

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1290

2005 HOUSE JUDICIARY

HB 1290

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/24/05

Tape Number	Side A	Side B	Meter #
1		xx	12.1-33.3
1		xx	37.5-39.9

Committee Clerk Signature



Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1290.

Wayne Stenehjem, Attorney General: Support (see written testimony).

Representative Bernstein: The court may order the frequency and location of the random testing. Doesn't that give the heads up to the person that is being tested.

Wayne Stenehjem: Exactly. This is what we hope will happen. The reason for the frequency is that depending on the drug that you are using, the amount of time that it will stay in your system, some can stay in your system up to a month (marijuana), so you don't need to have testing every other day to determine if there was marijuana use. Meth can stay in your system up to 72 hours, so that would be a kind of a key for the kind of randomness you are talking about. As long as they know it is coming, and coming in a period of time that the drug will be detected in their system, that's the kind of notice we want them to have.

Chairman DeKrey: Thank you. Further testimony in support.

Arnie Rummel, BCI agent: I am here to give you firsthand information that we do see on the street. As the bill implies, prior to this bill, people are getting out and actually getting arrested time and time again. We see a lot of people out on bond, dealing the drug, etc. and the fact that they think they are going to jail, they just continue this type of activity, so they continue making meth, creating more hazards in different parts of the state, from county to county. This bill would be an asset to the community.

Representative Meyer: If you have a blood test, and you have been taking pseudo ephedrine for a cold, does that show up as a controlled substance.

Arnie Rummel: No, it does not. It the conversion to meth. The pseudo ephedrine is just the product that they need for manufacturing. Their is a chemical change when it becomes meth.

Chairman DeKrey: Thank you. Further testimony in support.

Chief Debbie Ness, Bismarck Police Dept.: Support. This will help us combat problems, these three bills will lend themselves to public safety.

Representative Meyer: Do you believe that meth users can be rehabilitated, is there hope?

Chief Debbie Ness: There is a slim hope, we see drug users go back into that environment. We put in things like drug court that helps the change the world they live in. On the treatment side, it is very hard, this problem destroys homes, family, lives.

Chairman DeKrey: Thank you.

Representative Boehning: (directed to AG) When they are out on bail, as a condition of bail, can they be ordered to seek treatment.

Wayne Stenejem: There is but I think the appropriate time for that might be after the person has been through trial, to determine if they are actually guilty of the offense. The question asked

about whether there is hope in treatment. The answer is that we do not have to give up. There is some evidence that there are kinds of treatments that work, but the first thing we have to recognize is that the typical 28 day intensive outpatient treatment program, works pretty well for alcohol and other drugs. For meth treatment, you need ongoing long term program, where the individual is monitored to make sure that they aren't using while they are undergoing the treatment program, because it can take 2-3 months to actually begin working and dealing with the problem. Another bill we have in, that will provide that what the court can do, is to require that the sentence will be a sentence to a treatment program for first time felony offenders. 60% of the males that were admitted last year to the State Penitentiary have admitted to meth use. Most of the women, the issue that is driving the need for constructing a women's prison in New England was a meth issue. The bill before us will be a pilot project, that we're taking up in the NE part of the state to provide other methods rather than continuing year after year to build more prisons. Because we're not going to build prisons to solve these problems. We need to look at other options where there is actual treatment available on a long term basis; 4, 5, 6 months or longer.

Representative Galvin: Do most of the people that run these labs, make the meth, are they themselves addicted usually.

Wayne Stenehjem: Yes, by and large. The people manufacture it and use it as well.

Chairman DeKrey: The ND meth labs are more home grown, they manufacture it to support their own habits.

Wayne Stenehjem: Often they'll sell a little bit of it and get the money to buy what they need for the next cook.

Representative Charging: How much of this does it take to make this amount (referring to the package AG sent around during his testimony).

Arnie Rummel: The conversion amount is about 3 to 1, such as 100 grams of ephedrine, will be around 70 grams in end.

Representative Maragos: Has there been any data or information coming down on whether there has been an illicit black market now for pseudo ephedrine since they have taken off the market. Generally there is always a reaction where these people find another supply system. Has this circumstance happened.

Wayne Stenehjem: For the super labs, that is exactly what is happening, Canada has some very large pseudo ephedrine manufacturing plants and, not too long ago, at the border a truckload of 10 million capsules was seized that was intended for the super lab down in the southwestern part of the state. There are SE Asian countries and I think China will manufacture pseudo ephedrine in huge quantities, that comes to the super labs. In the smaller labs in ND, typically is that they will send out smurfs (teenagers) that will go out and buy 2 packages, and go from store to store and then eventually come up with a sufficient number of packages to cook a batch of meth. One of the advantages to having the restriction is that they are out on the street longer, more likely that one of the clerks is going to call and we can find out who they are, follow them around, and that has actually happened. We found out where they were, and watched them as they went from store to store, etc.

Chairman DeKrey: Do you take your meth kit out of the truck when you go to MN or MT.

Wayne Stenehjem: I have a badge.

Representative Bernstein: What is the street value of the 50 grams of meth? What does it cost to make that 50 grams.

Arnie Rummel: Street value is about \$50,000 and it costs about \$500.00 to make.

Wayne Stenehjem: This is pretty pure stuff, you mix this, you don't sell it pure. You mix it with baby formula or other similarly colored stuff, and if you mix an equal amount of baby formula and cut it in half, doubled your profits. The purity of meth in ND is 20%, 5x your potential profit.

Representative Charging: How do they ingest this product.

Wayne Stenehjem: You name it, smoking, injecting, shooting galleries, eat it. They prefer to smoke or chew it because the effects are almost instantaneous.

Chairman DeKrey: Thank you. Further testimony in support.

Glenn Elliott: The concerns I have in HB 1290 exactly who are we trying to get on this. Are we primarily going after people who are identified users, or anybody who has been caught in the dragnet, under 19.03.1 or .4. Most of the people who are manufacturing the controlled substances are also users. There are some people who are not. The point is that an individual who's only exposure might be incidental to the manufacture, packaging or transportation of a controlled substance, would test at a very low level. I don't see where the individual like this is going to be helped by this bill. I would rather that the language be a little more narrowly drawn to target specifically individuals who have been identified as users either because they were tested at the time of arrest and found to be under the influence, or who have a history of abuse, or excessive dependence on legal controlled substances.

Chairman DeKrey: Thank you. We close the hearing on HB 1290.

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House Judiciary Committee
Bill/Resolution Number HB 1290
Hearing Date 1/24/05

(Reopened in the same session)

Chairman DeKrey: What are the committee wishes in regard to HB 1290.

Representative Boehning: I move a Do Pass.

Representative Meyer: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Maragos

FISCAL NOTE
Requested by Legislative Council
04/08/2005

Amendment to: HB 1290

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					
Appropriations					

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.*

There is no fiscal impact from HB 1290 as amended.

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: Ted Gladden
Phone Number: 3284216

Agency: N.D. Supreme Court
Date Prepared: 04/08/2005

FISCAL NOTE
Requested by Legislative Council
03/21/2005

REVISION

Amendment to: HB 1290

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			\$592,800		\$593,000	
Appropriations						

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.*

HB 1290 provides for random drug testing of individuals charged with a felony violation of N.D.C.C. Ch. 19-03.1 and 19-04.3. The computations for the testing are based on an arbitrary figure of 75% of the indigent defendants not having monies for regular drug testing and it being the responsibility of the state to pay for drug tests. Historically, 93% of all felony defendants are determined to be indigent. In 2004, 1,318 will be indigent based on this 93% figure. Estimating that 75% of these indigent defendants will not have funds for the testing, 988 defendants will have to be tested at state expense. The docket currency standards provide that all felony cases must be disposed of within 180 days (26 weeks). The calculation for the testing is based on one test per week being administered for a total of 20 weeks at a price of \$15 per test. This will represent 19,760 tests being administered per year for an annual cost of \$296,400 or \$592,800 for the 2005-07 biennium.

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: Ted Gladden

Agency: ND Supreme Court



Phone Number: 328-4216

Date Prepared: 03/21/2005



FISCAL NOTE
Requested by Legislative Council
03/18/2005

Amendment to: HB 1290

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		\$529,800		\$530,000	
Appropriations					

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.*

HB 1290 provides for random drug testing of individuals charged with a felony violation of N.D.C.C. Ch. 19-03.1 and 19-04.3. The computations for the testing are based on an arbitrary figure of 75% of the indigent defendants not having monies for regular drug testing and it being the responsibility of the state to pay for drug tests. Historically, 93% of all felony defendants are determined to be indigent. In 2004, 1,318 will be indigent based on this 93% figure. Estimating that 75% of these indigent defendants will not have funds for the testing, 988 defendants will have to be tested at state expense. The docket currency standards provide that all felony cases must be disposed of within 180 days (26 weeks). The calculation for the testing is based on one test per week being administered for a total of 20 weeks at a price of \$15 per test. This will represent 19,760 tests being administered per year for an annual cost of \$296,400 or \$592,800 for the 2005-07 biennium.

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: Ted Gladden
Phone Number: 328-4216

Agency: ND Supreme Court
Date Prepared: 03/21/2005

FISCAL NOTE
Requested by Legislative Council
02/02/2005

Bill/Resolution No.: HB 1290

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					
Appropriations					

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.*

There is no fiscal impact to the judiciary.

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: Ted Gladden
Phone Number: 328-4216

Agency: ND Supreme Court
Date Prepared: 02/04/2005

Date: 1/24/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1290

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Rep. Boehning

Seconded By

Rep. Meyer

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

Total (Yes)

12

No

0

Absent

2

Floor Assignment

Rep. Maragos

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

REPORT OF STANDING COMMITTEE (410)
January 24, 2005 11:23 a.m.

