MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1057

2005 HOUSE JUDICIARY

HB 1057

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1057

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/25/05

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-23.8
2	xx		2.3-4.7

Committee Clerk Signature JPenrose

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1057.

Representative Koppelman: I am one of the sponsors of HB 1057, HB 1061, and HB 1313, I support the bill (see written testimony).

Representative Delmore: I support these bills.

Representative Onstad: On HB 1057, you reference the Executive Director, is that of Corrections ...

Representative Koppelman: I believe that is correct.

Chairman DeKrey: I believe it is head of State Hospital.

Duane Houdek, AG's office: Support HB 1057, 1061 and 1313 (see written testimony).

Representative Kretschmar: Would it be retroactive, for someone in the community now.

Duane Houdek: Yes, it could apply to anyone that is assessed now as a risk and for whom the states attorney in the counties see as a risk.

Representative Kretschmar: Did the task force, at any time, discuss any aspect of trying to prevent someone who's not an offender from doing it the first time.

Duane Houdek: We talked about extensively about the treatment that is available, what we'd do with people who come in from other states who may have never been part of our corrections system. As you know the corrections in the criminal system is the key way we find people and it is the biggest gate through which these assessments are made. This law would permit us to do it in any instance, in which a states attorney feels it would be necessary to pursue civil commitment. It could be someone who has not had a crime.

Representative Kretschmar: Someone who has committed a crime and been convicted comes under this bill. Someone with no conviction, but just out there, could be as dangerous as a criminal.

Duane Houdek: If we have a way of finding, through whatever source, that there has been an act committed, then this assessment could be made and such a commitment could be done.

Representative Onstad: On this assessment test, on the scoring, is 8 the basis where they require monitoring at that point.

Duane Houdek: You are exactly right. Eight is a critical point in the scoring of this particular test. We had the opportunity to talk to the doctor who developed this MnSOST test, a Dr. Efferson, and he showed us that between 7 and 8, over a period of 3-6 years, that's the point at which it becomes more likely than not, that the person will commit another act. Eight is also the point at which under our registration laws, we deem it necessary to have community wide notification. It is the point at which you change from moderate risk to a higher risk, and so 8 is a critical point and that's why it was chosen.

Representative Delmore: How many people do you foresee being on the outpatient side of this. One of the reasons I was very happy to be on these bills was because of what happened in my community in Grand Forks. How can we make sure that we can reassure the public that with an outpatient type of program, rather than incarceration, that the community is safe. Will we be able to monitor them so that we know where they are.

Duane Houdek: Yes. Thank you for your participation in this process. Yes, we can offer that assurance. We have to keep in mind, that those individuals who are scoring between 8 and 13 now, are not subject, we have not been referring them for civil commitment. So if they have a probationary part of their sentence, we would have that supervision. But if they were coming in from another state, or if they would have completed their criminal sentence, now what we have is registration and public notification. This would be an added layer of safeguards, including the monitoring you're talking about; the supervision by trained case managers and the court order requiring them to stay out of certain areas of the city; to stay away from schools, stay away from places where another offense might occur. So, although it is hard to predict exactly how many will end up in that status, we'll know that only after we run the tests and have the people assessed for that risk. I think we can say with assurance that we have the wherewithal to supervise, monitor and treat all those who fit that description. The GPS monitoring you mentioned, the sex offender specialist that we have added already out in the field, give us the opportunity and the ability to monitor this population.

Representative Delmore: What have we done, either with this committee, or with the Governor's office, with our border states. I look at MN as having fallen down with some of the things they probably should have had in place. Whether that would make the end result different,

nobody knows. I'm just wondering if we are working with SD, MT and MN to also make sure they're up to snuff with where they should be.

Duane Houdek: I know the Governor has spoken with Governor Polenti about this issue. We have changed our practices so that if a person would be subject to referral in ND for civil commitment, we notify any state that the person goes to that that is the fact, and that they may want to petition for civil commitment in their state, if they have such a law. Not all states do. We also apply our civil commitment laws to anyone who works in our state, even though they may live in a border state. We apply these laws to anyone, where we constitutionally can, who has sufficient contact with ND. We are hoping that people will leave. We want to be known as the state that sex offenders don't want to have anything to do with. We want to be known as the state where there are strict laws, where there is an ultimate level of protection.

Representative Koppelman: Are the other states reciprocating in that effort, are they also assessing people that come into their state in a like manner to which you are described.

Duane Houdek: I have seen more recently, that Gov. Polenti has convened a task force, similar to Gov. Hoeven and they are looking at those very same issues. I think Mr. Emmer would be able to tell you that we are getting a higher level of cooperation than we used to.

Representative Koppelman: We have to strike a balance between protecting freedom and liberties of people who have committed no offense of any kind and at the same time, dealing appropriately with those who have. Is it typical that sex offenders tend to violate on increasingly levels. Their first offense may not be as serious, but it kinds of ratchet up. We're dealing with folks that may be at risk, or a risk factor but have never offended, are they as likely to go out and do something as violent in their first act.

Duane Houdek: One thing I can see with certainty, is that your right about asking Dr. Etherington, instead of me.

Representative Delmore: There is evidence that the recidivism rate alone is very, very high with sexual predators, and that's one of the reasons they put this in there.

Chairman DeKrey: Thank you. Thank you for working with the Task Force. Further testimony in support of HB 1057.

Jonathan Byers, AG's office: I appear on behalf of the AG. He does send his apologies, he wanted to be here for this morning's committee hearings, but he is in an Industrial Commission meeting. I want to go on record in support of 1057 on behalf of the AG. I am going to provide more specific testimony as pertains to HB 1313 and Ken Sorenson, AG's office, will address some of the issues that are contained in HB 1061 (see written testimony). I do have some information for a question that Representative Koppelman raised, "Do sex offenders begin with more innocent type crimes and go on to more serious ones". We don't know or can't say that every sex offender that commits a hands-off offense, like window peeping or flashing, is going to commit a more serious one. But researchers did a study several years ago, indicating that when you take a look at the group of serious sexual offenders, 60% of those began with a hands off offense like window peeping or flashing.

