

**2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1119**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1119  
January 17, 2013  
17358

Conference Committee

Committee Clerk Signature

*Carmen Hart*

## Explanation or reason for introduction of bill/resolution:

Relating to authority of the warden of the state penitentiary to make rules.

## Minutes:

You may make reference to "attached testimony."

**Chairman Jim Kasper** opened the hearing on HB 1119.

**Robyn Schmalenberger, Warden of the North Dakota State Penitentiary**, presented the attached testimony. **Attachment 1.** (6:06)

**Rep. Marie Strinden** Have you considered putting in, instead of striking this entire sentence, something that says subject to the space, staffing, and security limitations?

**Robyn Schmalenberger** I believe the easiest way to adjust the statute is to remove the language to make it consistent with the authority currently granted to the administrator of the Youth Correctional Center. Sometimes it is difficult to predict what types of issues come up in a prison so to limit by definition in the statute, I could see some difficulties with that because in a prison environment you are not always sure what type of incidents arise and how you need to address those. It would be nice to have the flexibility that is currently granted to the North Dakota Youth Correctional Center.

**Rep. Marie Strinden** The statute doesn't say that each prisoner gets four days of visitation but that is how it is read?

**Robyn Schmalenberger** I know it does not state that but the inmates and their friends and families when they read it, they interpret it in that manner so we do spend time corresponding with them or engaging in discussion with them about their interpretation versus our interpretation of the statute.

**Vice Chair Randy Boehning** How do I know when there are visitation days? Is it posted on the website?

**Robyn Schmalenberger** Yes, we do have a Department of Corrections and Rehabilitation website and our visiting hours are posted on our website for friends and family members and the public to view.

**Vice Chair Randy Boehning** If I am not computer literate, is there a phone number that I could call? How soon in advance do you put this up on the website?

**Robyn Schmalenberger** Currently we put out a yearly schedule for visitation so it is out on the website. Also, the inmates have access to the schedule so they can give it to their friends or family members. Friends or family members can clearly call our front lobby and get the information over the phone. If they call and request it, we will mail it to a friend and family member. They do have various ways to getting access to that information.

**Vice Chair Randy Boehning** That schedule is subject to change in a matter of hours with lockdowns and so forth?

**Robyn Schmalenberger** Potentially, yes, it could be changed within a matter of hours.

**Vice Chair Randy Boehning** If you have a lockdown day and you have visitation, do you have to provide another day of visitation to make up for that day?

**Robyn Schmalenberger** The facility schedules are very tight in the facilities. Now if we have to suspend a day of visiting, we do not have the capability of making up a day of visiting.

**Vice Chair Randy Boehning** You mentioned individuals may use a personal computer to connect with the kiosk. Are they able to have their own personal laptop or is that a state furnished computer?

**Robyn Schmalenberger** We provide hard kiosk in our facilities for inmates to use, so we provide the kiosk computer for the inmates to use. We go through third party vendor so it is a pay system. The friend or family member can be on a computer at home, going through this third party vendor and connecting with the harden kiosk that we provide in the prison for our inmates.

**Rep. Bill Amerman** If you get rid of this section, you say it will bring you more in line with the Youth Correctional Center. Their administrator can make rules and regulations on how their visitation works. Do you know what they use?

**Robyn Schmalenberger** I believe the Youth Correctional Center at this time provides visitation on the weekends. You know they have children that are in school during the week so they are involved in a lot of activities. I don't have intentions of changing the visiting schedule with North Dakota State Penitentiary, but I am requesting the flexibility to be in compliance with the statue if there are reasons we need to suspend visitation. Now we are doing the expansion project and add a few hundred more inmates to our facility at that time, we may have to look at our visiting patterns and see how many visitors we have coming in. If we have more than we can accommodate, we may need to adjust the schedule at that time. Our visiting room at this point has a capacity of having about 60 visitors. Of course, when you add more inmates to our facility, it is going to have more stress on that visiting room.

**Rep. Bill Amerman** If we pass this and get rid of that language and you are able to make your rules and regulations, is that something that comes through the administrative rules committee?

**Robyn Schmalenberger** I believe the authority is granted to the wardens of the facility to make the rules for the visitation and that type of thing.

**Rep. Gail Mooney** Would the history on the four day actually probably have something to do with the fear of it being used as penalty?

**Robyn Schmalenberger** I am not sure what the history is on it.

**Rep. Gail Mooney** Would you have in place procedures that would insure the inmates as well as the families do have a standardized way or methodology time frames, etc. to be able to visit with their families?

