pg. 1. line 2 page 2 covers this.

Senator Nelson, what do they do now with transportation? A gentlemen's agreement?

Ken Sorenson, they still need to sign for jurisdiction. You need to extradite.

Senator Bercler, how about travel jurisdiction?

Ken Sorenson, this doesn't change that, when it comes to tribal jurisdiction.

Senator Lyson, we use same extradition as we do other states as well as territories.

Senator Bercler, could we include language to include the tribes?

Senator Lyson, when a person runs to another state, we need to give them over to the local authorities (sites MT as an example)

Senator Traynor closed the hearing on HB 1092.

SENATOR NELSON MOTIONED TO AMEND HB 1092, SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT

Page 3
Senate Judiciary Committee
Bill/Resolution Number HB 1092
Hearing Date January 31st, 2001

**VOTING. SECOND MOTION WAS MADE BY SENATOR LYSON TO DO PASS AS
AMENDED, SECONDED BY SENATOR WATNE. VOTE INDICATED 7 YEAS, 0
NAYS AND 0 ABSENT AND NOT VOTING. SENATOR LYSON VOLUNTEERED TO
CARRY THE BILL.**

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 8:48 a.m.

Module No: SR-18-2067
Carrier: Lyson
Insert LC: 18116.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1092, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1092 was placed on the Sixth order on the calendar.

Page 1, line 10, replace the first "the" with "a"

Page 1, line 24, replace the fourth "the" with "a"

Renumber accordingly

2001 TESTIMONY

HB 1092

Fifty-seventh
Legislative Assembly
Of North Dakota

HOUSE BILL NO. 1092

BEFORE THE HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
January 15, 2001

Mr. Chairman, Members of the House Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation.

It is a daily occurrence for law enforcement officers, correctional officials, and juvenile officials to transport persons who are in custody from one location to another. There are numerous reasons why persons in custody are so frequently transported. The Department of Corrections and Rehabilitation (DOCR) transports inmates between the Penitentiary, the Missouri River Correctional Center, and the James River Correctional Center. It also transports inmates to the State Hospital, to county and regional correctional centers, and to out-of-state facilities such as the Prairie Correctional Facility in Appleton, Minnesota. The DOCR also transports inmates to clinics and hospitals for medical and health care that it is not able to provide on-site. Similarly, on the juvenile side, the Division of Juvenile Services is involved on an almost daily basis in arranging for the transportation of juveniles committed to its custody by the Juvenile Courts. Juveniles are regularly transported to and from the North Dakota Youth Correctional Center and to and from residential care and treatment facilities, and to and from other foster care placements. Juveniles frequently will be traveling to out-of-state treatment and custodial facilities under the Interstate Compact for the Placement of Juveniles. Sometimes, the Division of Juvenile Services will arrange for transportation through a sheriff's department and other times a case manager or staff member of the North Dakota Youth Correctional Center will be responsible for transportation of a juvenile.

Sheriffs, deputy sheriffs, and police officers also routinely transport persons held in custody. The transportation may be for purposes of going to court either in that county or in another county, or to go to a hospital or clinic, to go to the State Hospital for an evaluation or for civil commitment, or to take a convicted offender to the North Dakota State Penitentiary to serve a sentence. Sheriffs and deputy sheriffs also are required to travel out of state and pick up persons pursuant to extradition proceedings and to also bring persons back to North Dakota under the Interstate Compact on Detainers to face pending criminal charges in the state of North Dakota.

The frequency of transportation of persons in custody, the fact of prior escapes, and the potential for escapes presented potential issues of arrest warrant authority and jurisdiction over escapees. House Bill No. 1092 is intended to resolve these potential issues.

1. Section 1 of House Bill No. 1092

Section 1 of House Bill No. 1092 would add a new subsection to the Penitentiary's escape statute. The amendment would statutorily authorize the Warden of the Penitentiary to issue an arrest warrant for an offender subject to official detention as defined under N.D.C.C. § 12.1-08-06 and in the legal custody of the Warden or the DOCR if the Warden has reasonable cause to believe there has been an escape or an attempted to escape. This amendment includes the authority to issue the warrant if the escape or attempted escape occurs within or without the state of North Dakota. I am not aware of any judicial decision from the state of North Dakota that has recognized whether or not an arrest warrant may be issued for an out of state escape. This amendment provides that an arrest warrant may be issued in the event of an escape of a North Dakota prisoner outside of our geographical boundaries.

The DOCR has received comments that it may not be appropriate to give the Warden this warrant authority. While it is my contention that the Legislative Assembly has the authority to give the executive branch statutory authority to issue quasi-criminal arrest warrants for persons in the Warden's custody who have escaped from official detention, this possible issue may be resolved by simply removing the proposed amendment from the bill draft. In that event, Rule 4 of the Rules of Criminal Procedure would govern the warrant process and a magistrate would issue the warrant for the arrest of an escapee. While the DOCR does not necessarily agree with these comments, in order for this not to be an issue before this Committee or before the courts, the DOCR has attached a proposed amendment to remove this section.

