

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2357

2007 SENATE JUDICIARY

SB 2357

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2357**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2255

Committee Clerk Signature *Maria L. L. L.*

**Minutes:** Relating to the housing of inmates.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

## **Testimony In Support of Bill:**

**Sen. Nelson**, Dist. #2 Introduced the bill.

**Mr. Glenn Ellingsberg**, Administrator Cass Count Jail and Juvenile Detention Center (meter 1:49) Gave Testimony – Att. #1. (meter 4:30)

He referred to a situation of a 17 year old juvenile who had been charged with terrorizing and attempted murder, because of his attempted crime and his actions in the juvenile facility he had to be placed in Administrative Isolation. 24 hours in isolation is very difficult. They need to have interactions of others.

**Sen. Fiebigers** concern in the adult transfer it is not being done? Yes it is being done, when they have been charged as an adult in court, they have transferred them. Upon review, they are in question if they are in violation of the law. We have used "may" so that both ways are an option. Currently they can not be housed with the adults. Yes. You think that social interaction is more important then potential harm that could be done? Yes. Mr. Ellingsberg

spoke of the heinousness of the crime they would have had to be capable of to be there in the first place. Discussion of what neighboring states do.

**Terry Trainer**, Asst. Dir. Assoc of Counties (meter 8:47) actively involved in working with our jails and detention centers to keep them in compliance with the Federal Acts. This as proposed is consistent with what the federal language recognizes. It is best for them an the other inmates.

**Testimony in Opposition of the Bill:**

None

**Testimony Neutral to the Bill:**

None

**Senator David Nething**, Chairman closed the hearing.

**Sen. Lyson** made the motion to Do Pass and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

**Sen. Lyson** rescinded the motion to further motion the amendment

**Sen. Lyson** made the motion to Do Pass the amendment and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

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Carrier: **Sen. Nelson**

**Senator David Nething**, Chairman closed the hearing.

Date: 1-30-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2357

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen Lyson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fieblger	/	
Sen. Lyson	/		Sen. Marcellais	/	
Sen. Olafson	/		Sen. Nelson	/	

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent With drew Motion to Make Amendment

Floor Assignment \_\_\_\_\_

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

Date: 1-30-07  
 Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2357

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment

Motion Made By Sen. Lyson Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebigger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 1-30-07

Roll Call Vote # 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2357

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By sen. Lyson Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebigger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Nelson

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

**REPORT OF STANDING COMMITTEE**

**SB 2357: Judiciary Committee (Sen. Nethling, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2357 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the overstrike over "~~Juvenile~~", remove "~~Juvenile offenders~~", remove the overstrike over "~~adults~~", and replace "~~adult offenders~~" with "except that an adult held under a delinquency proceeding may be held with juveniles and a juvenile transferred or waived to adult court on a felony criminal offense may be housed with adults in a jail or regional correctional facility"

Renumber accordingly



2007 HOUSE JUDICIARY

SB 2357

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2357

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4832

Committee Clerk Signature *D. Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2357.

**Glenn Ellingsberg, Chief Deputy, Administrator for Cass County Jail and Juvenile Detention Center:** (see attached testimony).

**Rep. Delmore:** Is there ever a flip side to this, where some of these people could be put at risk by being with the adult population. I understand what you're saying about the isolation factor, but there could be a risk on the other side.

**Glenn Ellingsberg:** There is a potential for that and I think that's why we asked for the bill amendment, is permissive rather than mandatory, it states "may". Our position, as is most places that deal with adults and juveniles, we prefer to keep them with their own age group. However, there are times and an instance happened earlier this year, we had a juvenile that was in for terrorizing and was reduced from attempted murder. It simply was not mandatory or necessary; therefore we did move him to our adult facilities, simply because it is a more strict facility. That individual was isolated for almost five months before he turned 18, and we could move him into gen. population. There is that concern; however, I think we can work with those under "may" instead of mandatory.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Aaron Birst, State's Attorney Association and Association of Counties:** (see attached testimony).

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2357

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4906

Committee Clerk Signature *D. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2357. What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 3/12/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2357

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Dahl

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

**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2007 3:22 p.m.

**Module No: HR-46-5040**  
**Carrier: Dahl**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2357, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2357 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

SB 2357

AH #1  
1-30-07

Senate Judiciary Committee  
Senator Dave Nething, Chairman  
January 30, 2007

SB 2357 A Bill relating to the housing of inmates

Chairman Nething and Committee Members, I am Glenn Ellingsberg and the current Administrator for the Cass County Jail and Juvenile Detention Center.

I would like to thank you for taking my testimony this morning which is in favor of this bill. The proposed bill was introduced on behalf of Cass County to clarify the existing statute relating to the housing of juveniles from adults found on line 15 of the proposed amendment.