Module No: HR-15-0907
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1290: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1290 was placed on the
Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1290

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 1, 2005

Tape Number

1

Side A

Side B

X

Meter #

445 -2730

Committee Clerk Signature

Maria L Solbey

Minutes: Relating to bail bonds and drug testing.

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:

Wanye Stenehjem, ND Attorney General introduced the bill. (meter 445) Gave his testimony - Att. #1, and submitted an amendment - Att. #2. One of the major field complaints that we get is the catch and release process. The requirement of a random required drug test will assist the police from individuals being bonded out and back on the streets again. The amendment deals with the indigents who can not pay for this; Our approach to this problem are the following three things; 1) Prevention & Education 2) Adequate & Available Treatment and 3) Strong Law Enforcement Tools. This bill aids as a strong law enforcement tools.

Sen. Trenbeath asked that isn't it a requirement of bail be that you are law abiding? Yes, but it is not a condition of bail to take a drug test. Discussion of eliminating line 3-4. This bill would only serve to specifically state in writing that you will be drug tested, so there is no confusion.

Senator Triplett stated that the proposed amendment might need clarity on if the indigent can not pay, who will? He responded that they have paid in the past but the court can order who will pay.

Sen. Nelson asked for a breakdown of the cost. Mr. Stenehjerm stated that depending on the drug, for instance; marijuana stays in the system for a month, meth only 72 hours. The cost is \$20/test. **Senator Hacker** debated that a person out on bond has been tested, maybe do to a time span, two or three times and they is found not guilty. Is he then out all of the money? The A.G. stated that if you pay an bondsman or an attorney and not found guilty you are also out the money.

Discussion of the drug problems around the US. (meter 1111) We want to go after the big boys but we are spending so much time on the little people. The super labs are in California and Mexico Federal Gov. is working on our boarders We have good relationships with our DEA.

Debra Ness, Chief of Police (meter 1226) We are in support of the Attorney General and his comprehensive package that he has put together. Sited the "three prong" approach. At a conference they referred to Meth as the "home grown" epidemic of the Heartland. Other states were asking me how we had accomplished so much. I reply that our Attorney General and Legislature has stepped up to the plate and taken aggressive action that law enforcement can not do it alone. Sited several drug related incidents. Population of citizens created from the meth problem.

John V. Emter, Citizen I am for this legislation. You do not have the choice. You have to pass this. (meter 1720).

Carol Two Eagles, Stand in Support of all three bills. (meter 1764) Talked about her adopted children and grandchildren and how drugs and alcohol have ruined so many lives. Discussed meth incident at her sister Edith's house.

Testimony in Opposition of the Bill:

Mr. Glenn A. Elliott, private citizen (meter 1955) Gave Testimony - Att. #3 Gave Testimony. Senator Syverson referred to Mr. Elliott's 3rd page statement, "if there is no reasonable belief that use may occur, could we apply that concept to people of responsibility for instance a pilot, and say that without probable cause they can not be tested. He responded that this was apples and oranges. General criminal defendants vs. people who are exceptionally responsible for the public's safety, health and welfare. Conditions are placed on them that are not placed on normal citizens

Senator Triplett asked the Attorney General in the requirement of the condition of release that they do not use controlled substances that a judge on a case where drugs were not involved that the judge should deem that frequency none? This is the condition of release for the person arrested under violation of Ch 19 03 - Controlled substance act.. I would not think to kindly of a judge who did not get around the implementation of what is a serious statute by saying the frequency is never. We would be back fine tuning this in two years if this was a problem.

Senator Triplett asked the Attorney General to submit his proposed amendments.

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

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1290

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 1, 2005

Tape Number

2

Side A

X

Side B

Meter #

997 - 2025

Committee Clerk Signature

Maria Solberg

Minutes: Relating to bail bonds and drug testing.

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:

Ted Gladden, State of ND Court Administrator (meter 1000) Att. #1 fiscal note. We are not taking a position against the bill, but there are reasons we have concerns. The concern I have is how the mechanics of this would work. What will happen if the person's release run out of money and fail to pay for the tests. How will it be administered in the rural part of the state? Constitution issue of the defendant paying for the test prior to release.

Sen. Traynor stated that his amendment does not change the bill? No it does not it only leaves the questions hanging. This bill has a lot of mechanical issues.

Senator Triplett discussed with Mr. Gladden the difficulties of defendants paying for this and the inability of the courts to cover it. **Sen. Trenbeath** stated that the A.G.'s amendment would

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1290

Hearing Date March 1, 2005

say the court would have to pay if the persons were indigent. The committee discussed with the court administrator the lack of funds in the courts to cover the matter and that Mr. Gladden should reflect this in his fiscal note. He discussed the difficulties due to the variables of time between the arrest and hearing and the type of drug being tested for type of test.

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

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number

2

Side A

X

Side B

Meter #

5100 - End.

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to bail bonds and drug testing.

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

Ted Gladden, ND State Court Administrator - submitted letter Att. #1 and the committee reviewed letter. The A.G.'s office submitted amendments - Att. #2a and 2b. **Sen. Trenbeath** requested that the amendment be put into one. Discussion of how many tests and how many indigents would need to be paid for-if they tested every one. **Sen. Trenbeath** states that one of the requirements of parole is that they remain law abiding and should not take illegal drugs any ways.

Sen. Trenbeath made the motion to amend line 8-9 and **Sen. Nelson** seconded the motion. All but Senator Syverson were in favor of the motion and motion passes.

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

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number

1

Side A

X

Side B

Meter #

5900- End

Committee Clerk Signature

Marie L Solberg

Minutes: Relating to bail bonds and drug testing.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

Senator Syverson sited that he had issues with the drug test failure concerns that sometime substances that are legal go into the system and metabolizes into a illegal drug at this test stage

Att. #1

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

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 15, 2005

Tape Number	Side A	Side B	Meter #
1	X		2820 - 3860

Committee Clerk Signature

Minutes: Relating to bail bonds and drug testing.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee:

Sen. Trenbeath met with the Attorney Generals Office and concluded that even though a valid prescription is existing law it is not in the bond/probation law.

Sen. Trenbeath made the motion to reconsider his amendment and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Trenbeath made the motion to amend as Att. #2 dated 3/1/05 and **Senator Syverson** seconded the motion. All members were in favor and the motion passes.

Sen. Trenbeath made the motion to do pass as amended and **Senator Syverson** seconded the motion. All members were in favor and motion passes.

Carrier: **Senator Syverson**

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 1290

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken line 8-9 Amend

Motion Made By Senator Trenbeath Seconded By Senator Nelson

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

Total (Yes) 5 6 No 1 0

Absent 0

Floor Assignment

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

Date: 3/15/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1290

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Move reconsider Amend*

Motion Made By Senator *Trenbeath* Seconded By Senator *Nelson*

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

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

Att #2

Prepared by the Office of Attorney General
March 1, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1290

Page 1, line 9, remove ",at the individual's own cost,"

Page 1, after line 12, insert, "The testing must be at the person's own cost unless the court makes a specific finding on the record that the payment of testing costs by the person will result in an undue hardship."

Date: 3/15/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1290

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass "At The indiv. own cost" line 12 delete
additional in orig. amend. ATT 2 3/1/05
Motion Made By Senator Trenbeath Seconded By Senator Syverson

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

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

Date: 3/15
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1290

Senate **Judiciary**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By Senator *Trenbeath* Seconded By Senator *Syverson*

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. Syverson*

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

REPORT OF STANDING COMMITTEE

HB 1290: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1290 was placed on the Sixth order on the calendar.

Page 1, line 9, remove ", at the individual's own cost,"

Page 1, line 12, after the period insert "The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court of the examination or testing results, if any, and shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost unless the court makes a specific finding on the record that the payment of testing costs by the individual will result in an undue hardship."

Renumber accordingly

2005 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1290

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/1/05

Tape Number

1

Side A

xx

Side B

Meter #

19.5-39

Committee Clerk Signature

Dawn Penrose

Minutes: 6 members present.

Representative Bernstein: Attendance was taken. Called the meeting to order. We have Mr. Gladden here to explain the fiscal note and evidently the fiscal note is the reason why this conference committee was called.

Ted Gladden, State Court Administrator: I did prepare the fiscal note and it was not a guesstimate, it truly was our best estimate of what it would cost. I want to go through the logic with you of how we arrived at the dollar figure. There are no projected increases over the present biennium, in other words, I did not anticipate an increase in criminal filings or anything of that nature. The reason I state that is because it wasn't our intent to try to kill the bill with a fiscal note, but it was to try and get a realistic figure in, in terms of providing a fiscal impact statement. All I did was look at the actual number of felony filings, where there were violations of Title XIX, which would be the operative section of the code. I then used our figure of 93%; 93% of all felony defendants qualify for court appointed counsel, they are indigent so they meet the

threshold in terms of income level. Then I just arbitrarily took 75%, 93% of the total = 1318 are indigent and there will be some on the higher end that they may have the money, the ability to pay for the testing themselves. I then said 75% will not. I then came up with 988 defendants. These are the felony defendants charged with violations of Title XIX, who would not have the ability to pay for the testing as part of a release from jail. According to our rules, criminal cases are to be disposed of within 180 days, now again this is not arbitrary, but then I just arbitrarily picked 20 out of 26 weeks, recognizing that some defendants are going to fail the test and will go right back into jail, so they're not going to be out. But I just picked 20 weeks and said, if you administer one test per week, at a cost of \$15 per test, and I arrived at that figure by talking to the programs in Grand Forks, Devils Lake and Bismarck, who currently administer urinalysis tests, and I came up with a figure of \$296,400/yr. I might point out that in Williston and in Minot, where they are doing this testing, and the defendants are currently paying for it, they charge \$20 per test. Now, again if it is a marijuana charge, and I'm not an expert on urinalysis testing, but you can go a longer period of time because it stays in your system, but meth is a shorter period of time, and so you need to test more often. In talking to the people and getting the information from Minot and Williston, one of the jurisdictions up there test 2x/week, the other one tests weekly. So I just, again, arbitrarily said, 75% of those who are indigent, somebody is going to have to pay for the test, I used a \$15 figure, realizing that there is some variation. Again, I built in no increases for the upcoming biennium or any changes in that regard. I didn't try to factor in \$20 for part of them and \$15 for the other. I took the lower figure and I just said, here is what it's going to cost if you administer a weekly test for 988 defendants for a 20 week period of time, while they are out on bail.