Representative Onstad: Do all states give the same assessment tests in rating. If a sexual offender comes in from Kentucky to ND, does a number come with that person, if not, do we test that person.

Jonathan Byers, AG's office: There are a number of states that have adopted the MN Sex offender screening tool, which is the one we use. There are other states that use tools called the

Razar, Static 99, there are about three that are well recognized across the country. We developed some guidelines for sexual offenders that provides that if they already have a score that we can make sense of from another state, we'll adopt that; but if they haven't, then they are reassessed once they move to ND and we'll assign our own risk level too.

Chairman DeKrey: Thank you. Further support of HB 1057.

Dr. Etherington, Clinical Director of ND State Hospital: We are in support of this bill (see written testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Warren Emmer, Director, Dept. Of Corrections And Rehab: Support (see written testimony). The way the system is set up now, is the sex offender will announce where they are going to live, and then law enforcement doesn't hear from them again. This requires that the individual would be checking in much more frequently. I think that's helpful. Rep. Delmore and Koppelman also spoke about sex offenders under correctional supervision crossing state lines. The new interstate compact that came law of September 1, 2004 is a much more stringent interstate compact, than we had for example when that tragedy occurred in Grand Forks. I think that mechanism is going to be much more helpful. It's not perfect. Our sister state, MN, has come into compliance in ways we've never seen before. We have some influence on the national level, as I am the chair of the National Compliance Committee for the Interstate Compact. I think that we can do a better job and we will be doing a better job.

Representative Maragos: What is the composition of the Risk Management Treatment Team.

Warren Emmer: That's going to be the treatment clinicians, and the case manager. But it's all the people who are officially involved with that case, would be part of the Risk Management Team.

Dr. Etherington: It would be a trained clinician, a case manager, the sex offender specialist, and then all those others that are deemed appropriate; most often a family member, or multiple family members, community members, members of the church, it is really a community project.

Warren Emmer: We started that same system for the high risk parole applicants in Fargo, Bismarck, and soon to be Williston, called the re-entry project. It's very similar to what the doctor described.

Representative Meyer: Last fall there was a special on TV, they showed where the sex offender gave the police department a bogus address, and when they went there they weren't there. Which of these three bills would address that issue.

Warren Emmer: I think actually all three of them would to some extent. If in fact a person is on a community civil commitment, it would be the case manager or sex offender specialist. That may be an interchangeable term, depending on how things work out. That would be ensuring that the people are living where they should be. HB 1061, dealing with registration, is also part of it, because that's the part where law enforcement gets more actively involved. If we developed this kiosk system, that address will be established monthly. As a result of the Governor's Task Force, we are looking at these addresses, and they are physically going out and making it a point to check each of them; particularly the high risk people. On HB 1313, that's the sentencing bill, the mandatory piece that requires supervision on the back end, would also then kick in the work of the sex offender specialist and also working with the law enforcement

community as well. Out of tragedy, sometimes a lot of good things can come. First of all, the Governor taking the initiative to put this group of people together in a task force was helpful, but it clearly also allowed my staff and other local law enforcement folks to work together in a way we haven't ever done before. It was through those discussions in fact, that the kiosk system idea came into play.

Chairman DeKrey: Thank you. Further testimony in support of HB 1057.

Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the ND Council on Abused Women's Services/Coalition against Sexual Assault in ND: We support all three bills, HB 1057, 1061 and 1313 (see written testimony).

Representative Koppelman: I certainly appreciate your amendments. Just to clarify, you do understand that the intent of the legislation is not to allow more sex offenders into the community, but rather to make sure that those who go back to the community, receive the kind of supervision that they need or that society thinks they need.

Jessica McSparron-Bien: Yes, we understand that.

Chairman DeKrey: Thank you. Further support of HB 1057, opposition, we will close the hearing on HB 1057.

(Reopened in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1057.

Representative Delmore: I move the Abused Women's amendments.

Representative Koppelman: Second.

Chairman DeKrey: Motion carried.

Representative Zaiser: I move a Do Pass as amended.

Representative Kretschmar: Second.

14 YES 0 NO 0 ABSENT **DO PASS AS AMENDED** **CARRIER: Rep. Bernstein**

FISCAL NOTE

Requested by Legislative Council
01/24/2005

REVISION

Bill/Resolution No.: HB 1057

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$0	$0		
Appropriations			$0	$0		

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill creates and enacts a new section of NDCC relating to the postcommitment placement of sexually dangerous individuals into the community and provides for a penalty. This bill proposes to provide an option for the Department to treat civilly committed sexual offenders in the community rather than in an inpatient setting if a completed risk assessment indicates that the public would not be at risk. Due to the uncertainty regarding the risk level of future referrals to the program, a fiscal impact cannot be determined at this time. We are uncertain which referrals would be able to be treated in the community versus the inpatient setting. Should future referrals qualify for community treatment and the number of inpatient civil commitments drops below the proposed 42 beds in the 2005 – 2007 biennium, a portion of that budget could be shifted toward this effort. However, additional funding would be needed should the inpatient civil commitment referrals remain at the estimated level of 42 beds and we also see an increase in the referrals that can be treated in the community.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Weisz	**Agency:**	DHS
Phone Number:	328-2397	**Date Prepared:**	01/24/2005

FISCAL NOTE

Requested by Legislative Council
12/20/2004

Bill/Resolution No.: HB 1057

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			$0	$0		
Appropriations			$0	$0		

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill creates and enacts a new section of NDCC relating to the postcommitment placement of sexually dangerous individuals into the community and provides for a penalty. At this point the Superintendent of the State Hospital feels the impact on the Department would be limited as they do not see discharging anyone from the program for some time. No fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Weisz	**Agency:**	DHS
Phone Number:	328-2397	**Date Prepared:**	01/07/2005

Jessica

Proposed Amendment to House Bill No. 1057

Page 2, line 8 insert f. Contact with victims is prohibited independent of a supervised treatment plan; and

Renumber accordingly

58050.0101
Title.0200

Adopted by the Judiciary Committee
January 25, 2005

VR
1/25/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1057 JUD 1/26/05

Page 2, line 7, remove "and"

Page 2, line 8, after "f." insert "Contact with victims is prohibited independent of a supervised treatment plan; and

g."