**Robyn Schmalenberger** We have internal policy as to how many hours inmates are allowed to visit each month. Currently, they start with 20 hours of visitation. We understand how important visitation is. It is important to the inmates. It is important to the rehabilitation process. It is not something that we intend to take away from them, because it meets our needs of the facility to keep the inmates satisfied, meets the rehabilitation needs, and meets the friends and family members' need to maintain contact with their loved ones that are in prison.

**Rep. Karen Rohr** How long has YCC had that rule in place?

**Robyn Schmalenberger** I do not know.

**Rep. Karen Rohr** Have there been any social ramifications at YCC, and are you going to be keeping data to make sure that if people are not getting their 20 hours per month that there isn't issues then that you'd have to deal with from a liability point of view?

**Robyn Schmalenberger** I haven't heard of any problems with the North Dakota Youth Correctional Center. I would have to believe that the time of running is adequate on the weekends because the children are pretty occupied during the week so their visitors come in on the weekends. We currently do keep track of the 20 hours in our system. It is documented every time a visitor comes in and is subtracted off that amount of 20 hours.

There was no opposition.

The hearing was closed on HB 1119.

**Vice Chair Randy Boehning** moved for a **Do Pass**.

**Rep. Karen Rohr** seconded the motion.

**Rep. Marie Strinden** I like the bill and like both of you, but my concerns are that someday there will be a warden and a person in charge of the Department of Corrections that isn't as

altruistic towards the prisoners. I think we should just be aware that this won't be the personnel forever. I am going to vote yes for it, but I just wanted to let everybody know that it is a concern.

**Rep. Karen Rohr** I understand where Rep. Strinden is coming from. However, they have a maximum of 20 hours that obligates them and they also keep the data.

**Vice Chair Randy Boehning** Do we have to give them 20 hours of visitation or is there something in federal law that says they have so much visitation hours?

**Robyn Schmalenberger** I don't believe there is any specified visiting hours in law, but there are standards that require we need to make adequate space available and time available for visitation. That is made through American Correctional Association of Accreditation which we are currently in the process of working on right now.

**Vice Chair Randy Boehning** Somebody who is in total lockup 23 hours a day, I am guessing he is not going to have the 20 hours of visitation rights per month?

**Robyn Schmalenberger** You are correct. People that are locked in an administrator segregation unit don't have all the same privileges that other inmates have. They are required to have secure visiting in a secured visitation booth. We do provide visitation for them twice a week on Saturdays and Sundays. When you add them up, it is about 4 ½ hours a week that they would have access to visits.

**Rep. Ben Koppelman** Is there anything for a well behaved prisoner who doesn't have restrictions because of conduct or some other restriction like a sex offender might have with children, that sort of thing? Is there anything that gives them some basic rights to visitation in terms of a defined amount?

**Robyn Schmalenberger** I do not believe there is any standard for defined amount of hours. Any prisoner warden that wants to maintain safety and security in their prison, it is a balance. You are going to allow visitation hours because it is important and you need to keep the peace with inmates. You also need to balance that against security needs. There are times where we may suspend a visitor for a period of time, or we may suspend an inmate's visiting privileges for a period of time because they help facilitate contraband into the facility.

**Chairman Jim Kasper** Keep in mind what the warden said earlier. The fact is we do have jailhouse attorneys and there are being some problems created because of this part of the statute. The intent of the warden and all the folks out there is not to abuse the fact that it is important to have visitors for the prisoners but they need some flexibility. I think now we have an issue that maybe we can make life easier for the administration out there, and I think it is a good bill.

**Do Pass. 13-0, 1 absent.**

**Rep. Bill Amerman** is the carrier of this bill.

**Rep. Gail Mooney** I just want to make a comment from my own behalf. With all due respect for all of us who sit here, I think that we all take real seriously what we have been given the job to do. Earlier we had discussion on the Affordable Care Act, though, and I think that we can all pretty well be safe in assuming that we are going to have to deal with this for a very long time going into the future. I myself am asking respectfully if we could deal with that in a respectful manner, and I believe that distasteful humor won't help us do our jobs as unbiased as possible.