Representative Onstad: You mentioned Williston and Minot doing this, is there a % of those who do not pay that fee.

Ted Gladden: In the data I received from the administrator, there was one defendant where the judge just waived the fee. But as a condition of their release, they're told you have to pay this, as I understand it. You have to pay this yourself. The problem gets to be with the indigency. If they are determined indigent, they're indigent.

Sen. Trenbeath: First, this fiscal note, at this amount, this had to have gone through the appropriations process did it not.

Ted Gladden: It did not, here's what happened. We missed the bill on the House side, so we did not appear. We then, when I appeared before the Senate Judiciary Committee, I was asked to provide a fiscal note, it was more or less an informal memorandum that I provided for the committee, it had the same data in it, but it was just an informal request. It then went to the Floor, and then there was a request for a formal fiscal note, and that's when I provided this fiscal note. I'm not sure that it ever went to appropriations.

Sen. Trenbeath: So you're telling me then, that this fiscal note actually became available to us after it had been passed in the Senate.

Ted Gladden: No..

Sen. Trenbeath: I don't know why it wouldn't have been referred, had it been presented prior to our action.

Ted Gladden: I was asked for an informal note, and then I got a request from LC to provide a fiscal note on it, I then provided that fiscal note. I'm not sure exactly on what day it was received. I'm not sure when the bill went to the Senate Floor.

Sen. Trenbeath: Secondly, your numbers are based on the numbers of projected indigent defendants in this category. Correct.

Ted Gladden: The numbers are based on actual indigent defendants for 2004.

Sen. Trenbeath: In this category.

Ted Gladden: Yes, that's correct.

Sen. Trenbeath: But this bill doesn't speak to indigency, it speaks to a finding of undue hardship, which necessarily wouldn't be the same.

Ted Gladden: That is correct. That's why I say, what kind of figure do you want to use. I use 75%, you could use 50% where it's an undue hardship, but once there is a finding of indigency, I picked 75% of that number that qualify as indigent, are not going to have the ability to pay, it would meet this requirement. That was an arbitrary figure.

Representative Maragos: Did the Williston and Minot people tell you what the cost was of administering the test and what the revenues were. Was that a revenue generator for them.

Ted Gladden: It was. I don't remember how much of a revenue generator it was. They buy their testing materials in large quantities, like 500 sets of rubber gloves, and the vials, etc. It is at \$20, as I recall, it was a revenue generator, but I don't know exactly how much revenue. In Minot, the way they administer the test, is they pay overtime to a sheriff's deputy to administer the test, so they figure in 2 hours per week, based on the overtime rate for that deputy to actually administer the test. Now they don't figure that in, in Williston, as I recall. But I don't know the exact figure.

Sen. Trenbeath: Per your memorandum in the file, it indicates those numbers.

Ted Gladden: You do have that attached then. Okay. I don't remember what it was.

Sen. Trenbeath: It's considerable.

Representative Maragos: Is that #1.

Sen. Trenbeath: It's a memorandum dated March 3 from the State of North Dakota
Administrative Unit 4.

Ted Gladden: That would be a memorandum from our administrative unit 4.

Representative Bernstein: Thank you for appearing.

Sen. Trenbeath: It occurs to me, and I don't know what the procedure would be, but it looks
to me like appropriations should have a look at this, we're talking a half million bucks.

Representative Bernstein: With a fiscal note, I agree with you, it's going to have to go to
appropriations, because as I understand, there is no money appropriated for this per se. I guess
my thinking is, and Mr. Gladden did a lot of this on supposition, and I think it might be
incumbent upon us to decide if his suppositions are correct or if we should change it, or if we
should just leave this fiscal note the way it is and move it on to appropriations so they can handle
it.

Sen. Trenbeath: I think Mr. Gladden's suppositions are better than ours would be, given his
experience and undoubtedly, because it's not only a moving target, it's a hidden target. He's
going to be wrong, how much and on which side we don't know. But in that respect, that doesn't
differ a lot from a lot of those we see come along.

Representative Bernstein: The thing is, to me in my estimation, it would be a very difficult
thing to really put a firm number on it, and I suppose if we're going to err, we're going to have to
err on the side of it being sufficient, rather than on the side of not being sufficient.

Representative Maragos: What I just want to make sure in my own mind, by including the fiscal note, we are making this the responsibility of the state, rather than the counties, is that correct.

Sen. Trenbeath: That's correct.

Sen. Syverson: Would it be appropriate if we were to find a meeting of the minds here to concur between the two parts of this committee and let's move it to appropriations from where it would come back to the Floor with the appropriations recommendation for passing on the bill. Would that be the appropriate direction.

Sen. Trenbeath: I think that would probably be appropriate. My thinking is that this bill is now in the House and the House would want to speak to leadership and have it placed back on the calendar for rereferral to appropriations, which would make your appropriations people delirious.

Representative Bernstein: Well, the thing is, the bill's not going to do any good without the appropriation.

Sen. Nelson: I've got a concern, we've got two different prices here. We've got \$20 from Williams County and we've got \$15 in the fiscal note and when you figure out the profit they're making up in Ward and Williams County, actual cost is about \$5 a test. So is the fiscal note supposed to be figured on \$5 or \$15 or \$20, and it seems to me it should be on \$5, because it's not the business of the state to be making money.

Representative Bernstein: You said to figure about \$5 for the test kit.

Sen. Nelson: It looks to be what it costs them.

Representative Bernstein: But what about the time of the person giving the test. Now the comment was made that they pay a deputy two hours overtime.

Ted Gladden: There are a whole, wide array, quite a vast number of different organizations that are doing urinalysis testing presently. Center, Inc. does testing in Bismarck, Lutheran Social Services does a lot of the testing. One of the matters to address, is to find somebody in every county who is going to do the testing. I don't know what the overhead figure is for the private enterprise, I know they are administering it through the sheriff's offices in Williams and Ward Counties. The other places, it's being done by outside private sector organizations.

Sen. Nelson: Are we sure that there's nothing left in somebody's budget to cover this.

Sen. Trenbeath: Probably because it's new law, it probably isn't.

Sandi Tabor: If I read the memorandum from Mr. Gladden, it's actually from Dixie, the administrative overhead, including sheriff deputy time, in conducting the test, writing the report, for both Ward and Williams Counties, is included in the money that you see on page 3 of the March 3rd memo. That, I think, is what perplexes everyone about this fiscal note, is that in fact, in Ward and Williams County, they're making money and they're including all the costs. I appreciate the committee's confusion over what is this going to cost, because the program itself seems to be more than self-sufficient in those two counties. Sen. Nelson's comment about what should be the basis for the fiscal note is probably appropriate, because at minimum, we shouldn't be assuming that you are going to make money on this, on the backs of indigents or the state.

Representative Onstad: Just one comment, if in Minot and Williston, if only one person couldn't afford to pay that, and you are looking at historically 93% of all are considered indigent, that's not true in Minot and Williston.

Sen. Trenbeath: The difference being is indigency is a status that can be considered based on charts and tables, undue hardship is, arguably a different standard. So now everybody who is found indigent, as that term is defined, wouldn't necessarily suffer undue hardship in this testing situation, is my theory.

Representative Bernstein: Well, it left the House without an appropriation and now it's back here with an appropriation, I really believe that the Appropriations Committee is going to have to address this. I wonder, in your discussions, and I'm sure Mr. Gladden will be down there when they take this up, that they will probably take the time and have the wherewithal to find out what exactly this does cost, so that they could put a figure to it and see.

Sen. Trenbeath: For the purposes of moving this along, I will move that the House accede to the Senate amendments and recommend rereferral to House Appropriations.

Representative Maragos: Seconded.

Representative Bernstein: The motion has been made and seconded that the House accede to the Senate amendments and rerefer to Appropriations Committee. Vote taken.

6 YES 0 NO 0 ABSENT

HOUSE ACCEDE TO SENATE AMENDMENTS AND REREFER TO APPROP.

(We came back to another Conference Committee, so this action was never taken).

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1290/B

House Judiciary Committee

☐ Conference Committee

Hearing Date 4/4/05

Tape Number

1

Side A

xx

Side B

Meter #

0-27.4

Committee Clerk Signature



Minutes: 6 members present.

Representative Bernstein: Called the Conference Committee to order.

Representative Maragos: I move that we reconsider our actions on HB 1290.

Representative Onstad: Seconded.

Representative Bernstein: Motion carried. Now we have the bill here as it came over from the Senate, and to make it palatable to most everybody involved, there is a slight adjustment to the Senate amendment. Would it be proper to agree with the Senate amendment and further amend.

Sen. Trenbeath: I think we ought to have a discussion on what changes are here, first.

Representative Bernstein: Okay, any discussion.