Renumber accordingly

Date: 1/25/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1057

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Zaiser Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Bernstein

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

REPORT OF STANDING COMMITTEE

HB 1057: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1057 was placed on the Sixth order on the calendar.

Page 2, line 7, remove "and"

Page 2, line 8, after "f." insert "Contact with victims is prohibited independent of a supervised treatment plan; and

g."

Renumber accordingly

2005 SENATE JUDICIARY

HB 1057

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1057

Judiciary Committee

☐ Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 2740
		X	0.0 - 800

Committee Clerk Signature Moira L Solberg

Minutes: Relating to commitment of sexually dangerous individuals; penalty.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Kim Koppelman, Dist. #13 Att. #A

Duane Hoedek, Legal Counsel, Governor's- Introduced the Bill (meter .07) Gave Testimony - Att. # 1,

Senator Triplett referenced that the scoring process of what the cut off was to deem a person to dangerous to be released". Where was this on the constitution? This is a policy issue and they have been doing it already at the prisons. Discussion of the re-of fence probability. **Sen. Trenbeath** questioned the court order community placement by the executive director as an exclusive direction? Yes. Talked about the annual review process. The committed person may also access the court for a petition. The change is that the executive director can do it at any

time. **Sen. Trenbeath** asked why a dollar amount was not addressed in a fiscal note? Human Services sees this as new and they do not know how many community placements there will be or how much the courts will use this.

Sen. Trenbeath stated that there is no indirect placement according to court order. Why do we not trust the judge to make these decisions? We do. **Sen. Trenbeath** responded only at the request of the executive director. **Mr. Hoedek** responded that the system is set as it is so that plea bargaining is not used as a negotiating tool during the criminal proceedings. We want to continue with the current standards. This bill avoids plea bargaining, give state hospital the opportunity to review that person specifically for community placement and the risk factors. This is to hard to do upfront and at this time they may have had some rehabilitation. Third this mirrors current statute.

Senator Triplett discussed the "may" verses "shall" in the mandate of the executive director? This mirrors current language. Discussed the ongoing assessment process.

Jonathan Byers - Attorney Generals office, (meter 2340)

Rosalie Etherington, Clinical Director of ND State Hospital and member of Governor's Task Force (meter 3131) Gave Testimony - Att. #2. Out Patient Risk Assessment description (meter 3400). Discussion of the risk assessment being in two levels. One when they first arrive and one upon request of the risk management plan.

Sen. Trenbeath asked why if you are already doing this are we now mandating that you do it? Why shouldn't you do a risk management assessment on all individuals? I a person is at such a high risk level then it is a waste of the resources to do the procedure. They would not ever

qualify for the process. The reason it is not mandatory is due to some time in the course of treatment they may be deemed able to be placed in the community.

Senator Triplett wanted a description of what an "8" individual and a "13" individual profile be and the tree pathway used to measure risk. Dr.. Etherington gave a description (meter 4299)

Senator Triplett asked how our system would have treated a person like the man that murdered the girl in Grand Forkes, Mr. Rodgeges. **Dr. Etherinton** stated that he would never have been released. She has been doing her job for 9 years.

Mr. Warren Emmer, Director of Dept. of Corrections and Rehabilitation, (meter 5037) Gave Testimony - Att. #3

Jessica Mc. Sparron-Bien, Sexual Assault Program and Policy Coordinator of ND (meter 6012) Gave Testimony - Att. # 4.

David Boek, Protection and Advocacy Project. (meter 721) Sited his support in this legislation

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Carrier:

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1057

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
2	X		300 - 1580

Committee Clerk Signature Mona L Solberg

Minutes: Relating to commitment of sexually dangerous individuals; penalty.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen. Traynor stated that no amendments had been proposed to the committee.

Sen. Trenbeath stated that in the code he assumed that there was a definition of "sexually dangerous individual" General discussion of the bill: This came out of the Governors Task Force bills. No opposition and the discussion of the work "may" in line 9. Discussion of the Class C felony. Some offenders refuse any type of treatment. **Senator Triplett** said that this process is not a change in the legal standards for commitment but there is a recent change in there procedure. The last six months they started "referring for commitment" people who score as low as an 8, on these tests. This was done on the advise of some experts from MN. In the last 6-8

months only 1 has been committed. They have tried 6 over time and had succeeded once. Intern, **Jeff Ubben** read the definition of "sexual dangerous individual.

Sen. Nelson referred to Rep. Kopplemans testimony that, although treatment is offered to convicted sex offenders, many reject the opportunity for treatment and are uncooperative. No supervision other then registration. **Sen. Trenbeath** has issues with the more they "lower the threshold" of the tests they do. Discussed community placement. **Senator Triplett** cited her concerns of State Hospitals having an over zealous physiologist could ruin the lives of many people. **Senator Hacker** reviewed the thoroughness of the tests and the percent of most likely to reopened. Fine line of what we lock up and what we as a society allows back into the community. This is more for the judges to decide.

