2013 HOUSE JUDICIARY

HB 1392

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1392 Job 18299 DATE February 5, 2013

☐ Conference Committee

Carmen Heckle			
Explanation or reason for introduction of bill/resolution:			
Relating to correctional facilities			
Minutes:	Testimony 1,2,3,4		

Chairman Kim Koppelman: Opened HB 1392

Les Witkowski, Chief Deputy Burleigh County Sheriff's Dept.: Testimony #1 see attached. Time on tape .55 to 3:24.

Rep. Lois Delmore: Where does the training take place?

Les Witkowski: It is held at the Law Enforcement Training Center (LETC). We are lacking in adequate facilities, the course is held three to four times a year and it is a three week course.

Rep. Kathy Hogan: You are adding the new Grade Four on the lock up, can you describe those facilities and what that actually means in real practice?

Les Witkowski: That part of the bill is not my expertise, the others after me will explain that.

Steve Engen, Director of Staff Development and Facility Inspections of North Dakota Department of Corrections and Rehabilitation: Testimony handout #2, see attached. Time on tape 5:06 to 10:26.

Rep. Kathy Hogan: How many Grade Four facilities are there in the state at this time?

Steven Engen: Right now there are four, a Grade Four facility means is anytime that a Sheriff's office or Police Department has a cuffing rail, a bench where

people are chained to, or a processing area that is locked. Locked area or secure area is where a person cannot egress on their own. We don't know because we are not accounting for them by this Century Code. We want to be able to do that in order to provide a safe secure environment for those detained.

Rep. Kathy Hogan: Will this change and who is responsible for the training have any financial implications for either the local or political subs or state in any way?

Steve Engen: No the Department of Corrections will continue to regulate the agencies that provide secure custody. The training there will be no fiscal note involved with that. The Department of Corrections will continue to document, to certify and to approve curriculums on behalf of the POST Board, either through a memorandum of understanding or as a POST Board member. There will be no fiscal impact as far as accounting or any other issue.

Rep. Lois Delmore: Will this bill help to provide for better and more flexible training? Hopefully we will be able to get it more localized, not all of it in Bismarck, will this bill help to provide for that?

Steve Engen: Yes, I can right now receive a master's degree and a majority portion of my PhD on line. These colleges are willing to do this on behalf of the POST Board are willing to make that step. This will reduce the cost to our agencies to train staff in correctional training.

Rep. Lois Delmore: Because they don't have to come to Bismarck?

Steve Engen: Because they don't have to come to Bismarck, they can do it locally and be home with their families at night.

Rep. Gary Paur: In the classifications you started out with grade four, then three, then two and one the highest grade is a facility to confine inmates for not more one year. But I believe we can confine them for more than that time. There is no classification for that, should there be?

Steve Engen: Right now in the state of North Dakota a Grade One jail can confine for up to one year. This can be added to by request from the Department of Corrections through the Director of Corrections she has the statutory ability to extend that past one year if needed. This is on a case by case basis in our county jails.

Rep. Gary Paur: But the penitentiary where does that fit in?

Steve Engen: The penitentiary is not part of ND Century Code 12.44.1. The penitentiary has its own statutory section.

Vice Chairman Larry Klemin: Section 3 creates this new definition for Grade Four, where else would this used in the Century Code? I don't see anything in this bill that talks the Grade Four other than the definition.

Steve Engen: Part of Century Code 12.44.1 gives the DORC the authority to make up administrative rules for the running of an operation of a facility. Those things would come from administrative rules which are made up of a group of Sheriff's and Administrators that run facilities. We set the administrative rules that way.

Rep. Diane Larson: Would you see this as some jurisdictions opening up more Grade Four areas in their Police and Sheriff's Departments to hold people until they can be released a few hours later?

Steve Engen: Right now we are having new agencies appear in the west part of the state. Right now we are not accounting for perhaps as we should all of the adult holdings. We want to be able to account for egress holdings and we want to be able to help them establish proper rules to ensure safety and security. Would it increase it? I don't know for sure that it would but it would account for those that are there now.