There are two issues with the current statute. The first is that the juvenile justice system can and often will maintain jurisdiction of an individual past their 18th birthday. Cass County Juvenile Court will direct that an individual 18 or older be housed in our Juvenile Detention Center due to the offense occurring prior to their turning 18. Keeping these adults held for a delinquency proceeding separate as required under current statute is difficult due to the design of our juvenile center. It is also not a requirement of the Juvenile Justice and Delinquency Prevention Act of 2002.

***3.4 Compliance With Separation***

***Adults Under the Jurisdiction of the Juvenile Court***

*An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been "convicted of a crime or is awaiting trial on criminal charges."*

This statute also poses a problem when a juvenile is waived into adult criminal court on a felony offense as existing statute requires that we house the juvenile separate from our adult population even though he is being tried as an adult. This also is not required under the Juvenile Justice and Delinquency Prevention Act of 2002.



## **2.4 Compliance With Jail Removal**

### **Transfer or Waiver Exception**

*If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's age of majority, at which time, he or she must be separated from the juvenile population within 6 months.*

However, since we asked this bill to be introduced, we have had an opportunity to discuss this change with other correctional professionals. With our current proposed language, the state would not be in compliance with the requirement that juveniles charged in criminal court with misdemeanor offenses still be housed in a Juvenile Detention Facility and not an Adult Jail or Regional Correctional Facility.

Therefore, the proposed change in line 15 should be amended to better reflect the intent of this change and to comply with the JJDP Act. I would therefore suggest the following change:

2. Juveniles from Adults, except that adults held under a delinquency proceeding can be held with other juveniles; and juveniles transferred or waived to adult court on a felony criminal offense may be housed with other adults in a jail or regional correctional facility.

Thank you.

Glenn D. Ellingsberg  
Chief Deputy

House Judiciary Committee  
Representative Duane DeKry, Chairman  
March 12, 2007

SB 2357     A Bill relating to the housing of inmates

Chairman DeKrey and Committee Members, I am Glenn Ellingsberg and the current Administrator for the Cass County Jail and Juvenile Detention Center.

I would like to thank you for taking my testimony this morning which is in favor of this bill. The proposed bill was introduced on behalf of Cass County to clarify the existing statute relating to the housing of juveniles from adults found on line 15 of the proposed amendment.

There are two issues with the current statute.

The first is that the juvenile justice system can and often will maintain jurisdiction of an individual past their 18th birthday. Cass County Juvenile Court will order that an individual 18 or older be housed in our Juvenile Detention Center due to the offense occurring prior to their turning 18. Our Juvenile Detention Center is quite small and holds only 11 residents. Keeping an Adult held for a delinquency proceeding separate as required under current statute is difficult due to the design of our juvenile center. It is also not a requirement of the Juvenile Justice and Delinquency Prevention Act of 2002.

This statute also poses a problem when a juvenile is waived into adult criminal court on a felony offense as existing statute requires that we house the juvenile separate from our adult population even though he is being tried as an adult. This means true isolation of this inmate from others for months until the case is disposed of by our District Court. Being isolated increases his risk for suicide and other mental health issues. This also is not required under the Juvenile Justice and Delinquency Prevention Act of 2002.

I am asking that you adopt a DO PASS on this bill and allow what has been a common practice among jails and detention centers in the State of North Dakota for years.

Thank you.

Glenn D. Ellingsberg  
Chief Deputy

**Excerpts from the Juvenile Justice and Delinquency Prevention Act of 2002.**

**3.4 Compliance With Separation**

***Adults Under the Jurisdiction of the Juvenile Court***

*An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been "convicted of a crime or is awaiting trial on criminal charges."*

**2.4 Compliance With Jail Removal**

***Transfer or Waiver Exception***

*If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's age of majority, at which time, he or she must be separated from the juvenile population within 6 months.*

**Testimony To The  
HOUSE JUDICIARY COMMITTEE  
Prepared March 12, 2007 by the  
North Dakota Association of Counties  
Terry Traynor – Assistant Director**

**REGARDING ENGROSSED SENATE BILL 2357**

Thank you Chairman DeKrey and members of the Committee for the opportunity to present the counties' support for Engrossed Senate Bill 2357. This bill clarifies, with respect to jails and detention centers, the distinction between the judicial and chronological definitions of "adult" and "juvenile".

Periodically, an individual under the age of 18 is waived or transferred into adult court – thereby becoming an adult for future court proceedings. At times such an individual has behavior warranting their removal from a juvenile detention center, and this change would make it clear that this individual can be legally housed in an adult jail.

Conversely, there are rare situations where an individual is charged with committing a delinquent offense prior to their 18<sup>th</sup> birthday, but they reach their 18<sup>th</sup> birthday before reaching detention or while being held in juvenile detention. This law recognizes that until they have been transferred to adult court, they are under the jurisdiction of the juvenile court and must be treated as a juvenile.

The Association of Counties has had some concern over the current law as it forces counties to choose between compliance with State law or with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act. With passage of engrossed HB2357, our laws will become consistent with the federal Act and with what is considered appropriate juvenile justice practice.

Mr. Chairman and committee members, we urge a "Do Pass" recommendation.