Sen. Trenbeath made the motion to DO PASS and **Senator Triplett** seconded the motion. All

Carrier: **Sen. Trenbeath**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/9/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1057

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Trenbeath Seconded By Senator Sen Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Trenbeath

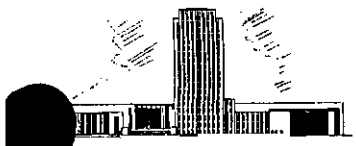
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1057, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1057 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1057



NORTH DAKOTA HOUSE OF REPRESENTATIVES

Representative Kim Koppelman
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COMMITTEES:
Judiciary
Political Subdivisions
Constitutional Revision, Chairman

Testimony on House Bills 1057, 1061, and 1313 before the House Judiciary Committee 1-25-05

Same given to Senate

Mr. Chairman and Members of the House Judiciary Committee, for the record, I am Rep. Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo.

In consideration of the committee's time, I appear before you this morning to introduce three bills: House Bills 1057, 1061 and 1313. As you'll note, the sponsorship of the bills is identical and includes our committee chairman.

These bills are the product of a task force convened by the Governor, which studied the problem violent sexual offenders and how best to deal with them, from the perspectives of treatment, incarceration and supervision. We are all too familiar with grizzly events, such as the Dru Sjodin case, to understand the need to pay attention to these offenders and our laws that deal with them.

The package of legislation before you seeks to do just that. While we have good laws on the books to deal with sex offenders now (we were one of the early states to implement civil commitment for sex offenders, for example) we need to do more.

We're proposing getting even tougher on violent sex offenders in sentencing. House Bill 1313 would impose a life sentence, without the possibility of parole, for perpetrators whose victims die, as a result of the offense.

House Bill 1061 deals with the collection and confirmation of DNA samples.

House Bill 1057 provides a critical piece of the puzzle, as it deals with supervision of offenders after they are released. We're told that, although treatment is offered to convicted sex offenders, many reject the opportunity for treatment and simply uncooperatively serve out their full sentence. That's means that there is no supervision, once they go back into society, other than the registration and community notification requirements we have in law.

I believe that it's vitally important, for the safety of our citizens, that we supervise offenders, after they are released. This bill requires that and sets up a process to accomplish it.

Mr. chairman and members of the committee, House Bills 1057, 1061 and 1313 are an important step forward to deal with sexual offenders more firmly and more comprehensively and to make our state an even safer place and I'd encourage the committee's favorable consideration. I'd be glad to attempt to answer any questions.

HOUSE JUDICIARY COMMITTEE
REP. DUANE DEKREY, CHAIRMAN
HB 1057, 1061, 1313

Testimony of Duane Houdek
Legal Counsel, Governor's Office
January 25, 2005

Chairman DeKrey, members of the House Judiciary Committee, my name is Duane Houdek. I am legal counsel for Governor Hoeven, and I staffed the task force the Governor convened last January to study our sex offender laws. The task force included professionals from all relevant disciplines and all parts of North Dakota. Over the course of six months, it met throughout the state, receiving public comment about the issues and refining its work. House bills 1057, 1061 and 1313 are a product of that task force.

Mr. Chairman, I would like to thank you and Representative Koppelman for your leadership during this study. With Senator Trenbeath, you provided the legislative expertise that proved invaluable to our deliberations. I would also like to thank Representative Delmore and Senators Traynor and Nelson for co-sponsoring this package of legislation.

When this task force convened last January, it became apparent that, although our sex offender laws and policies were generally very good, there were things we could do to provide even greater security for North Dakota citizens.

We studied all aspects of sex offender laws, including sentencing, probation and supervision, registration, treatment and civil commitment. In the end, we made some additions to each of these areas that significantly enhance the protections our laws provide to all North Dakotans.

I will provide a brief overview of each of these bills, with emphasis on the legal aspects of the community placement provisions of HB 1057. Joining me from the task force today to discuss these bills in greater detail are Jonathan Byers, from the Attorney General's office; Dr. Rosalie Etherington, Clinical Director at the State Hospital; and Warren Emmer,

Director of Field Services for the Department of Corrections. These people have stepped up and done a tremendous amount of work on these issues and, although they don't seek it, deserve recognition for all their efforts.

As a society, we deal with sex offenders in a number of ways. In the criminal system with incarceration and supervised probation, in the community with registration and public notice, and in the mental health area with inpatient civil commitment for those sexually dangerous offenders who have a mental disorder that requires treatment.

The task force looked first at our criminal system, particularly our sentencing and probation laws. We found that enhancing the criminal sentences for sexual offenses would not only provide a longer period of secure confinement, but also a greater likelihood that appropriate treatment could be provided in prison before release, further enhancing public safety. Therefore, you will see in HB 1313 a significant increase in sentencing maximums for sexual crimes that are violent or whose victims are children. In certain cases, the most heinous cases where a victim dies from a sexual attack, the task force recommends mandatory life sentence without the possibility of parole.

The task force also found that approximately one-half of sexual offenders in the penitentiary are not sentenced to any supervised probation following their release from prison. Periods of mandatory supervised probation are recommended so that no sex offender leaves our prison without supervision.

By extending the actual period of incarceration and adding five years of supervision, we will closely follow offenders through a critical period of potential recividism.

These changes are contained in HB 1313, which Jonathan Byers will explain.

The task force then turned its attention to our civil commitment laws. Current law provides for the civil commitment of sexually dangerous individuals. These are people who have engaged in sexually predatory conduct in the past, and who have been found to have a mental disorder or dysfunction that makes them likely to do so again.

The current law was passed in 1997, and since then 22 people have been committed to inpatient treatment at the State Hospital as sexually dangerous individuals.

It is important to recognize that this is not a criminal proceeding, and the commitment to inpatient treatment is not punishment for a crime. This is a civil proceeding, based upon a finding of a mental disorder, coupled with a proclivity to commit further acts of predatory conduct which present a danger to others.