Paul Laney, Sheriff, Case County: Testimony #3. Time on tape 16:40 to 18:16

Rep. Kathy Hogan: Do you know how many other states use this model of certification with academic training?

Sheriff Laney: In the law enforcement profession, Minnesota does it for all of their Peace Officers there is no academies in MN. Corrections they have a different thing they do. I believe we would be ahead of them if we go this route. MN only has an academy for their Highway Patrol. Law enforcement either go to a two year school and they get part of their skills training through that. Or they go to a four year University and apply to a ten week skills course and they come out certifiable or licensable as Peace Officers. Very similar to our Lake Region program, we currently have two different programs in ND. One is to send our people to the state academy, two the Lake Region program does that for Peace Officers now which is a 17 week program. It is an early interview program for us, so the time investment we made to this was well worth it. We were training our

future employees our way right from the beginning. We look at this much the same way, although it was a smaller time frame in training. The educational institutions around the state all sponsored this to become involved. If a school in Minot takes it on they can get their training and come out certified and come to Cass County. They are already trained and we know they have received the POST certified corrections training, we know they are ready to go. I don't have to send them away to Bismarck for three full weeks within the first year. As you heard Steve Engen say they are strapped, these classes are packed. State law mandates one year we have to get them in. There are times I'm losing 4, 5, 6 at a time for three weeks at a time. Then you start matching up their days off and time off and it turns into a month that they are away from the facility. I would much rather have them walk in the door already certified. I have the largest facility in the state and I am impacted but think of the Sheriff with five deputies in the jail and two of them have to go away that's huge.

Vice Chairman Larry Klemin: I can see why it would be beneficial for Sheriff's across the state but is there anyone here to talk about it from the University system or have you coordinated this bill and this concept with the University system?

Sheriff Laney: I believe you will hear from the educational facilities today as well. We talked with many of them and if this bill moves forward we are also ready to partner and move forward with those in our area that would be willing to take this on.

Lloyd Halverson, Assistant Vice President of Lake Region State College: I have been after the DOCR since 2004 trying to get the authority to deliver the Correctional Officer basic training in conjunction with our Police Academy and also as a standalone program. DOCR has been hesitant because the law says it's their responsibility. If we put this under the Peace Officers Standards and Training Board as is Police Academy training it would make sense. There is a lot of overlap in the training and we would only have to add six days to the Police Academy to cross train every Police Academy student. We support this changes.

Robert Neuteboom, Academic Dean of Rasmussen College: Testimony #4, see attached. Time on tape 24: 24 to 25:45.

Rep. Lois Delmore: Is it your understanding a lot of the training would be done by people from law enforcement? You're not hiring additional people within Rasmussen structure to teach these classes, they would be other law enforcement personnel?

Robert Neuteboom: that is our intent to continue leveraging that network of instructors from Law Enforcement.

Rep. Roger Brabandt: How many fulltime on-campus students do you have with both Fargo and Bismarck?

Robert Neuteboom: We have residential students probably around 300 a majority of our students are on line but we do service both residentially and on line.

Rep. Lois Delmore: Made a motion for do pass.

Rep. Andy Maragos: Second the motion.

Rep. Vicky Steiner: On page 2 Juvenile detention center means a publically or privately established which is crossed out, is there a reason that was crossed out?

Mr. Engen: We don't have them anymore nor does the DOCR have regulatory authority over a privately operated juvenile detention facility, if there were such a facility.

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Rep. Delmore will carry the bill.

Chairman Kim Koppelman: Closed the hearing.