Sen. Trenbeath: I've got what the rest of you have from the Attorney General's office and what we would be left with, what we had after the Senate amendments, was a bill that would allow the court discretion in making a finding of undue hardship, and therefore involve the state

to pay for the testing. If that were to be removed, and I don't have any strong heartburn on that, my heartburn then becomes the mandate to the court to order the testing. I don't know of any other areas where we mandate the court on a bond term. The bond is designed to ensure the appearance of the defendant at trial. The court invokes such measures as the court decides will ensure that the defendant shows up for trial. That's at the court's discretion, knowing the defendant, hearing from both sides, etc. That's what judges do. This mandates the judge to impose as a condition of release, that this testing be done, and although I can see the Attorney General's point with respect to putting in the finding of undue hardship, and therefore involving state funds. I think that if we take that out of there, it would give the discretion back to the court, as to whether or not to order the testing on a case-by-case basis. My suggestion is that, we either on line 6, take out the word "shall" and make it "may", or if we wanted to make it a little more instructive to the court, this is just language off the top of my head, which would need to be refined. You would start with something like "Unless the court makes a specific finding on the record to the contrary" the court shall impose as a condition of release.... Unless the judge can say with specificity why he or she is not ordering the testing, he or she has to order it.

Representative Onstad: I think the concern was over this fiscal note, and how that..Senator, how does what you're saying, try and take away that fiscal note, or reduce it, or get it as accurate as we can, so with what you're saying, how does that help that fiscal note any.

Sen. Trenbeath: The fiscal note, in my opinion, would go away at that point, because what the court is saying is that unless I make some specific findings why this shouldn't apply to this particular defendant, I'm going to order that it applies. If we take out those amendments as the

Attorney General suggests that we do, it will be at the defendant's own cost. So there will be no fiscal effect on the state.

Sen. Syverson: The individuals that would be looking for release on bail, I'm sure most judges could determine by the type of case and the individual themselves, as to whether or not there would be a need for the testing to be ordered by the court. Even if the individual would were of such nature and character that testing might be a good idea, the court should still have the option of ordering the frequency of the testing. The changes that were suggested by Sen. Trenbeath, I believe have some merit, or worthy of discussion.

Representative Maragos: I would certainly like to see the amendment crafted, so I could apply it, reconcile it to the bill, and then have seek some counsel on that myself, if I may.

Wayne Stenehjem, Attorney General: The suggestion was made that we change it from "shall" to "may" doesn't really help, in my view, anyway because the court may do that now. We don't need a law to say that they may do that, because that in Williams and Ward Counties, they are doing that now. What Sen. Trenbeath is suggesting, I guess, is kind of a middle ground. I, frankly, prefer that the legislation be amended along the lines that was proposed to us, and require that the testing be given in all cases; mindful of Sen. Trenbeath's concern about whether we are telling judges what they need to do, which is what this bill seeks to do. But this isn't the only area where these kinds of things happen and while I tend to agree with him in that philosophically, sometimes we have a problem of enormous consequences that we really need to address. I think the issue that we're talking about here, would lend itself to passing the bill with the amendments that were proposed. That's my position.

Representative Bernstein: And leave "shall" in there instead of changing it to "may".

Wayne Stenehjem, Attorney General: Yes.

Sen. Nelson: If we put in the phrase, unless the court makes a specific find on the record and then a court shall impose... Would you have a problem allowing the court a little discretion.

Wayne Stenehjem, Attorney General: Well, that is a middle ground that you're discussing, and if the committee is interested in that, it certainly is better than not passing the bill or passing the bill with only the word "may" in it, but again, I prefer that we have this kind of testing in all cases. We'll be back here in two years, if it turns out that there's a terrible problem with it, you can amend it then, but I would like to see the strongest measure that we can enact, take place now.

Sen. Syverson: I'm looking at the testing, toward the end of the bill that would be amended by your proposal. The testing must be at the individual's own cost. If the individual has no means, whatsoever, and it appeared that testing was in order, how would this be accomplished or would the individual, then, just not be able to make bail.

Wayne Stenehjem, Attorney General: Courts often impose conditions of bail that the defendants are unable to meet. If you have a bond set at \$10,000 and it happens, and the person can't either come up with the \$10,000 or even the \$1,000 to get in touch with the bail bondsmen, and interest him, you sit in jail until you're able to come up with it, or until your trial is held. So it is not unusual that there are bail conditions that the person can't meet.

Sen. Trenbeath: Doesn't it still state in the law that the reason for bail, is to ensure appearance.

Wayne Stenehjem, Attorney General: It does, but there are other provisions that are constitutionally acceptable that you can impose upon a defendant to ensure that while they are

out on bail, they are abiding by the law. In fact, the requirement is that you abide by the law and certain other conditions can be imposed to ensure community safety as well.

Representative Maragos: If this discussion is done, I would make a motion that the House accede to Senate amendments and further amend, remove lines 15 and 16 on page 1 after the word "cost."

Sen. Syverson: Seconded.

Representative Bernstein: The motion has been made and seconded that the House accede to the Senate Amendments and further amend as follows: On page 1, line 15, after the word "cost", remove "unless the court makes a specific finding on the record that the" and remove all of line 16. Clerk will take the vote.

6 YES 0 NO 0 ABSENT

HOUSE ACCEDE TO SENATE AMENDMENTS AND FURTHER AMEND.

Representative Bernstein: Motion carried.

Sen. Trenbeath: I move to further amend, that on page 1, line 6, after the word release. Insert "Unless the court makes a specific finding, on the record, the court shall" and continue on with the sentence. The amendment in its entirety would read, beginning on line 6 "Bail-Additional conditions of release. Unless the court makes a specific finding, on the record, the court shall impose as a condition of release" etc.

Sen. Syverson: Seconded.

Representative Onstad: That just kind of takes us back to where we were.

Sen. Trenbeath: No, how do you see that, happening.

Representative Onstad: Because you're still leaving it up to the court to determine whether or not, it should be up to the individual's situation.

Sen. Trenbeath: Yes, although only after making specific finding for reasons for not doing it, would the court not be able to do it.

Representative Onstad: So, only after you make specific findings, so when would it be not any different, that the court would ever impose any, unless they had certain findings or facts to go on.

Sen. Trenbeath: I don't understand your question.

Representative Onstad: Well, additional conditions of bail, or conditions of release, you know, specific findings. When would the court ever not have specific findings.

Sen. Trenbeath: Well it would have to be specific findings related to why or why not the drug testing shouldn't be mandated, that's the only thing. If you were to ask, under what conditions that might happen, I can't say, which is why we have judges.

Representative Maragos: May I be clear, did you change the word "shall" to "may" also.

Sen. Trenbeath: I did not.

Sen. Syverson: Can I come at it a little differently, nothing has changed in the wording of it, except if the court makes a specific finding to change it. Otherwise, the language is the same.

Am I not correct.

Sen. Trenbeath: Yes.

Sen. Syverson: So the court would have to make a specific finding before any of the wording would change.

Representative Maragos: Sen. Trenbeath, give me an example of what kind of finding the court would render as a condition. Could you give me an example.

Sen. Trenbeath: You get a person in front of you, who's arrested under this situation, and for some reason, that person just isn't going to pose a danger of reoffending during the time waiting for trial. I'd have to have a statute in front of me, to pick out what some of those reasons might be. I can't tell you what they are. Let's say you have a local kid, that's on a threshing crew, and he got himself in trouble one night in Rugby, ND, and as a condition of bond, now he's got to have this drug test. He's got an absolutely spotless record prior to that. The court might be tempted, and he's going with his dad to harvest, to say we're not going to order the drug testing in this instance. We don't know how we're going to get the test back from OK, NE, SD and then ND.

Representative Maragos: So as a condition of bail, the kid could be allowed to travel under some other form of bail, but still have to come back.

Sen. Trenbeath: Yes, absolutely. The court might set it at \$10,000 bond, with a 10% security and allow the kid to spend the summer making the money that he was going to, rather than hanging around Rugby with nothing to do but take this test every week, or whatever. That's just off the top of my head. What it does, if I may be so bold, is it doesn't relieve the judge of discretion. He has to make specific findings.

Representative Bernstein: We will ask the AG to comment on that, the reason for that is, no reflection on you, but rather have you make it now rather than later.

Wayne Stenehjem, Attorney General: I understand what Sen. Trenbeath is saying, but remember, that even under this bill, the court does have the discretion to determine the frequency

of the tests and in the case of your guy on the threshing crew, I guess you could say you'll be tested now and then tested again when you come back, the week before your trial is scheduled or at any other interval that they think is appropriate. So there is a little bit of discretion that the court will have in setting the frequency of the test. But I think it can be very useful for this person to know that there is a randomness to it, and they are on notice, even while he's down in the south harvesting, that this is something that is going to be held over his head. These are felony offenders, remember, this is not for misdemeanor offenses. This only applies in cases of felony.

Representative Bernstein: Would they be able to do that, if we just left it, the court shall impose, or even change it to a court may impose, rather than changing the whole wording of it.

Wayne Stenehjem, Attorney General: I'm not understanding your question.

Representative Bernstein: Well, Sen. Trenbeath proposed changing that whole sentence. How would that be comparable to what is in there now.

Wayne Stenehjem, Attorney General: It would, as I mentioned before, I think it would be kind of a middle ground, which I would prefer to see rather than bill die, but I think I prefer the bill as you've, at least as it stands now, amended it now, recognizing that there is a little bit of wiggle room still for judicial discretion, without telling them how to get around this by dealing with the question of how frequent these tests would have to be.

Representative Bernstein: Any further questions. Further discussion.

Sen. Syverson: I have a question for Sen. Trenbeath. What would be involved in making the specific findings.

Sen. Trenbeath: It's something that the judge would have to recognize when he was setting bail, in part under this section, and say these are my specific findings, my specific reasons for not ordering testing of this individual.

Sen. Syverson: So, it would maybe address the character issue of the individual involved, or the circumstances.