2. Section 2 of House Bill No. 1092.

N.D.C.C. § 12.1-08-06 is the escape statute and provides a definition of official detention. N.D.C.C. § 12.1-08-06(3)(b) defines "official detention" to mean arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, but "official detention" does not include supervision on probation or parole or constraint incidental to release.

N.D.C.C. § 29-03-15 provides that the jurisdiction of a criminal action for escaping from or breaking the penitentiary, with intent to escape, or for attempting by force or violence or in any other manner is in the county where the penitentiary is located. N.D.C.C. § 29-03-16 provides that the jurisdiction of a criminal action for breaking or escaping from the jail of any county is in the county where the jail is located. Neither one of these

provisions addresses the situation when a person may escape from "official detention" but at the time, the "official detention" was neither the penitentiary or a jail, but instead was transportation, which is included within the definition of "official detention". Neither of these statutes accurately addresses the situation of an escape that occurs when a person escapes from "official detention" but the "official detention" is neither a state nor local correctional facility. It may be argued that jurisdiction over an escape in this circumstance can be found under N.D.C.C. § 29-03-04, which provides that when a crime or public offense is committed in part in one county and in part in another, or when the acts that make up the offense occur in two or more counties, jurisdiction is in either county. Even if the courts did have to address the issue and did decide the matter that way, it still does not address jurisdiction of an escape when a person is subject to "official detention" under North Dakota law and escapes while out of state. The amendments in Section 2 of House Bill 1092 resolve the issue of where jurisdiction should lie if there is an escape from official detention other than a correctional facility, and in order to resolve the question of jurisdiction when there is an escape from North Dakota's official detention outside of the state's geographical boundaries. Namely, Section 2 of House Bill 1092 provides that the jurisdiction for a violation of N.D.C.C. § 12.1-08-06 is in the county where the violation occurred, and if the violation occurred outside of North Dakota, in Burleigh County, and also provides jurisdiction in the county in which the order committing the person to lawful detention was entered. The proposed new subsection does include some redundant language and also potentially places more of a prosecution burden on Burleigh County than was intended. This can be resolved by rewording the subsection to read as follows:

The jurisdiction of a violation of this section when the person is in the legal custody of the warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority, is in the county where the violation occurred if the violation occurred within this state, and in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

For example, under this proposed amendment, if an inmate escaped from the James River Correctional Center (JRCC), Stutsman County would have jurisdiction. If the escape occurred while the inmate was being transported from Cass County to the North Dakota State Penitentiary in Bismarck and the escape occurred in Cass County, Cass County would have jurisdiction. If the escape was from the North Dakota State Penitentiary or the Missouri River Correctional Center, jurisdiction would be in Burleigh County. On the other hand, if the escape occurred out of state, such as if an inmate escapes while being transported from the North Dakota State Penitentiary to the Prairie Correctional Center in Appleton, Minnesota, either Burleigh County or the county where the judgment of conviction was entered will have jurisdiction.

A proposed amendment to change the language in Section 2 of House Bill 1092 is attached to this testimony.

3. Section 3 of House Bill 1092.

In order to resolve any potential issue whether a person who escapes from official detention under North Dakota law may be guilty of escape under North Dakota law if the escape occurs outside the geographical boundaries of the state, Section 3 of House Bill amends subsection 1 of N.D.C.C. § 12.1-08-06 to provide that a person who escapes from official detention while outside the state of North Dakota is guilty of escape under North Dakota law.

4. Section 4 of House Bill 1092.

Section 4 of House Bill repeals N.D.C.C. §§ 29-03-15 and 29-03-16. These statutes were referenced in part three of this discussion and would no longer be needed because of the amendment to N.D.C.C. § 12.1-08-06 in Section 2 of House Bill 1092, with the additional proposed amendments.

5. Section 5 of House Bill 1092.

Because of the frequent transportation of inmates within and without the state of North Dakota and the always-present risk of escape, an emergency clause has been included to resolve potential escape arrest authority and jurisdiction issues as soon as possible.

Fifty-seventh
Legislative Assembly
Of North Dakota

ENGROSSED HOUSE BILL NO. 1092

BEFORE THE SENATE JUDICIARY COMMITTEE
JACK TRAYNOR, CHAIRMAN
January 31, 2001

Mr. Chairman, Members of the Senate Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation.

Peace officers, correctional officials, and juvenile officials transport persons who are in custody from one location to another on a daily basis. There are numerous reasons why persons in custody are so frequently transported.