Date:	2-5	- -/る	
Roll Ca	II Vote #:	1	

2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB 1392

House Judiciary			A transfer of the second secon	Comi	mittee
☐ Check here for Conference C	ommitte	ee			
Legislative Council Amendment Nun	nber _				
Action Taken: Do Pass	Do Not	Pass	☐ Amended ☐ Adop	t Amen	dment
Rerefer to Ap	propria	tions	Reconsider		
Motion Made By Rep. Delmore Seconded By Rep. Maragos					
Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls	/				
Rep. William Kretschmar					
Rep. Diane Larson	/				
Rep. Andrew Maragos	/.				
Rep. Gary Paur	/				
Rep. Vicky Steiner					
Rep. Nathan Toman	/				
Total (Yes)/		N	o		
Absent					
Floor Assignment	0	els	roce		

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

REPORT OF STANDING COMMITTEE

Module ID: h_stcomrep_21_005

Carrier: Delmore

HB 1392: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1392 was placed on the Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1392

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee Fort Lincoln Room, State Capitol

> HB1392 3/18/2013 Job #20051

	☐ Conference Committee			
/	2			
Committee Clerk Signature	DO ann			
Minutes:	Attached testimony			

Relating to correctional facilities

Senator David Hogue - Chairman

Steven Engen - Director of Staff Development and Facility Inspections for the ND Dept. of Corrections & Rehabilitation. See written testimony and also hands in testimony for Les Witkowski. (1) Senator Nelson asks where they hold individuals overnight. Mr. Engen explains they take them to the local processing area and then the person is transferred to a jail if needed or released. Senator Nelson asks him if there is a list of the different jails and what grade they are. Mr. Engen said he will get her one. He explains the three grades they have and they are proposing grade 4. He says there are 32 jails in our State, 16 are grade one, which can hold up to a year, grade two can hold for 90 days and grade three of which there are 3 can hold for 96 hours. Senator Sitte asks Mr. Engen why we need this law. Mr. Engen responds because we are not accounting for those things now. He goes on to explain juvenile detention.

Opposition - none Neutral - none

Senator Sitte moves a do pass Senator Armstrong seconded

Vote - 7 yes, 0 no Motion passes Senator Grabinger will carry

Date:	3/18		
Roll Call	Vote #:	1	

Senate JUDICIARY				Com	mittee
☐ Check here for Conference	Committe	ее			
Legislative Council Amendment N	umber _				
Action Taken: Do Pass	Do Not	Pass	☐ Amended ☐ Ado	pt Amen	ıdment
Rerefer to	Appropria	tions	Reconsider		
Motion Made By	le	Se	econded By S ann	nteo	ng
Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	.X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X			/	
Senator Spencer Berry					
Senator Kelly Armstrong	X				
	/				
					-
					-
Total (Yes)		No	o		
Absent					
Floor Assignment	G Ra	ben	equi		
If the vote is on an amendment, br	riefly indica	ite inter	nt:		

REPORT OF STANDING COMMITTEE

Module ID: s_stcomrep_48_018

Carrier: Grabinger

HB 1392: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1392 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1392

Testimony on House Bill 1392 House Judiciary Committee February 5, 2013 Major Les Witkowski Chief Deputy Burleigh County Sheriff's Department Chairman- North Dakota Peace Officers Standards and Training Board

Good morning Chairman Koppelman and Committee members.

For the record my name is Les Witkowski and I am a Chief Deputy at the Burleigh County Sheriff's Department and in 2010 Attorney General Wayne Stenehjem appointed me to the North Dakota Peace Officers Standards and Training Board, I currently serve as that board's chairman.

Today I come before your committee to ask for a "do pass" recommendation for House Bill 1392. Specifically related to the Peace Officers Standards and Training Board, House Bill 1392 provides the Peace Officers Standards and Training Board the authority to certify what is commonly known as the correctional officer basic training course. Presently the Department of Corrections and Rehabilitation provides this training and then certifies those correctional officers who successfully complete the training. The current Department of Corrections and Rehabilitation correctional officer basic training course is Peace Officer Standards and Training Board certified.

The demand for correctional officer training has increased and to meet this demand other entities have indicated an interest in providing this training. The Department of Corrections and Rehabilitation has concerns in allowing others to utilize their course for liability concerns.