Date: 1-17-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1119

House Government and Veterans Affairs Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Boehning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	✓		Rep. Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Rep. Gail Mooney	✓	
Rep. Jason Dockter	✓		Rep. Marie Strinden	✓	
Rep. Karen Karls	✓		Rep. Steven Zaiser		
Rep. Ben Koppelman	✓				
Rep. Vernon Laning	✓				
Rep. Scott Louser	✓				
Rep. Gary Paur	✓				
Rep. Karen Rohr	✓				
Rep. Vicky Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Amerman

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

**REPORT OF STANDING COMMITTEE**

**HB 1119: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1119 was placed on the Eleventh order on the calendar.



**2013 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1119**

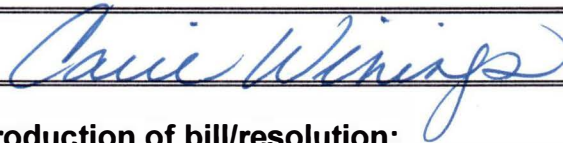
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1119  
03/28/2013  
Job Number 20597

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12-47-12 of the North Dakota Century Code, relating to authority of the warden of the state penitentiary to make rules.

### Minutes:

**Chairman Dever:** Opened the hearing on HB 1119.

**Robyn Schmalenberger, Warden, North Dakota State Penitentiary:** See Attachment #1 for testimony in support of the bill.

**(6:02)Chairman Dever:** How long has this 4 day requirement been in place?

**Robyn Schmalenberger:** I am not exactly certain, but I believe it was in the 1980's.

**Chairman Dever:** The kinds of inmates that you deal with now are different than they were then aren't they?

**Robyn Schmalenberger:** That is correct.

**Chairman Dever:** So they are more difficult and accommodating that visitation is a different issue than it was then?

**Robyn Schmalenberger:** We currently allow visitation six days a week in our facility and I do not plans to change that right now at NDSP. We are requesting the language to be changed so that if there is an instance where lock downs occur or staffing issues occur, and we get more inmates at the facility, we may need to look at resources.

**Chairman Dever:** Even if you did, those visitation times are at times that are accommodating for people who work.

**Robyn Schmalenberger:** Yes, we have visitation at various times. We have some AM visitation, weekday PM visitation, and on weekends we have visitation from about 10AM to 5:30PM. We are pretty flexible with our visiting hours to accommodate different schedules.

**Chairman Dever:** I appreciate your comments about recognizing the need for that as rehabilitation. That may be a different attitude than back in the 80's too.

**Robyn Schmalenberger:** We know it is important that most of our inmates are going to get out of prison and they need connections with friends and family in the community. We try to facilitate that in addition to the electronic mail and the video messages. A lot of inmates are embracing that and the family members are as well.

**Vice Chairman Berry:** Roughly how many complaints do you file based on the four day minimum?

**Robyn:** We do not see a lot but it is unpredictable when we are going to go on lockdown because that is based on security needs. We have some family members that come to visit their family members pretty frequently and those are mainly the inmates that are from Bismarck. Typically when we go on lockdown we usually have a couple of telephone calls from visitors complaining about not being able to come into the facility. Either the visitor or inmate will claim we are violating the Century Code.

**Vice Chairman Berry:** There is nothing in current code that exempts any specific case such as lockdown?

**Robyn Schmalenberger:** No, the only exceptions are space limitations that are in Century Code right now.

**Senator Marcellais:** Do you have a process for screening visitation?

**Robyn Schmalenberger:** Yes we do. All visitors have to complete a visitor application.

We do a records check on them to see what their background is and then we make a determination if it is safe to have them in our visiting room.

**Senator Nelson:** Occasionally we get letters from inmates in the penitentiary complaining about everything and anything and I am wondering if some of them are the same ones that are complaining to you?

**Robyn Schmalenberger:** We do have a handful of inmates that are doing most of the complaining. They are usually inmates that are with us for a long period of time. It is good that their friends and family stay connected to them because they need that social support.

**Senator Nelson:** They do seem to have some friends on the outside that write us too.

**Chairman Dever:** I do think there are some that move to Bismarck in order to be able to see their family member in your facility, but are there a lot that travel a distance to visit?

**Robyn Schmalenberger:** Yes. I think very few move to Bismarck to be with their loved one, but individuals do travel. We are aware of long distance travelers and we have made special accommodations and allowed them more visiting hours if we have staff available to do that. It makes the inmates happier and easier to deal with and provides them some support and it helps the family out also.

**Chairman Dever:** Do they communicate with you prior to coming so that they know you are able to accommodate them?

**Robyn Schmalenberger:** Yes. Typically I will get a phone call from a family member or the inmate will contact me and ask if they can have a special visit and then I will look at our scheduling to see if we have staff available and if we do I will give them a few dates that might work and we will make arrangements for them to come in.

**Senator Marcellais:** I do have a constituent down in James River Correctional Center - do I deal with you or do I deal with someone over there?