Sen. Trenbeath: Yes, any number of circumstances or things.

Representative Bernstein: The motion has been made and seconded that we further amend, pg. 1, line 6, after the "release." Insert "Unless the court makes a specific finding, on the record, the court shall". The clerk will take the vote.

3 YES 3 NO 0 ABSENT MOTION FAILED

Representative Bernstein: Any further discussion.

Sen. Nelson: The Chief Justice has been sitting there nice and quiet during this whole thing, could we get his input on what we've just done.

Chief Justice Gerald Vande Walle: I'm here because I want the committee to understand that we're not opposed to the concept of this bill, and as originally introduced have no particular problem with it. The amendment, because it said at the defendant's own cost, as amended, however, it created considerable concern and you saw the fiscal note. I went over it with Ted Gladden, the court administrator very carefully, I've been around longer than any of you people have in the conference committee, and I know that fiscal notes are sometimes used to kill bills. I want to make sure that that did not happen here. On the other hand. I also was very concerned that we not have a contingent liability on the judicial appropriations, and I was very concerned about that. So that's what you have before you. I have no particular problem with making it

mandatory. I think Sen. Syverson is absolutely correct, that if they are ordered to take a drug test, and they can't pay, they don't get out. That's the way it is. Strangely enough, I learned that in the last two years, with regard to the minimum fee they have to pay for indigent counsel, that somehow they start coming up with the money. They can't come up with enough money to pay an attorney, but they can come up with the \$15, \$20 for the drug test. So that comes up, I went over that with Ted very carefully, but we don't know. We don't know what our contingent liability is and I simply didn't want it to be a liability on the judicial appropriation. As far as the proposed amendment that was just defeated was concerned, I propose that if we really speak to the issue, the issue is whether they can pay for it or not, would the judge make a finding that "I'm not going to order the drug test because the defendant can't pay for it." So that's a possibility, I suppose.

Sen. Trenbeath: So you might be favorably disposed to an amendment such as the one I made last, but excepting out reasons of indigency or hardship.

Chief Justice Gerald Vande Walle: Well, I think that, whether it was your intention or not, Sen. Trenbeath, as I read the bill and you were being questioned, it seemed to me that, is that your intent that they would be excused from the drug test because they couldn't afford to pay for it.

Sen. Trenbeath: Well it wasn't my intention, but if we certainly clean that language up, unless the court makes a specific finding on the record, indigency or hardship, notwithstanding, the court shall impose as a condition of release.

Chief Justice Gerald Vande Walle: I thought the issue, after you passed the first amendment, quite frankly, was still the issue of whether they could pay or not, because that seemed to be what the hang-up was. I'm a latecomer to this discussion.

Sen. Trenbeath: I agree with you, Mr. Chief Justice and with the Attorney General, if they need \$20 for testing, they will come up with it instead of sitting in jail for \$20, but I still think there are instances, you just can't second guess the commander in the field, which happens to be the trial judge in this case. They should have the latitude to make a decision that, in this case, it serves no purpose.

Chief Justice Gerald Vande Walle: I, frankly, was unaware until several months ago, that there was even a project going on in Williams and Ward County. My understanding of that process is, that it really came from the law enforcement people that came to the court to ask them to do it. I doubt it started with the court. I think it came from law enforcement. That's a big key, it's going to be a big key if the bill passes in whatever form, because the courts will not be administering the drug tests, nor will the courts be determining whether or not the person is complying with the order to take drug tests. That's going to have to be law enforcement, if they're not complying, then I assume that maybe a petition to revoke bail or something like that, but the courts will not be monitoring it, law enforcement would be monitoring it.

Representative Bernstein: What are the committee's wishes. We have this bill before us, with one amendment on it that has passed, is there any other proposals.

Sen. Trenbeath: Of those of you who voted against the amendment that I proposed, if we excepted out reasons of indigency or hardship, would that help any.

Representative Onstad: I understand the concern and as Judge Vande Walle said, in knowing the history of the whole thing, it coming from the House and Senate, it was all about the fiscal note, who's going to end up paying for it. I just think, let's just kick it out that it is an individual's cost. I know we can find those one situations where they can't pay.

Sen. Trenbeath: That isn't the question right now. The question is never who pays for it. If it's ordered, the defendant will pay for it.

Representative Onstad: Okay.

Representative Maragos: Under current law, what's the process.

Sen. Trenbeath: With respect to setting bail.

Representative Maragos: Yes. Basically what we're doing here is requiring a felony drug offender to take a drug test.

Sen. Trenbeath: Let me just correct your thinking for a second. It's not, it's an alleged felony offense. This is bail, it isn't punishment or trial.

Representative Bernstein: This is just one condition of bail.

Sen. Trenbeath: Ordinarily there is an initial appearance in front of a judge, the judge will ask for arguments regarding bail from the defense counsel, from the prosecutor, and then the judge will set bail. On a felony count, often times they'll set a certain monetary amount, whether it's a full amount or through a bail bondsmen, and then they'll set conditions, to be remain law abiding, stay out of the bars, you sometimes report in to the sheriff's office every week or every day, not leave the area, stay away from the victim, if there was a victim in the case, etc.

Representative Maragos: Well my own feeling is that I would prefer that we just let this work for a couple of years and look at it again, Sen. Trenbeath. I see what you're...

Sen. Trenbeath: That, in my mind, isn't a really good tactic, because it'll work, that isn't the question. The question, should it work in this fashion. Should we be relieving the judge of that decision entirely. The fact of the matter is, if we leave discretion with the judge, then we'll know whether it works or not. If there are negative results, it's show.

Representative Maragos: I would be the first to admit I feel woefully inadequate to make a decision like that without having a real good debate on it through testimony in front of a committee. I understand you have some very firm beliefs in this regard...

Sen. Trenbeath: Just say no.

Sen. Nelson: I move that the committee be dissolved and our work be ended. We've amended the bill back to the form we were in, and close debate.

Representative Onstad: Seconded.

Representative Bernstein: It's been moved and seconded that we stick with the amendment we put on here.

Sen. Nelson: Maybe I should just move that the committee be adjourned.

Sen. Syverson: And the chairman dissolve it.

Representative Bernstein: Meeting adjourned until further notice.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1290/C

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/6/05

Tape Number

1

Side A

xx

Side B

Meter #

0-2.9

Committee Clerk Signature *Dawn Penrose*

Minutes: 5 members present, 1 member absent (Sen. Nelson).

Representative Bernstein: Called to order.

Sen. Trenbeath: To continue our conversation from the last time we met, and as the committee will recall, I did have a hang-up on relieving the district judge of his/her discretion. The Attorney General and I have since met, and you have before you a proposed amendment to this bill that would leave the word "shall" in there, so the court shall impose this condition, unless the court finds on the record that the person has not been arrested for meth, that the person will appear as required by the court and comply with all conditions of release and the person does not pose a danger to the person or the community if they're not subjected to this examination. So if a court were to find, on the record, that all three of those apply, the court could then exercise its discretion on whether or not to do the testing. The AG's office drafted this after some conversations that the AG and I had. Having said that, I would move to further amend HB 1290 in this respect.

Representative Maragos: Seconded.

Representative Bernstein: It's been moved and seconded to further amend HB 1290. Any discussion.

Wayne Stenehjem, Attorney General: I want to thank Sen. Trenbeath, for his dogged efforts in working on amendments to this bill, which I think are very good amendments. The initial reason that we sought the introduction of this bill, was primarily to deal with the problem of people who are arrested for manufacturing or using meth, and that afternoon, or that night or two days later are out, and are being arrested for doing the same thing again. This amendment says that if it is a meth arrest, the judge doesn't have that discretion, but on the other drug offenses, the judge would have that discretion. I think this amendment is a very good one, and I support it.

Representative Bernstein: Further discussion, the clerk will take the vote.

5 YES 0 NO 1 ABSENT (Sen. Nelson)

SENATE RECEDE FROM SENATE AMENDMENTS AND BE AMENDED

Representative Bernstein: Motion passes. Adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1290**

Date: **April 1, 2005**

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

	Yes/No		Yes/No
Sen. Syverson	xx	Rep. Bernstein	xx
Sen. Trenbeath	xx	Rep. Maragos	xx
Sen. Nelson	xx	Rep. Onstad	xx

recommends that the HOUSE ACCEDE TO SENATE

The Senate amendments on (HJ) page(s) 1216

XX and place HB 1290 on the Seventh order and Rerefer to Appropriations.

**____, adopt amendments as follows, and place HB 1290 on the
Seventh order:**

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

HB 1290 was placed on the Seventh order of business on the calendar.

DATE: 4/1/05

CARRIER: Rep. Bernstein

LC NO. of amendment

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen. Trenbeath

SECONDED BY: Rep. Maragos

6 YES 0 NO 0 ABSENT

House accede to Senate amendments and rerefer to Appropriations.

**THIS ACTION WAS NEVER TAKEN, IT WAS BROUGHT BACK TO CONFERENCE
COMMITTEE AND FURTHER ACTION TAKEN ON 4/4/05 AND 4/6/05.**

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1290**

Date: **April 4, 2005**

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

	Yes/No		Yes/No
Sen. Syverson	xx	Rep. Bernstein	xx
Sen. Trenbeath	xx	Rep. Maragos	xx
Sen. Nelson	xx	Rep. Onstad	xx

Recommends that the House Accede To the Senate amendments on (HJ) page(s) 1216 and amend as follow: On page 1, line 6, after "Release", insert "Unless the court makes a specific finding, on the record, the court shall"...

_____ and place _____ on the Seventh order.

XX, adopt amendments as follows, and place HB 1290 on the Seventh order:

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

was placed on the Seventh order of business on the calendar.