All commitments are done by court order. The State's Attorney of a county petitions the court for an order of commitment on his or her own motion, or based on a referral from our corrections department or from the Attorney General's Sex Offender Risk Assessment Committee. In the past, we have referred the very highest risk offenders, those whose scores on a sex offender screening tool known as MnSOST-R are equivalent to 13 or above. By comparison, community wide notification is given of individuals if their risk is roughly equivalent to an 8 on the MnSOST-R test.

The task force found that there is a population of individuals in the state, approximately 45 people, who have been assessed between 8 and 12 on the MnSOST test and are subject only to registration as a sex offender. Some are on probation from criminal sentences, but some are not, and have no supervision at all. By scoring an 8 on this assessment tool, they indicate that over a period of three to six years, they have greater than a 50% chance of committing another sexually predatory act.

HB 1057 contains provisions that provide a new method of treating and supervising certain members of this population. They present enough risk to be evaluated and referred for commitment, but may not require the intensive in-patient treatment we have reserved for the very highest risk individuals.

Dr. Etherington will explain the risk assessment and treatment aspects of this bill, and Warren Emmer will discuss the supervision and monitoring this entails.

I would like to set the legal framework and explain why the task force chose this method of treatment.

Initially, please note that HB 1057 presents no change to either the standards for commitment of sexually dangerous individuals, nor to the procedure that is followed. Because the population we are seeking to evaluate have shown that it is likely they may commit another sexually predatory act, they already fit the requirement of our current law.

The risk assessment for community placement is done only after a court has decided there is enough evidence to commit. The initial decision by the court is whether to commit or not. There can be no direct placement in the community in the initial court order.

We did this for two reasons: First, it preserves the integrity of our current statute. Second, it avoids "plea bargaining", that is, having someone say I will agree to commitment only if it can be in the community.

Once a commitment is made, a risk assessment will be conducted and only then can the director of the department of human services petition the court for placement in the community.

Notice of the petition is given to the State's Attorney, and the court makes the final decision to place the individual in a community treatment program.

Please keep in mind that these individuals are now in our communities. We would be adding supervision, monitoring and treatment that may not now be present. The highest risk individuals will continue to be treated on an in-patient basis.

The court's order of placement must contain provisions for treatment and supervision and monitoring of the individual that will assure public safety and proper treatment of the committed individual.

One of these provisions is the requirement that the individual submit to electronic monitoring. GPS technology has advanced dramatically in recent years, and the cost of such monitoring has dropped substantially.

We are now able to track an individual's whereabouts minute by minute, establish safety zones that may not be entered, and treatment zones that must be entered at certain times. We can interface these tracks with police reports, so that we can tell in an instant if a monitored individual is at or near a crime scene at a given time.

We expect to use this tool extensively in the supervision and monitoring of community placed individuals.

Finally, HB 1057 provides that violation of a commitment order is a Class C felony. It was the conclusion of the task force that it is appropriate to have this sanction available to ensure compliance with the court's order, in addition to the contempt power inherent in the Court.

The type of out-patient treatment HB 1057 presents has been used extensively in some other states. In Texas, it is the exclusive method of commitment. Because it is a civil proceeding, it may be used when appropriate, for anyone who lives or works in a community, regardless of whether they are or have been part of our corrections population.

I understand that the Council on Abused Womens' Services will offer an amendment that would specifically provide that a committed individual have no contact with a victim outside of a supervised treatment plan. That amendment would certainly be consistent with the intent of this legislation.

The third bill, HB 1061, addresses two issues in the sex offender registration laws. It first requires a DNA sample as part of the registration process for anyone who has not previously provided one.

Secondly, it provides that the registration information must be updated in a manner and at an interval the attorney general requires. This is intended to allow our corrections department to continue to explore the concept of computerized kiosks, in which offenders provide updates of necessary information. This is favored by law enforcement, and perhaps Warren Emmer can further discuss this with you, should you want more information about it.

Mr. Chairman, you will note that the fiscal note for HB 1057 states that the cost of this legislation will depend upon the utilization of both the in-patient and out-patient methods of commitment. We have analyzed the cost of out-patient treatment and supervision, and I can tell you that it is substantially below the cost of in-patient treatment, which currently is approximately $95,000 per year for each individual. Based on costs in other states, and our analysis of the treatment and supervision needed, we have calculated a cost of approximately $12,000 per year, or even less, depending on the number of people receiving such treatment.

Thank you for the opportunity to present this overview. I would be glad to try to answer any questions you may have.

Final Draft

House Bill – 1057 – Governor's Task Force
House Judiciary Committee
Representative Duane DeKrey, Chairman
January 25, 2005

Chairman DeKrey and members of the House Judiciary Committee, I am Rosalie Etherington, the Clinical Director of the North Dakota State Hospital of the Department of Human Services. I am a member of the Governor's Task Force and have been a part of the various initiatives that come before you today. I will speak specifically to the civil commitment procedures and ask that you consider including provision for outpatient commitment within the already existing civil commitment for sexually dangerous individuals.

There is a small but dangerous group of sexual predators that pose a high risk for repeat acts of sexually predatory conduct. These recidivists do not respond to the traditional means of punishment and deterrence with the amelioration of behaviors. These recidivists do not initially respond to the treatment provided them within the community or the prisons. It is for these individuals the Civil Commitment procedures exist.

The current law allows for the commitment of an individual when two experts agree that there is a mental disease or defect present and that this makes the individual likely to engage in further sexually predatory conduct. We, the experts, have thus far narrowly defined the amount of risk necessary to recommend civil commitment. In doing so we have recommended for commitment only those individuals posing the highest risk for re-offense.