**Robyn Schmalenberger:** You would contact the warden there.

**Vice Chairman Berry:** During lockdown are there other forms of communication available?

**Robyn Schmalenberger:** Typically during lockdown, no because inmates are in their cell for safety reasons. They are fed in there and do everything in their cells. It is typically for a period of a few days until we can search the entire facility. They can do postal service mail.

**Chairman Dever:**

**Senator Nelson:** Do we have inmates that have absolutely no visitors?

**Robyn Schmalenberger:** Yes we do. Some choose not to have contact with their family. Some family members are tired of dealing with them. We do have various religious programs that inmates can get involved in. We do have visits from clergy.

**Senator Nelson:** What about solitary confinement?

**Robyn Schmalenberger:** We do have what is called an administrative segregation unit and that is a housing unit where inmates that can't live in general population are housed for a period of time. We do try to transition them out into regular housing. They do have visitation available to them. We do secure visits with those individuals. They are brought into a booth and visit through glass with a telephone.

**Senator Marcellais:** Could you tell me what percentage are Native American?

**Robyn Schmalenberger:** It is around 25% male and 30% female population.

**Chairman Dever:** Asked a question about New England facility.

**Robyn Schmalenberger:** It is a contract facility and their visitation is a separate issue and the Century Code does not include them. I am not sure what their visitation is like.

**Chairman Dever:** Closed hearing on HB 1119.

Senate Government and Veterans Affairs Committee  
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**Vice Chairman Berry: Moved a Do Pass.**

**Senator Poolman: Seconded.**

**A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.**

**Senator Poolman: Carrier.**

Date: 3/28

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1119

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Berry Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Poolman

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

**REPORT OF STANDING COMMITTEE**

**HB 1119: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1119 was placed on the Fourteenth order on the calendar.



**2013 TESTIMONY**

**HB 1119**

*Attachment 1*

**HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
Chairman Kasper**

**Robyn Schmalenberger  
Warden, North Dakota State Penitentiary  
North Dakota Department of Corrections and Rehabilitation  
Presenting Testimony in House Bill 1119  
Thursday, January 17, 2013**

Good morning Chairman Kasper and members of the Government and Veterans Affairs Committee. My name is Robyn Schmalenberger and I am the warden of the North Dakota State Penitentiary ("NDSP"). I am here on behalf of the Department of Corrections and Rehabilitation to provide testimony in support of House Bill 1119.

By definition, the NDSP includes the James River Correctional Center, a medium custody facility in Jamestown, and the Missouri River Correctional Center, a minimum custody facility in southwest Bismarck.

North Dakota Century Code Section 12-47-12 (1) requires that the warden, subject to the approval of the director of the department of corrections and rehabilitation, make rules for the admission of visitors, but it also requires that admission of visitors may not be limited to less than four days in each week, subject to the space limitations of the facility. The only exception to the four-day visitation requirement is the space limitations.

There are reasons why the NDSP and its affiliated facilities may not be able to, and should not be required to, admit visitors four days each week, including staffing and safety and security concerns. Therefore, the DOCR is requesting the change that appears on page 1 of HB 1119, beginning in line 10

and concluding in line 11, that removes the current statutory language, that admission of visitors may not be limited to less than four days in each week, subject to the space limitations of the facility.

The proposed amendment will allow DOCR prison facility wardens the same discretion currently granted to the administrator of the North Dakota Youth Correctional Center (“NDYCC”) under N.D.C.C. Section 12-46-09(1)(a), which states the administrator of the NDYCC may make rules and regulations not in conflict with the laws of the state for the admission of visitors. The NDYCC’s statute, Section 12-46-09, does not include any requirements as to a minimum number of days visitors must be admitted to the facility.

There are a number of safety and security reasons why minimum visitation requirements should not be specified in statute. As the DOCR’s inmate population continues to grow, its prison facilities and their wardens require the flexibility to manage resources, including being able to determine when, and when not, visitors may be allowed in DOCR prison facilities.

An example of the problem is that five years ago, DOCR prison facilities had to designate regular visiting hours and adult-only visiting hours. This was necessary because there are inmates who are restricted from having contact with children. In other words, they could not be having visitation at the same time children may be having visitation with other inmates. It is usually sex offenders who are subject to this restriction, but it may also include inmates who have committed felony crimes against children. This has impacted resources because of the additional time required to provide separate visiting hours for

inmates restricted to adult-only visitation. This has led to problems with the requirements of 12-47-12 (1) and the way inmates claim it should be interpreted. The DOCR provides adult-only visitation twice weekly at the North Dakota State Penitentiary and the James River Correctional Center, and once a week at the Missouri River Correctional Center. Inmates on adult-only visitation restrictions have claimed the DOCR is in violation of N.D.C.C. § 12-47-12(1) because their visitors cannot be allowed admittance four days each week. The NDSP cannot accommodate them because of resource limitations and facility schedules.