The Department of Corrections and Rehabilitation's request to have the Peace Officers Standards and Training Board approve correctional officer basic training for other entities was approved at the December 5, 2012 Peace Officers Standards and Training Board meeting. The certification and records management process will remain the responsibility of the Department of Corrections and Rehabilitation. In other words the Department of Corrections and Rehabilitation will need to recognize and certify those correctional officers who have received the Peace Officer Standards and Training Board approved training from those other training providers.

The Peace Officers Standards and Training Board has the authority to certify training for peace officers (NDCC 12-63-04). The definition of a peace officer means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law (NDCC 12-63-01). Those peace officers who complete this course will receive training hour credit toward their license renewal.

Page 2

House Bill 1392 Major Les Witkowski House Judiciary Committee February 5, 2013

I have to commend members of the Peace Officers Standards and Training Board in providing the leadership to meet the demand for correctional officer training and to work cooperatively with the Department of Corrections and Rehabilitation to develop a mechanism for other entities to assist in this process.

I will attempt to answer any questions you may have.



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Jack Dalrymple, Governor Leann K. Bertsch, Director

Testimony in support of House Bill 1392 before the House Judiciary Committee
February 5, 2013
Prairie Room

Chairman Koppelman and members of the House Judiciary Committee, I am Steve Engen, the Director of Staff Development and Facility Inspections for the North Dakota Department of Corrections and Rehabilitation ("DOCR"). I am here today on behalf of the DOCR, which has regulatory and training oversight over local correctional centers, to request the passage of House Bill 1392 for the following reasons.

Currently N.D.C.C. ch. 12-44.1 does not address the existence of "Adult Lockup" or "Court Holding" in our state. These non-residential, temporary holding facilities enable law enforcement to process offenders before transport to detention facilities or release and smaller, more rural agencies to hold offenders before and after court proceeding.

These non-residential temporary holding facilities create the need for a fourth grade of correctional facility. A Grade Four correctional facility would account for any non-residential secure area. The DOCR would provide technical assistance to administrators of these facilities with the expectation of increasing safety and security and reducing agency exposure. These Grade Four facilities would be staffed by the detaining or attending non-correctional trained law enforcement officer when occupied.

N.D.C.C. ch. 12-44.1, the current jail chapter of the code, was enacted in 1979 in response to corrections liability issues and inmate litigation occurring in North Dakota and nationwide. Administration of the chapter was under the Attorney General and correctional officer training was provided through the Combined Law Enforcement Council. The Combined Law Enforcement Council provisions were repealed in 1981 and the Legislative Assembly created a Criminal Justice Training and Statistics Division under the Attorney General. The Division's duties included providing training for local correctional officers. Another statute enacted at that time provided that all new correctional officers were required to attend training conducted by the Division. This statute also required the newly created Peace Officer Standards and Training Board ("P.O.S.T. Board"), in cooperation with the Sheriff's Association, to determine the correctional officer training curriculum.

In 1989, the Legislative Assembly created the North Dakota Department of Corrections and Rehabilitation ("DOCR") and transferred the Attorney General's jail responsibilities under Chapter 12-44.1 to the DOCR. In 1996, the Attorney General issued a letter opinion and stated the DOCR had the authority under Chapter 12-44.1 to mandate correctional officer training for jail staff who supervise inmates.



The statutory requirements for the Criminal Justice Training and Statistics Division and the P.O.S.T. Board over correctional officer training continued to exist as originally enacted at the time of the Attorney General's opinion. The practice became, and still is, that the DOCR coordinated and scheduled training for new correctional officers at the Law Enforcement Training Academy, with the actual training provided by DOCR staff, local correctional staff, law enforcement, and Attorney General staff. The curriculum and training, while updated and expanded from year to year, was based on the curriculum approved by the POST Board, although those particular statutes were repealed in 2003 as part of a reorganization of the POST Board chapter.

At the present time, correctional facilities and sheriffs are looking to provide correctional training in locations more proximate to their facilities, similar to Lake Region State College's current law enforcement basic training programs in Devils Lake, Grand Forks, Fargo, and Minot, instead of having to wait until classes may be scheduled in Bismarck and the Law Enforcement Academy and send their correctional officers here. The DOCR and the P.O.S.T. Board support this concept, and the full-circle change to putting correctional officer training curriculum back under the P.O.S.T. Board will facilitate training outside of the Law Enforcement Training Academy. The DOCR will still have to enforce its regulatory authority over the jails to ensure that officers who are supervising and have contact with inmates do receive the required training. That responsibility will not change with the amendment.