DATE: 4/4/05

CARRIER: Rep. Bernstein

LC NO. 58270.0102 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen. Trenbeath

SECONDED BY: Sen. Syverson

3 YES 3 NO 0 Absent

House accede to Senate amendments and adopt amendments. MOTION FAILED.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1290**

Date: **April 4, 2005**

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

	Yes/No		Yes/No
Sen. Syverson	xx	Rep. Bernstein	xx
Sen. Trenbeath	xx	Rep. Maragos	xx
Sen. Nelson	xx	Rep. Onstad	xx

Recommends that the House Accede To the Senate amendments on (HJ) page(s) 1216 and amend as follow: On page 1, line 15, after the word, "cost", remove "unless the court makes a specific finding on the record that the" and remove all of line 16.

_____ and place _____ on the Seventh order.

**XX, adopt amendments as follows, and place HB 1290 on the
Seventh order:**

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

HB 1290 was placed on the Seventh order of business on the calendar.

DATE: 4/4/05

CARRIER: Rep. Bernstein

LC NO. 58270.0102 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment _____

MOTION MADE BY: Rep. Maragos

SECONDED BY: Sen. Syverson

6 YES 0 NO 0 Absent

House accede to Senate amendments and adopt amendments. MOTION CARRIED.

Conference Committee Amendments to HB 1290 (58270.0102) - 04/06/2005

That the Senate recede from its amendments as printed on page 1216 of the House Journal and pages 878 and 879 of the Senate Journal and that House Bill No. 1290 be amended as follows:

Page 1, line 7, replace "a person" with "an individual"

Page 1, line 9, replace "person" with "individual" and remove ", at the individual's own cost,"

Page 1, line 12, after the period insert "The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost. Submission of an individual to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

1. The individual has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;
2. The individual will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and
3. Not imposing examination or testing as a condition of release will pose no danger to the individual or to the community."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1290**

Date: **April 7, 2005**

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

	Yes/No		Yes/No
Sen. Syverson	xx	Rep. Bernstein	xx
Sen. Trenbeath	xx	Rep. Maragos	xx
Sen. Nelson (Absent)		Rep. Onstad	xx

recommends that the SENATE RECEDE from

the Senate amendments on (HJ) page(s) 1216

_____ and place _____ on the Seventh order.

**XX, adopt amendments as follows, and place HB 1290 on the
Seventh order:**

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

HB 1290 was placed on the Seventh order of business on the calendar.

DATE: 4/6/05

CARRIER: Rep. Bernstein

LC NO. 58270.0102 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen. Trenbeath

SECONDED BY: Rep. Maragos

5 YES 0 NO 1 ABSENT (Sen. Nelson)

Senate recede from Senate amendments and adopt amendments.

REPORT OF CONFERENCE COMMITTEE

HB 1290: Your conference committee (Sens. Syverson, Trenbeath, Nelson and Reps. Bernstein, Maragos, Onstad) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1216, adopt amendments as follows, and place HB 1290 on the Seventh order:

That the Senate recede from its amendments as printed on page 1216 of the House Journal and pages 878 and 879 of the Senate Journal and that House Bill No. 1290 be amended as follows:

Page 1, line 7, replace "a person" with "an individual"

Page 1, line 9, replace "person" with "individual" and remove ", at the individual's own cost,"

Page 1, line 12, after the period insert "The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost. Submission of an individual to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

1. The individual has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;
2. The individual will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and
3. Not imposing examination or testing as a condition of release will pose no danger to the individual or to the community."

Renumber accordingly

HB 1290 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1290

Testimony of Wayne Stenehjem
Attorney General
HB 1290
January 24, 2005

House Bill 1290 imposes new conditions on an individual released on bail. It is another product of the North Dakota Commission on Drugs and Alcohol. During the interim the Commission continued to examine ways to curb the illegal use of drugs in our state. During our deliberations we heard numerous concerns about the "revolving doors" of our court system. Offenders are arrested on meth-related drug charges, they make bail and a few days later they are back in jail facing new drug charges.

To stop the revolving door, several judges in Williams and Ward counties implemented a new protocol for releasing offenders on bail. They ordered offenders to undergo random drug-testing as a condition of release on bail. If they fail the drug test, their bail is revoked and they are sent back to jail. Law enforcement reported to the Commission that the practice works to slow the revolving door for those repeat offenders.

House Bill 1290 mandates courts to impose, as a condition of bail, random drug testing on felony offenders. The court must order the frequency and location of the random testing. The tests will be paid for by the offender. If the offender fails the test, bond will be revoked and the offender will go back to jail. The bill also allows for an offender to use a valid prescription from a doctor.

The mandatory testing of felony offenders is yet another tool to get drug offenders off the street ... it is a way to keep them from continuing to hurt themselves and those around them. I encourage a do pass on the bill.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1290

Page 1, after line 16, insert:

"Submission of a person to a medical examination or other reasonable random testing as a condition for release is not required if the court makes a specific finding on the record that:

- 1. the person has not been arrested for a felony offense relating to the use, possession, manufacture, or delivery of methamphetamine;**
- 2. the person will appear as required by the court and will comply with all conditions of release without submission to an examination or testing; and**
- 3. not imposing examination or testing as a condition of release will pose no danger to the person or to the community."**

Renumber accordingly

Testimony of Wayne Stenehjem
Attorney General
HB 1290
March 1, 2005

House Bill 1290 imposes new conditions on an individual released on bail. It is another product of the North Dakota Commission on Drugs and Alcohol. During the interim the Commission continued to examine ways to curb the illegal use of drugs in our state. During our deliberations we heard numerous concerns about the "revolving doors" of our court system. Offenders are arrested on meth-related drug charges, they make bail and a few days later they are back in jail facing new drug charges.

To stop the revolving door, several judges in Williams and Ward counties implemented a new protocol for releasing offenders on bail. They ordered offenders to undergo random drug-testing as a condition of release on bail. If they fail the drug test, their bail is revoked and they are sent back to jail. Law enforcement reported to the Commission that the practice works to slow the revolving door for those repeat offenders.

House Bill 1290 mandates courts to impose, as a condition of bail, random drug testing on felony offenders. The court must order the frequency and location of the random testing. The tests will be paid for by the offender. If the offender fails the test, bond will be revoked and the offender will go back to jail. The bill also allows for an offender to use a valid prescription from a doctor.

After the hearing in the House, Judge McCullough from Fargo emailed us with a request to include standard language in the bill allowing the court to review the person's ability to pay. We have prepared an amendment to do so for your consideration today.

In closing, the mandatory testing of felony offenders is yet another tool to get drug offenders off the street ... it is a way to keep them from continuing to hurt themselves and those around them. I encourage a do pass on the bill.

#3

Testimony Opposing House Bill 1290

by Glenn A. Elliott, a private citizen and resident of Mandan, North Dakota, appearing on his own behalf on Tuesday, 1 March 2005

Before the Judiciary Committee of the North Dakota Senate

Mr. Chairman and Senators of the Committee:

I am appearing today and offering this testimony to oppose House Bill 1290.

1. The state has an instant, exigent, and compelling reason at the time of a suspect's arrest to determine if the suspect is under the influence of a controlled substance. This is both to determine if the suspect has illegally used the substance, or been exposed to it during the manufacture or packaging of it, and if the suspect's health and welfare may be at hazard because of such exposure.
2. If officers of the state determine incident to arrest that the suspect is displaying physical signs consistent with present exposure to a controlled substance, or with recent use coupled with evidence indicating unauthorized possession of a controlled substance, and the suspect does not consent to scientific testing for such, the state may request that a court order the suspect to submit to testing for presence of a controlled substance.
3. The state does not have such a compelling interest at the time of the bail hearing. At this time, the state should have:
 - a. Evidence of controlled substance exposure per Item 2 above;
 - b. Admissible records indicating that the arrestee is a habitual illicit user of controlled substances; OR
 - c. No such evidence or records.
4. If the state has evidence or records indicating illicit use of controlled substances, the court has reason to impose drug testing as a condition of bail, and the legislature has reason to require such imposition if it sees fit.
5. If the state has no such evidence or records, there is reason to believe the accused may not illicitly use controlled substances. This is not an absolute determination, but it argues against automatic imposition of drug testing as a condition of bail. It may also be argued that such automatic imposition is excessive bail.
6. Bail exists to allow the defendant to remain at liberty until trial and to assure that the defendant will appear at trial. The public is also not to be placed at unreasonable risk through such liberty. Bail is not to be punitive or remunerative to the government. While the conditions of bail may be separable, bail to the accused is a whole that must be complied with in toto.
7. HB 1290 provides for automatic imposition of drug testing, regardless of reasonable belief that the accused may illicitly use controlled substances during the period of bail.

a. Abstinence from use of controlled substances except under medical supervision is a reasonable condition of bail, as exposure to controlled substances may engender conditions that put the user or others at risk of harm, or induce the user to violate the conditions of bail. However, if there is no reasonable belief this use may occur, the condition of drug testing contributes nothing to achieving the purpose of bail, and imposition of the condition constitutes excessive bail.

b. As the testing is at the expense of the accused, with no provision for remuneration if the accused tests negative and otherwise satisfactorily fulfills the conditions of bail, much less upon acquittal, the state effectively receives remuneration through bail by avoiding the cost of the drug testing.

In conclusion, I ask that the committee not recommend "do pass" on HB 1290 in its current form. I believe that HB 1290 can be amended to accomplish its purpose without imposing undue burden on criminal defendants. That amended version, although it may not conform to the form and style requirements, follows as an appendix.

Appendix to Testimony of Glenn A. Elliott on HB 1290
North Dakota Senate Judiciary Committee, Tuesday 01 March 2005
Draft of Amended Version of HB 1290

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Bail - Additional conditions of release. If a person is arrested upon a felony violation of this chapter or chapter 19-03.4, a court shall impose as a condition of release or bail:

SUBSECTION 1. That the person not use a controlled substance without a valid prescription from a licensed medical practitioner.