Adding the provision of outpatient commitment allows for commitment of individuals falling within the categories of high risk but provide an option for individuals that, in spite of risk, could live at-large under specific safety provisions. This does not, in any way, alter the already existing inpatient treatment services or change the threshold of risk identified for individuals requiring confinement.

The very best science uses two different ways of assessing an individual for whether he is high risk and therefore likely to engage. In the first way, we look at the individual as a unique person. We diagnose if he has a sexual disorder, a personality disorder, or another mental disorder that makes him likely to engage in additional acts of sexually predatory conduct. Then we calculate how much risk. To do this we use actuarial tables just like insurance companies. The measures used include the Minnesota Sex Offender Screening Tool, the Rapid Risk Assessment for Sex Offense Recidivism, and the Static-99. We incorporate identified factors into the instruments and the scores allow us to estimate on average the likelihood an individual will re-offend based on that individual's identified factors.

For those individuals at high risk, but yet not of the highest risk, and for whom a Risk Management Plan is reasonable, a course of outpatient commitment would be recommended. This commitment would include intensive group therapy and multiple other provisions to encourage stability within the community and continued safety against any further offending. These safety measures may include the requirement of full-time employment, stable residence, a list of persons with whom the individual may or may not be allowed to contact, submission to at least an annual polygraph and to electronic monitoring. Community supervision provided

by the Sex Offender Specialists within the Department of Probation and Parole ensures compliance of the plan and a point of contact for community concern. The Risk Management Plan becomes a living document that specifies the particular needs of the individual offender and provides a guide to all individuals assisting the offender, including family, friends, and community.

Treatment is difficult. Treatment needs of this population are very long term and the treatment modalities are very different than the treatment modalities generally provided. The various disorders that drive sexual offenses all distort an individual's deepest beliefs and attitudes about himself, about other people, about the universe, and, of course, about sex. Beliefs and attitudes do change. They change in a crucible fired by insight and tempered by kindness. Harsh methods only succeed in driving the warped thinking deeper into the unconscious mind. Overly supportive therapy achieves no change. There must be a balance and a tension between insight and kindness.

The treatment itself proceeds in five stages. Look unflinchingly at the problem. Identify the weaknesses that bring about sexual offense. Fix them. Test the fix. Prevent relapse for the rest of your life. This works if the individual works the program. Some patients get the basic idea that they need to change a lot faster than others. For individuals at highest risk this process usually moves the slowest. Nevertheless, the research clearly indicates that treatment works to reduce the risk for re-offense.

The addition of a provision for outpatient commitment allows for the identification, treatment, and management of a group of sexual offenders that may not otherwise receive treatment and are not otherwise under any

supervision. The Risk Management Plan would safeguard society from the risk that particular individuals pose but in a way that would not require their confinement.

In summary, I ask that you pass this initiative, in addition to all other initiatives proposed through the Governor's Task Force. Thank you and I will answer any questions.

Same given to Senate.

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
JANUARY 25, 2005

WARREN R. EMMER, DIRECTOR
DEPARTMENT OF CORRECTIONS AND REHABILITATION
FIELD SERVICES DIVISION
PRESENTING TESTIMONY RE: HB 1313, 1057, and 1061

Good Morning Mr. Chairman and members of the House Judiciary Committee, my name is Warren Emmer. I am the Director of the Department of Corrections and Rehabilitation, Field Services Division. House Bills 1313, 1057, & 1061 are products of the work done by the Governor's sex-offender task force. I was a member of that task force.

Several fellow task force members have already presented testimony this morning. I agree with what they have said and do not intend on duplicating that testimony. During my testimony, I will discuss examples of supervision strategies that may be used to protect both the public and reduce the future sex-offending risk of clients assigned to a community civil commitment program.

As we begin our discussion, it's imperative that we note that the authority for any community supervision for civilly committed sex offenders will remain with the court. The case manager assigned to the supervision of the civilly committed client will need to insure that all conditions set by the court are enforced. All client supervision strategies, utilized by the assigned case manager, will also need to be compatible with the individual client's risk management plan.

Examples of Client Supervision Strategies

- **Assessment of Client's Risk**
  The case manager will continually assess client future risk while the client is assigned to community supervision.
  - The case manager will utilize multiple assessment tools to assist them in assessing client risk.
  - The case manager will utilize information provided to them by collateral sources such as law enforcement, treatment professionals, corrections, client-family members, and others, to assist them with risk assessment.

- Changes of client risk will be reported to the risk management treatment team and recorded in the client's risk management plan.

- **Compliance With Treatment Programming**
  Treatment is a critical component of most sex offender risk reduction programs.
  - The case manager will monitor the client's compliance with all required treatment programming.
  - The case manager will participate as an active member of the risk management treatment team.

- **Client's Surveillance**
  Client surveillance will be a critical component of a successful client risk management plan.
  - Utilization of polygraph assessments
  - Electronic surveillance
  - Structured client interviews
  - Client home inspections
  - Personal home computer inspections
  - Collateral communication with client-family members, law enforcement, employers, and others
  - Three to five (or more) face-to-face meetings with the client weekly

The enactment of House Bills 1313, 1057, and 1061 will enhance public safety. The Department of Corrections respectfully requests your support for each bill.

NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA
18 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson DeKrey and Member of the House Judiciary Committee

RE: Testimony in support for an amendment to HB 1057

Date: Tuesday, January 25, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator at the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony for an amendment to this bill for the post-commitment community placement of sexually dangerous individuals.

Victim advocacy organizations are reluctant to support any bill which allows for sexually dangerous individuals, who have been designated by our criminal justice system as a high risk to society, to be placed in our communities. Research indicates that sex offenders have the highest rate of violent crime recidivism. The Department of Justice, Bureau of Justice Statistics in November 2003 indicated that "sex offenders are four times more likely to be arrested for another sex crime than other criminal offenders." The Department of Justice also warns against community placement of sex offenders because of "the intimate nature of sex crimes, and the fact that offenders often appear to be extremely compliant and law abiding, often hiding their behavior even from the most dedicated supervision officer, sex offenders are extremely difficult to supervise." Finally, research indicates a very limited efficacy for sex offender treatment programs. All of these finding would suggest that community placement of sexually dangerous individuals is an enormous risk and a slippery slope.