It is necessary at times to secure a DOCR facility and stop all movement because of security threats, contraband, which may include weapons and drugs, or to temporarily reduce services because of a lack of resources. For example, the NDSP was recently secured, or put in "lock-down" for several days because inmate-made weapons were found. Visitation was recently suspended for a period of time at the James River Correctional Center because staffing was impacted by influenza. If a DOCR prison facility is required to suspend or restrict visitation because of a security threat, the introduction of contraband into a facility, or staffing issues, inmates, or their visitors, allege the DOCR is in violation of the four-day visitation requirements under N.D.C.C. § 12-47-12 (1).

There are also currently ways of facilitating contact between inmates and their families and friends that were not available when the number of visitation days were specified in statute. The DOCR is aware of the benefits of engaging inmates with pro-social support from their friends and family members, and it has utilized advances in technology to expand the manner in which inmates maintain

contact with their family and friend support systems. In addition to the traditional avenues of communication, including the US Postal Service mail, telephone and personal visits, the DOCR currently provides electronic mail and video messages in which inmates are able to use kiosks to send and receive electronic mail and video messages. The DOCR prison facilities currently review over 3000 pieces of electronic mail each month. There is also technology available that will allow the DOCR prison facilities to use its existing kiosks to facilitate visits between inmates and their friends and families. Individuals will be able to use a personal computer to connect with a kiosk in prison. There is a fee for the service, but for friends and family who are required to travel, the fee is considerably less than travel expenses. Although the DOCR has not yet implemented this service, it is considering utilizing it when the North Dakota State Penitentiary expansion project is complete.

The proposed amendment to N.D.C.C. Section 12-47-12(1) will allow facility wardens to provide appropriate visiting opportunities through their present rule-making authority, and consistent with the same rule making authority and discretion afforded to administrator of the North Dakota Youth Correctional Center.

On behalf of the North Dakota Department of Corrections and Rehabilitation, I am requesting a "do pass" on this bill.

This concludes my testimony and I'd be happy to answer any questions you may have.

**SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
Chairman Dever**

**Robyn Schmalenberger  
Warden, North Dakota State Penitentiary  
North Dakota Department of Corrections and Rehabilitation  
Presenting Testimony in House Bill 1119  
Thursday, March 28, 2013**

Good morning Chairman Dever and members of the Government and Veterans Affairs Committee. My name is Robyn Schmalenberger and I am the warden of the North Dakota State Penitentiary ("NDSP"). I am here on behalf of the Department of Corrections and Rehabilitation to provide testimony in support of House Bill 1119.

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An example of the problem is that five years ago, DOCR prison facilities had to designate regular visiting hours and adult-only visiting hours. This was necessary because there are inmates who are restricted from having contact with children. In other words, they could not be having visitation at the same time children may be having visitation with other inmates. It is usually sex offenders who are subject to this restriction, but it may also include inmates who have committed felony crimes against children. This has impacted resources because of the additional time required to provide separate visiting hours for

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It is necessary at times to secure a DOCR facility and stop all movement because of security threats, contraband, which may include weapons and drugs, or to temporarily reduce services because of a lack of resources. For example, the NDSP was recently secured, or put in “lock-down” for several days because inmate-made weapons were found. Visitation was recently suspended for a period of time at the James River Correctional Center because staffing was impacted by influenza. If a DOCR prison facility is required to suspend or restrict visitation because of a security threat, the introduction of contraband into a facility, or staffing issues, inmates, or their visitors, allege the DOCR is in violation of the four- day visitation requirements under N.D.C.C. § 12-47-12 (1).

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contact with their family and friend support systems. In addition to the traditional avenues of communication, including the US Postal Service mail, telephone and personal visits, the DOCR currently provides electronic mail and video messages in which inmates are able to use kiosks to send and receive electronic mail and video messages. The DOCR prison facilities currently review over 3000 pieces of electronic mail each month. There is also technology available that will allow the DOCR prison facilities to use its existing kiosks to facilitate visits between inmates and their friends and families. Individuals will be able to use a personal computer to connect with a kiosk in prison. There is a fee for the service, but for friends and family who are required to travel, the fee is considerably less than travel expenses. Although the DOCR has not yet implemented this service, it is considering utilizing it when the North Dakota State Penitentiary expansion project is complete.

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On behalf of the North Dakota Department of Corrections and Rehabilitation, I am requesting a "do pass" on this bill.

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