SUBSECTION 2. If there is reason to believe that the person has recently used, or habitually uses, a controlled substance without a valid prescription from a licensed medical practitioner, that the person submit, at the person's own cost, to reasonable examination or testing to determine if the person is continuing to use a controlled substance without or not in accordance with such a prescription. The court will determine what nature, frequency, and location of examination or testing is acceptable.

**Testimony to the
Senate Judiciary Committee
by Ted Gladden, State Court Administrator**

Chairman Traynor and members of the Senate Judiciary Committee, I am appearing today concerning HB 1290. This bill slipped through the House under our radar. As a result, we did not appear to express our concerns with this bill. While the judiciary does not take a position in opposition to this bill, there are a number of issues that need to be presented in terms of the mechanics of how this bill would actually operate. Attached to my comments is proposed language that would facilitate the administration of this bill should the concept receive a do pass vote.

In 2004, there were 1610 defendants charged with violations of §§ 19-03.1 and 19-03.4. Certainly, a number of these defendants are without funds to pay for this testing or would wind up in this position. These are the cases I am concerned about.

I want to raise to the committee's attention to the implementation issues that have not been addressed with this legislation. While this approach sounds like a good idea, in many cases these are individuals who will either not have the money for the tests initially, or once they have been released, they will run out of money and be unable to pay for the ongoing costs of these tests. In visiting with providers in Grand Forks, Devils Lake, and Bismarck, I have been informed there is a charge of \$15 for each urinalysis test conducted. The individual has to pay for the test before the test is administered. This charge and procedure for prepayment are fairly standard, statewide. The fiscal note for this bill indicates there is no fiscal impact for the judiciary. But, I am questioning what will happen if defendants are released and run out of money and can no longer pay for the test or do not have the money for this test in the first instance. It does little good to pass legislation that will create circumstance where we may have offenders coming to court more often for failure to

comply with a court's order, as I am fearful could occur with this legislation. There is the question of how the law will be administered in the rural parts of our state. Will defendants be expected to routinely travel to a larger city where personnel are available to administer the test? Finally, there is a potential problem with the bill with possible constitutional implications because defendants would be required to pay for the testing as a condition of release.

I would request that the committee not only consider the proposed amendments that are provided, but also the broader public policy issues raised in my testimony.

Thank you and I will respond to any questions the committee may have.



TED C. GLADDEN
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 3, 2005

AA #1
SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
Bismarck, ND 58505-0530
Phone: (701) 328-4216
Fax: (701) 328-2092

TO: Chair Traynor, Senate Judiciary Committee
FROM: Ted Gladden
SUBJECT: Fiscal Impact Statement on H.B. 1290

Felony Violations of N.D.C.C. Ch.19-03.1 and 19-03.4

2003: Statewide - 1,083; Ward County - 85; Williams County - 50

2004: Statewide - 1,417; Ward County - 103; Williams County - 43

The number of offenders includes only those for which we have a unique social security number.

Historically, 93% of all felony defendants are determined to be indigent.

House Bill 1290 provides for random drug testing of individuals charged with a felony violation of N.D.C.C. Ch. 19-03.1 and 19-04.3. The computations for the testing is based on an arbitrary figure of 75% of the indigent defendants not having monies for regular drug testing and it being the responsibility of the state to pay for drug tests. In 2004, 1,318 will be indigent based on this 93% figure. Estimating that 75% of these indigent defendants will not have funds for the testing, 988 defendants will have to be tested at state expense. The docket currency standards provide that all felony cases must be disposed of within 180 days (26 weeks). The calculation for the testing is based on one test per week being administered for a total of 20 weeks at a price of \$15 per test. THIS WILL REPRESENT 19,760 TESTS BEING ADMINISTERED PER YEAR FOR AN ANNUAL COST OF \$296,400 OR \$592,800 FOR THE 2005-07 BIENNium.

Attached to this document is the data that was gathered for the testing that is currently being provided in Ward and Williams counties. In both jurisdictions, the charge is \$20 if it is for methamphetamine and a another \$2.50 if the test is for marijuana, as well. The Ward County Sheriff's Office administers UA tests twice per week for each defendant and charges \$20 or \$22.50 per test. The Williams County Sheriff's Office is charging \$20 per test and administers tests once per week..

Senate Judiciary Committee

March 3, 2005

Page 2

In preparing this fiscal impact statement, no increase in case filings over 2004 was projected and a statewide average of \$15 per test was used based on UA test costs in Bismarck, Grand Forks, and Devils Lake.

TG/cs

Attachment

**State of North Dakota
Administrative Unit 4**

Dixie Knoebel
District Court Administrator
Telephone: (701) 857-6625
Facsimile: (701) 857-6649
Email: dknoebel@ndcourts.com

Ward County Courthouse
315 3rd St SE
PO Box 5005
Minot ND 58702-5005

LaVonne Carlson
Calendar Control Clerk
Telephone: (701) 857-6628
Email: lcarlson@ndcourts.com

MEMORANDUM

March 3, 2005

TO: Ted Gladden

FR: Dixie Knoebel 

RE: Urinalysis Testing

The following data was gathered to determine frequency and cost of Urinalysis Testing on criminal defendants in the Northwest District Court of North Dakota. Urinalysis testing (UA) is generally court ordered prior to bail bond determination, and often as a condition of defendant release from jail while awaiting trial and/or disposition.

Ward County/Minot:

The Ward County Sheriff's Office conducts UA testing. On average, 12 defendants are tested twice a week. Total estimated cost per year for the actual test, cups and gloves is \$4287.00. This amount excludes administrative overhead, including sheriff deputy time to conduct testing and report writing. Defendants pay on average \$20 per test, which brings in approximately \$24,960.

Williams County/Williston:

The Williams County Sheriff's Office conducts UA testing. On average, 4 defendants are tested once a week. Total estimated cost per year for the actual test is \$840.00. This amount excludes administrative overhead, including sheriff deputy time to conduct testing and report writing. Defendants pay \$20 per test, which brings in approximately \$3,360.

Att #1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1290

Page 1, line 8, remove "not use a controlled substance without a valid prescription from a licensed medical"

Page 1, line 9, remove "practitioner and that the person" and remove ", at the individual's own cost,"

Page 1, line 12, after the period insert "The court shall provide notice to the selected provider of the required examination or testing. The provider shall notify the court of the examination or testing results, if any, and shall notify the court if the individual fails to appear for the examination or testing. The testing must be at the individual's own cost unless the court makes a specific finding on the record that the payment of testing costs by the individual will result in an undue hardship."

2a

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1290

Page 1, line 12, after the period insert " The court must provide notice to the selected provider of the required examination or testing. The provider shall notify the court of examination or testing results, if any, and shall notify the court if the person fails to appear for the examination or testing. "

Renumber accordingly

Syverson, John O.

1290 AH #1

From: John O Syverson [Jsydi@compuserve.com]
Sent: Sunday, March 13, 2005 7:46 PM
To: Syverson, John O.; John O Syverson
Subject: Pharm

Hi John,

Here is some information for you.

First, it is important to understand how urine testing is done to screen for substance abuse. Testing is done in a 2-stage procedure. The first stage uses various tests that are quite sensitive in picking up any potential drug of abuse. It is this preliminary stage that can have false positives from legitimate medicines. However, there are 4 different kinds of tests used for preliminary screening and the false positives that can occur differ with each one.

However, if a preliminary positive result occurs, the test is repeated with

a different, confirmatory test. Such tests are more expensive and complex but are highly accurate and specific for drugs of abuse. False positives from legitimate drugs do not occur with confirmatory tests. An excellent web site that describes how this works can be found at <http://workplace.samhsa.gov> and more specifically at <http://workplace.samhsa.gov/drugtesting/analyticaltesting/index.html>. The web site also provides a list of federally certified drug testing labs.

Samples tested at such labs meet legal forensic standards for charging a person with using illegal drugs.

Therefore, although I could send you by fax a couple of lists of drugs that

MAY cause false positive tests on preliminary testing, such a list is not of much value because it depends on which preliminary test is used, as well

as the amount and timing of legal drug use. Again, false positives do NOT occur when proper 2-stage testing is done.

Therefore, if you are writing legislation, I think the most important point

would be to require that all urine tests be done by a federally certified lab as listed at the above web site.

I hope this answers your concern. If not please feel free to call me at home at 235-5214 or at work at 231-7941.

Don
Don Miller, Pharm.D., FASHP
Professor and Chair,
Department of Pharmacy Practice
Chair, University Program Review Committee North Dakota State University Fargo, N.D.
58105-5055
(701) 231-7941
(701) 231-7606 (fax)

Note my new, shortened, email address:
donald.miller@ndsu.edu

1290 12/12

FEDERAL DRUG TESTS — Federal drug testing programs require testing all specimens for marijuana metabolites, cocaine metabolites, opiate metabolites, amphetamines and phenylephrine. Many random screening assays also detect barbiturates and benzodiazepines in urine. The US Department of Health and Human Services (DHHS) specifies urine testing in the Federal Workplace Drug Testing Programs, but drafts of new guidelines for use of hair, sweat and oral fluid (<http://workplace.samhsa.gov>). The DHHS has established specific threshold concentrations for a positive finding in urine for the drugs listed in the table. These concentrations were chosen for optimal sensitivity and specificity. The thresholds for other drugs, such as benzodiazepines, vary with the laboratory and the assay. The length of time someone will test positive following drug ingestion depends on the drug, the dose, its elimination half-life, and the source of the specimen.