The Department of Corrections and Rehabilitation (DOCR), through the North Dakota State Penitentiary, the Missouri River Correctional Center, and the James River Corrections Center, regularly transports inmates between the Penitentiary, the Missouri River Correctional Center, and the James River Correctional Center. It also transports inmates to county and regional correctional centers, to out-of-state facilities such as the Prairie Correctional Facility in Appleton, Minnesota, and although it has not done so recently, it has in the past transported inmates to the North Dakota State Hospital. The DOCR also transports inmates to clinics and hospitals for medical and health care that it is not able to provide on-site. Parole and probation officers, who are licensed

peace officers, also regularly transport persons who have been placed under their supervision and management either by the courts or by the Parole Board. Similarly, on the juvenile side, the Division of Juvenile Services is involved on an almost daily basis in arranging for the transportation of juveniles committed to its custody by the Juvenile Courts. Juveniles are regularly transported to and from the North Dakota Youth Correctional Center and to and from residential care and treatment facilities, and to and from other foster care placements. Juveniles frequently will be traveling to out-of-state treatment and custodial facilities under compact placement. Sometimes, the Division of Juvenile Services will arrange for transportation through a sheriff's department and other times a case manager or staff member of the North Dakota Youth Correctional Center will be responsible for transportation of a juvenile. The Warden of the North Dakota State Penitentiary recently testified before the House Judiciary Committee that in 1999, the Department of Corrections and Rehabilitation transported persons in its custody over 16,000 times.

Sheriffs, deputy sheriffs, and police officers also routinely transport persons held in custody. The transportation may be for purposes of going to court either in that county or in another county, or to go to a hospital or clinic, to go to the State Hospital for an evaluation or for civil commitment, or to take a convicted offender to the North Dakota State Penitentiary to serve a sentence. Sheriffs and deputy sheriffs also are required to travel out of state and pick up persons pursuant to extradition proceedings and to bring persons back to North

Dakota under the Interstate Compact on Detainers to face pending criminal charges in the state of North Dakota.

The frequency of transportation of persons in custody, the fact of prior escapes, and the potential for escapes present potential issues of jurisdiction over escapees. House Bill No. 1092 is intended to resolve these potential issues.

1. Section 1 of Engrossed House Bill No. 1092

N.D.C.C. § 12.1-08-06 is the escape statute and provides a definition of official detention. N.D.C.C. § 12.1-08-06(3)(b) defines "official detention" to mean arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, but "official detention" does not include supervision on probation or parole or constraint incidental to release.

N.D.C.C. § 29-03-15 provides that the jurisdiction of a criminal action for escaping from or breaking the penitentiary, with intent to escape, or for attempting by force or violence or in any other manner is in the county where

the penitentiary is located. N.D.C.C. § 29-03-16 provides that the jurisdiction of a criminal action for breaking or escaping from the jail of any county is in the county where the jail is located. Neither one of these provisions addresses the situation when a person may escape from "official detention" but at the time, the "official detention" was neither actual physical custody in the penitentiary or in a jail, but instead the escape occurred during transportation, or other form of temporary leave from the physical custody of a correctional facility, which are included within the definition of "official detention". It may be argued that jurisdiction over an escape in this circumstance can be found under N.D.C.C. § 29-03-04, which provides that when a crime or public offense is committed in part in one county and in part in another, or when the acts that make up the offense occur in two or more counties, jurisdiction is in either county. Even if the courts did have to address the issue and did decide the matter that way, it still does not address jurisdiction of an escape when a person is subject to "official detention" under North Dakota law and escapes while out of state. The amendments in Section 1 of Engrossed House Bill 1092 resolve the issue of where jurisdiction should lie if there is an escape from official detention other than a correctional facility, and in order to resolve the question of jurisdiction when there is an escape from North Dakota's official detention outside of the state's geographical boundaries. Namely, Section 1 of Engrossed House Bill 1092 provides that the jurisdiction for a violation of N.D.C.C. § 12.1-08-06 is in the county where the violation occurred, and if the violation occurred outside of

North Dakota, jurisdiction will be in Burleigh County, or in the county in which the order committing the person to lawful detention was entered.

For example, under Section 1, if an inmate escaped from the James River Correctional Center (JRCC), Stutsman County would have jurisdiction. If the escape occurred while the inmate was being transported from Cass County to the North Dakota State Penitentiary in Bismarck and the escape occurred in Cass County, Cass County would have jurisdiction. If the escape was from the North Dakota State Penitentiary or the Missouri River Correctional Center, jurisdiction would be in Burleigh County. On the other hand, if the escape occurred out of state, such as if an inmate escaped while being transported from the North Dakota State Penitentiary to the Prairie Correctional Center in Appleton, Minnesota, either Burleigh County or the county where the judgment of conviction was entered will have jurisdiction.

2. Section 2 of Engrossed House Bill 1092.

In order to resolve any potential issue whether a person who escapes from official detention under North Dakota law may be guilty of escape under North Dakota law if the escape occurs outside the geographical boundaries of the state, Section 2 of House Bill amends subsection 1 of N.D.C.C. § 12.1-08-06 to provide that a person who escapes from official detention while outside the state of North Dakota is guilty of escape under North Dakota law.

3. Section 3 of Engrossed House Bill 1092.

Section 3 of Engrossed House Bill 1092 repeals N.D.C.C. §§ 29-03-15 and 29-03-16. These statutes were referenced earlier and would no longer be needed because of the amendment to N.D.C.C. § 12.1-08-06 in Section 1 of Engrossed House Bill 1092.

4. Section 4 of Engrossed House Bill 1092.

Because of the frequent transportation of inmates within and without the state of North Dakota and the always-present risk of escape, an emergency clause has been included to resolve potential escape jurisdiction issues as soon as possible.