With that said and in spite of these reservations, we also realize the reality of working within the criminal justice and treatment system. The Department of Justice, Bureau of Justice Statistics exemplifies this reality stating that 60% or more of sex offenders will be supervised in communities, either immediately after sentencing or after incarceration. We acknowledge that the North Dakota Department of Corrections, working with the Governor's Task Force on Violent Crimes and Sex Offenders, has offered this legislation as one more tool to enhance supervision and monitoring of this population.

Sex offender treatment providers working hand in hand with sex offender supervisors and advocacy services have developed a list of recommendations for community placement. These recommendations are included in Community Supervision of the Sex Offender: An Overview of Current and Promising Practices, published by the Center for Sex Offender Management. The current bill does address some of these recommendations; however, it lacks specific reference to one important recommendation made in this report, no victim contact.

We request that the attached amendment be added to House Bill 1057 providing:

- Victim contact is prohibited outside a supervised treatment plan

Specific reasons for this request relate to the impact on victims, flexibility for sex offender treatment, and to ensure victim-centered responses in all communities. Victims of sexual assault fear for their life – both during and after the assault. In the cases of offenders being supervised in the community, these offenders are already determined to be at high risk for recidivism. The threats made to victims become much more acute once the offender is in the community. The

reality of harassment, stalking, retaliation, and possible homicide are real. Prohibiting contact with victims outside of the supervised treatment plan acknowledges this risk and imposes restrictions and limitations on offenders to decrease the risk.

Secondly, the language does allow sex offender treatment providers to include components of treatment such as victim empathy training or family reunification in cases of incest or continuous sexual abuse of a child. It allows sex offender treatment providers to treat the offender and involve victims to develop a treatment plan, one that will protect victims and advance the treatment of the sex offenders.

Finally, we feel it is critical to have this language contained in the statute to ensure that when sex offenders are place in supervised community treatment, all treatment providers are alerted to possible risks to victims and will include no victim contact provisions in their treatment and supervision plans, whether the treatment provider is the State Hospital, contracted sex offenders treatment providers or under the supervision of Parole and Probation Sex Offender Specialists monitoring these offenders.

With this amendment to the bill, The North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota asks for your support for HB 1057.

Thank you.

AH #1

SENATE JUDICIARY COMMITTEE
SEN. JOHN TRAYNOR, CHAIRMAN
HB 1057, 1061, 1313

Testimony of Duane Houdek
Legal Counsel, Governor's Office
February 28, 2005

Chairman Traynor, members of the Senate Judiciary Committee, my name is Duane Houdek. I am legal counsel for Governor Hoeven, and I staffed the task force the Governor convened in January of 2004 to study our sex offender laws. The task force included professionals from all relevant disciplines and all parts of North Dakota. Over the course of six months, it met throughout the state, receiving public comment about the issues and refining its work. House bills 1057, 1061 and 1313 are a product of that task force.

Mr. Chairman, I would like to thank you, and Senators Trenbeath and Nelson, for co-sponsoring this package of legislation, and Senator Trenbeath for serving on this task force. With Representatives Koppelman and DeKrey, you provided the legislative expertise that proved invaluable to our deliberations. I would also like to thank Representative Delmore for co-sponsoring the legislation on the House side.

When this task force convened last January, it became apparent that, although our sex offender laws and policies were generally very good, there were things we could do to provide even greater security for North Dakota citizens.

We studied all aspects of sex offender laws, including sentencing, probation and supervision, registration, treatment and civil commitment. In the end, we made some additions to each of these areas that significantly enhance the protections our laws provide to all North Dakotans.

I will provide a brief overview of each of these bills, with emphasis on the legal aspects of the community placement provisions of HB 1057. Joining me from the task force today to discuss these bills in greater detail are Jonathan Byers, from the Attorney General's office; Dr. Rosalie

Etherington, Clinical Director at the State Hospital; and Warren Emmer, Director of Field Services for the Department of Corrections. These people have stepped up and done a tremendous amount of work on these issues and, although they don't seek it, deserve recognition for all their efforts.

As a society, we deal with sex offenders in a number of ways. In the criminal system with incarceration and supervised probation, in the community with registration and public notice, and in the mental health area with inpatient civil commitment for those sexually dangerous offenders who have a mental disorder that requires treatment.

The task force looked first at our criminal system, particularly our sentencing and probation laws. We found that enhancing the criminal sentences for sexual offenses would not only provide a longer period of secure confinement, but also a greater likelihood that appropriate treatment could be provided in prison before release, further enhancing public safety. Therefore, you will see in HB 1313 a significant increase in sentencing maximums for sexual crimes that are violent or whose victims are children. In certain cases, the most heinous cases where a victim dies from a sexual attack, the task force recommends mandatory life without the possibility of parole.

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The current law was passed in 1997, and since then 22 people have been committed to inpatient treatment at the State Hospital as sexually dangerous individuals.

It is important to recognize that this is not a criminal proceeding, and the commitment to inpatient treatment is not punishment for a crime. This is a civil proceeding, based upon a finding of a mental disorder, coupled with a proclivity to commit further acts of predatory conduct which present a danger to others.

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I would like to set the legal framework and explain why the task force chose this method of treatment.

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We did this for two reasons: First, it preserves the integrity of our current statute. Second, it avoids "plea bargaining", that is, having someone say I will agree to commitment only if it can be in the community.