FEDERALLY MANDATED URINE TESTS FOR DRUGS OF ABUSE

Test drug	Positive preliminary test	Duration of detectability	Some drugs that can cause false-positive preliminary urine tests
Amphetamines	1000 ng/ml ¹	2-3 days	Ephedrine, pseudoephedrine, phenylephrine, amphetamines, dextroamphetamine, methamphetamine, selegiline, chlorpromazine, trazodone, bupropion, desipramine, amantadine, ranitidine
Cocaine metabolites	300 ng/ml ²	2-3 days; up to 8 days with heavy use	Topical anesthetics containing cocaine
Marijuana metabolites	50 ng/ml	1-7 days (light use); 1 month with chronic moderate to heavy use	Ibuprofen, naproxyn, dronabinol, efavirenz, hemp seed oil
Opiate metabolites	2000 ng/ml	1-3 days	Codaine, morphine, rifampin, fluoroquinolones, poppy seeds, quinine in tonic water
Phencyclidine	25 ng/ml	7-14 days	Ketamine; dextromethorphan

1. DHHS proposed new guidelines: 500 ng/ml
2. DHHS proposed new guidelines: 150 ng/ml

DRUGS — Blood and breath concentrations of alcohol correlate more closely than urine concentrations with central-nervous-system impairment.

False-positive determinations are especially common with amphetamines. Using a second immunoassay to double-check positive results can reduce the number of false positives. The exact substance present can be determined by confirmation testing.

Marijuana is converted into several metabolites; among these, Δ -9-tetrahydrocannabinol-9-carboxylic acid can be found in urine in high concentrations for the longest duration of time. Positive tests from passive inhalation of marijuana smoke or from consumption of hemp-containing foods found in health-food stores (such as nut butters or cold-pressed cooking oil) are unlikely (G Leson et al, J Anal Toxicol 2001; 25:691).





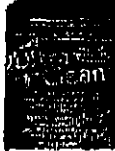
Cocaine has a short half-life (about 1 hour); it is largely metabolized to benzoylecgonine, which has an elimination half-life of about 7½ hours and is excreted in urine (RT Jones, NIDA Res Monogr 1997; 175:221).

False Positive Drug Test Results.**HAVE FALSE POSITIVE DRUG TEST****HOW TO PASS A DRUG TEST WITH A FALSE POSITIVE RESULT.****Medications & Substances Causing a False Positive Drug Test.**

According to a report by the Los Angeles Times New Service, a study of 181 prescription and over the counter medications showed that 85 of them produced false positive drug test results in the most widely administered urine test. Ronald Siegel, a psychopharmacologist at UCLA said "The widespread testing and reliance on tell-tale traces of drugs in the urine is simply a panic reaction invoked because the normal techniques for controlling drug use haven't worked very well. The next epidemic will be testing abuse."

Byrd Labs has in its possession an internal document from the Syva Company, makers of the widely used EMIT test. This document, leaked by a disillusioned company employee, lists more than 250 over-the-counter medications and prescription drugs that can cause false positive drug test.

Choose One of the Following Products.

Urine - Blood - Saliva		Hair	
Casual User 1-3 Times per Week	Heavy or Larger User 3+ Times per Week 200 lbs +	Boosters Margin of Safety	Hair Foliicle All Usage
 Liquid	 Liquid	 Capsules	  Shampoo Shampoo

Check Prices

Ready Clean	XXtra Clean	PreCleanse	Root Clean Ultra Clean
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Free PreCleanse (\$10 Value) with Ready or XXtra Clean.

Drug Test Type

- Drug Test for Urine
- Drug Test for Hair
- Drug Test for Blood

Usage Level

- Casual User
1-3 Times / Week
- Heavy User
3+ Times / Week
- Larger User
200+ lbs

Info You Need

- Solid Advice
- Detection Times
- How to Beat Drug Test
- Questions & Answers
- When to Get a Lawyer
- Why False Positives
- Why We Work Differ
- Federal Guidelines
- Employer's View
- Booster Product
- DEA Guidelines
- Classifications
- Side Effects
- Thresholds
- Glossary
- Articles
- History
- News

Check Prices Here

Home Page

Have a Question?

Substances That Cause False Positive Drug Test Results.**THC - Substances or Conditions which can cause false positives.**

- Dronabinol (Marinol)
- Ibuprofen; (Advil, Nuprin, Motrin, Excedrin IB etc)
- Ketoprofen (Orudis KT)
- Kidney infection (Kidney disease, diabetes) Liver Disease
- Naproxen (Aleve)
- Promethazine (Phenargen, Promethegan)
- Riboflavin (B2, Hempseed Oil)

Amphetamines - Substances or Conditions can cause a false positive drug test.

- Ephedrine, pseudoephedrine, propylphedrine, phenylephrine, or desoxyephedrine (Nyquil, Contac, Sudafed, Allerest, Tavist-D, Dimetapp, etc)
- Phenegan-D, Robitussin Cold and Flu, Vicks Nyquil

False Positive Drug Test Results.

- Over-the-counter diet aids with phenylpropanolamine (Dexatrim, Accutrim)
- Over-the-counter nasal sprays (Vicks Inhaler, Afrin)
- Asthma medications (Marax, Bronkaid tablets, Primatone Tablets)
- Prescription medications (Amfepramone, Cathine, Etacridine, Morazone, phendimetrazine, phenmetrazine, benzphetamine, fenfluramine, dexfenfluramine, dexendofuramine, Redux, mephentermine, Mesocarb, methoxyphenamine, phentermine, amineptine, Pholedrine, hydroxymethamphetamine, Dexedrine, amfepramone, clobenzorex, fenproporex, mephentermine, fenetylline, Didrex, dextroamphetamine, methphenidate, Ritalin, pemoline, Cylert, selegiline, Deprenyl, Eldepryl, Famprofazone) Kidney infection, kidney disease, Liver disease, diabetes.

Opates - Substances or Conditions which can cause a false positive drug test.

- Poppy Seeds
- Tylenol with codeine
- Most prescription pain medications
- Cough suppressants with Dextromethorphan (DXM)
- Nyquil
- Kidney infection, Kidney Disease
- Diabetes, Liver Disease

Ecstasy - Substances or Conditions which can cause a false positive drug test.

- Ephedrine, pseudoephedrine, propylphenedrine, phenylephrine, or deoxyephedrine (Nyquil, Contac, Sudafed, Allerest, Tavist-D, Dimetapp, etc)
- Phenegan-D, Robitussin Cold and Flu, Vicks Nyquil
- OTC
- Over-the-counter nasal sprays (Vicks Inhaler, Afrin)
- Asthma medications (Marax, Bronkaid tablets, Primatone Tablets)
- Prescription medications (Amfepramone, Cathine, Etacridine, Morazone, phendimetrazine, phenmetrazine, benzphetamine, fenfluramine, dexfenfluramine, dexendofuramine, Redux, mephentermine, Mesocarb, methoxyphenamine, phentermine, amineptine, Pholedrine, hydroxymethamphetamine, Dexedrine, amfepramone, clobenzorex, fenproporex, mephentermine, fenetylline, Didrex, dextroamphetamine, methphenidate, Ritalin, pemoline, Cylert, selegiline, Deprenyl, Eldepryl, Famprofazone)
- Kidney infection, kidney disease
- Liver disease, diabetes

Cocaine - Substances or Conditions which can cause a false positive drug test.

- Kidney infection (kidney disease)
- Liver infection (liver disease)
- Diabetes
- Amoxicillin
- Tonic water

Solid Drug Test Information - The Key to Passing a Drug Test.**General Items reported as causing false positive test drug test results:**

- **Your own enzymes.** A small fraction of the population excrete large amounts of certain enzymes in their urine which can produce a positive drug test. Dr. John Morgan of the Dept. of Pharmacology of New York City University writes: "A false positive test could occur in some individuals because they excrete unusually large amounts of endogenous lysozyme or malate dehydrogenase." Dr. Morgan judges that natural enzyme interference may run as high as 10% of positive samples.
- **Black Skin.** This is not a joke! Those of African origin, certain Orientals, or Pacific Islanders might test positive for marijuana. Dr. James Woodford, a toxicologist associated with Emory University labs hypothesized the pigment melanin which protects the skin from the sun, approximates the molecular structure of the THC metabolite to cross react on the marijuana urine test. Dark skinned Caucasians such as those from the subcontinent of India could also read positive on marijuana tests. The body eliminates some melanin in a dark person's urine sample.

HOUSE BILL NO. 1290
with Senate AmendmentsFifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1290

Introduced by

Representatives Klemin, Norland, Thorpe

Senators Seymour, Trenbeath, Triplett

- 1 A BILL for an Act to create and enact a new section to chapter 19-03.1 of the North Dakota
2 Century Code, relating to bail bonds.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Bail - Additional conditions of release.** A court shall impose as a condition of release
7 or bail that a person who has been arrested upon a felony violation of this chapter or chapter
8 19-03.4 not use a controlled substance without a valid prescription from a licensed medical
9 practitioner and that the person submit to a medical examination or other reasonable random
10 testing for the purpose of determining the person's use of a controlled substance. The court
11 shall order the frequency of the random testing and the location at which random testing must
12 occur. The court shall provide notice to the selected provider of the required examination or
13 testing. The provider shall notify the court of the examination or testing results, if any, and shall
14 notify the court if the individual fails to appear for the examination or testing. The testing must
15 be at the individual's own cost, unless the court makes a specific finding on the record that the
16 payment of testing costs by the individual will result in an undue hardship.

SENATE
AmendmentAmended
Passed

Proposed by the Office of Attorney General
April 4, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1290
With Senate Amendments

Page 1, line 15, remove "unless the court makes a specific finding on the record that the"

Page 1, remove line 16

Renumber accordingly