Once a commitment is made, a risk assessment will be conducted and only then can the director of the department of human services petition the court for placement in the community.

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Please keep in mind that these individuals are now in our communities. We would be adding supervision, monitoring and treatment that may not now be present. The highest risk individuals will continue to be treated on an in-patient basis.

The court's order of placement must contain provisions for treatment and supervision and monitoring of the individual that will assure public safety and proper treatment of the committed individual.

One of these provisions is the requirement that the individual submit to electronic monitoring. GPS technology has advanced

dramatically in recent years, and the cost of such monitoring has dropped substantially.

We are now able to track an individual's whereabouts minute by minute, establish safety zones that may not be entered, and treatment zones that must be entered at certain times. We can interface these tracks with police reports, so that we can tell in an instant if a monitored individual is at or near a crime scene at a given time.

We expect to use this tool extensively in the supervision and monitoring of community placed individuals.

Finally, HB 1057 provides that violation of a commitment order is a Class C felony. It was the conclusion of the task force that it is appropriate to have this sanction available to ensure compliance with the court's order, in addition to the contempt power inherent in the Court.

The type of out-patient treatment HB 1057 presents has been used extensively in some other states. In Texas, it is the exclusive method of commitment. Because it is a civil proceeding, it may be used when appropriate, for anyone who lives or works in a community, regardless of whether they are or have been part of our corrections population.

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Secondly, it provides that the registration information must be updated in a manner and at an interval the attorney general requires. This is intended to allow our corrections department to continue to explore the concept of computerized kiosks, in which offenders provide updates of necessary information. This is favored by law enforcement, and perhaps Warren Emmer can further discuss this with you, should you want more information about it.

Mr. Chairman, you will note that the fiscal note for HB 1057 states that the cost of this legislation will depend upon the utilization of both the in-patient and out-patient methods of commitment. We have analyzed the cost of out-patient treatment and supervision, and I can tell

you that it is substantially below the cost of in-patient treatment, which currently is approximately $95,000 per year for each individual. Based on costs in other states, and our analysis of the treatment and supervision needed, we have calculated a cost of approximately $12,000 per year, or even less, depending on the number of people receiving such treatment.

Thank you for the opportunity to present this overview. I would be glad to try to answer any questions you may have.

TESTIMONY
BEFORE THE JUDICIARY COMMITTEE

THE COMMITMENT OF SEXUALLY DANGEROUS INDIVIDUALS

Monday, February 28, 2005

Good morning members of the Committee. I am a concerned citizen.

I am concerned regarding HB 1057 – Relating to commitment of sexually dangerous individuals. What happened to these peoples' civil rights? Where is their right to privacy? These people are not being given a change to get a place to live or a job to become a productive member of society.

Please don't become like Minnesota, paranoid and turning their back on an individual who is trying to get his life back together.

Please don't let our State regress back to the San Haven-Grafton days when the mentally ill were civilly committed because no one wanted them in their community. It took the ARC to get these individuals back in the community. What group will come forward for these people to help them become productive individuals in the community rather than a drain on the state's economy.

AH #4

NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA
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Chairperson Traynor and Member of the Senate Judiciary Committee

RE: Testimony in support of HB 1057
Date: Monday, February 28, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator at the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of House Bill 1057 for the post-commitment community placement of sexually dangerous individuals.

Victim advocacy organizations are hesitant to support any bill which allows for sexually dangerous individuals, who have been designated by our criminal justice system as a high risk to society, to be placed in our communities. The Department of Justice, Bureau of Justice Statistics in November 2003 indicated that "sex offenders are four times more likely to be arrested for another sex crime than other criminal offenders." The Department of Justice also warns against community placement of sex offenders because of "the intimate nature of sex crimes, and the fact that offenders often appear to be extremely compliant and law abiding, often hiding their behavior even from the most dedicated supervision officer, sex offenders are extremely difficult to supervise." Finally, research indicates a very limited efficacy for sex offender treatment programs. All of these finding would suggest that community placement of sexually dangerous individuals is an enormous risk and a slippery slope.

With that said and in spite of these reservations, we also realize the reality of the correction systems over-population and limited treatment ability. The Department of Justice, Bureau of Justice Statistics exemplifies this reality stating that 60% or more of sex offenders will be supervised in communities, either immediately after sentencing or after incarceration. We acknowledge that the North Dakota Department of Corrections, working with the Governor's Task Force on Violent Crimes and Sex Offenders, has offered this legislation as an additional tool to enhance supervision and monitoring of a population of sex offenders not currently monitored.

In addition, sex offender treatment providers working hand in hand with sex offender supervisors and advocacy services developed a list of recommendations for the community placement of sex offenders. These recommendations are included in Community Supervision of the Sex Offender: An Overview of Current and Promising Practices, published by the Center for Sex Offender Management. The current bill addresses these recommendations and in addition to procedures and policy in the Department of Corrections provides a comprehensive alternative to releasing high risk offenders with no supervision or support.

The amendment in the House Judiciary was a victim-centered component and allows flexibility in sex offender treatment, and ensures victim-centered responses in all communities. Victims of sexual assault fear for their life – both during and after the assault. In the cases of offenders being supervised in the community, these offenders are already determined to be at high risk for recidivism. The threats made to victims become much more acute once the offender is in the community. The reality of harassment, stalking, retaliation, and possible homicide are real. Prohibiting contact with victims outside of the supervised treatment plan acknowledges this risk and imposes restrictions and limitations on offenders to decrease the risk.

Secondly, the language does allow sex offender treatment providers to include components of treatment such as victim empathy training or family reunification in cases of incest or continuous sexual abuse of a child. It allows sex offender treatment providers to treat the offender and involve victims to develop a treatment plan, one that will protect victims and advance the treatment of the sex offenders.

The North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota asks for your support for HB 1057.

Thank you.