Mr. Chairman and committee members, this concludes my testimony. If you have any questions, I attempt to answer them at this time. Thank you for your time.

Judiciary Committee HB1392 Testimony of Paul D. Laney—Sheriff, Cass County Government February 5, 2013

Good morning Chairman Koppelman, Vice-Chairman Klemin and distinguished members of the Judiciary Committee; for the record, my name is Sheriff Paul D. Laney from Cass County, North Dakota, and I am here today to testify in support of HB1392.

This bill will allow educational institutions in North Dakota to teach the North Dakota Corrections Basic class and to certify their students to North Dakota P.O.S.T. standards.

The ability to hire these students would greatly assist law enforcement and corrections agencies in North Dakota because if they come to us already certified, we do not have to send them away during their first year as is mandated by state law. The ability to hire these students will be cost effective for law enforcement, especially the smaller agencies, who are significantly impacted when an employee is gone for an extended period of time for training.

The passage of this bill alleviates that issue and allows us to hire P.O.S.T. certified correctional officers. It also is a great step in the professionalizing of the corrections discipline, while taking pressure off the DOCR for continually having to provide the course. It also allows agencies to develop partnerships with their local educational institutions and even assist with the training of these courses. This allows the agencies to get a "first look" at potential future employees. This type of program has been proven to work in the past with the huge success of the Lake Region State College program of training and certifying North Dakota Peace Officers. I urge you to support HB1392.

Thank you for your consideration of my testimony. I will gladly answer any questions you may have in regards to my support of this bill.

4 HB1392 2-5-13

Mr. Chairmen: Representative Kim Koppelman

My name is Rob Neuteboom.

I am the Academic Dean of Rasmussen College, Fargo campus, along with Shadd Piehl, the Academic Dean from the Rasmussen College, Bismarck campus, and Patty Laney, our Criminal Justice Studies Coordinator at our Fargo Campus. We are an institution of higher learning, accredited by the Higher Education Coordinating Board. We provide students the opportunity to earn both associates and bachelor's degrees.

As an institution of higher learning, we are committed to preparing students to be active and successful contributors to our community.

We look forward to partnering with local law enforcement agencies to provide opportunities for our students and future employees of the criminal justice profession.

We feel that providing an opportunity to students to complete the correctional officer curriculum approved by the Department of Corrections is an excellent way to meet the needs of our students and of our community partners.





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Jack Dalrymple, Governor Leann K. Bertsch, Director

Testimony in support of House Bill 1392 before the Senate Judiciary Committee 9:30 am March 18, 2013 Prairie Room

Chairman Hogue and members of the Senate Judiciary Committee, I am Steve Engen, the Director of Staff Development and Facility Inspections for the North Dakota Department of Corrections and Rehabilitation ("DOCR"). I am here today on behalf of the DOCR, which has regulatory and training oversight over local correctional centers, to request the passage of House Bill 1392 for the following reasons.

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These non-residential temporary holding facilities create the need for a fourth grade of correctional facility. A Grade Four correctional facility would account for any non-residential secure area. The DOCR would provide technical assistance to administrators of these facilities with the expectation of increasing safety and security and reducing agency exposure. These Grade Four facilities would be staffed by the detaining or attending non-correctional trained law enforcement officer when occupied.

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In 1989, the Legislative Assembly created the North Dakota Department of Corrections and Rehabilitation ("DOCR") and transferred the Attorney General's jail responsibilities under Chapter 12-44.1 to the DOCR. In 1996, the Attorney General issued a letter opinion and stated the DOCR had the authority under Chapter 12-44.1 to mandate correctional officer training for jail staff who supervise inmates.

The statutory requirements for the Criminal Justice Training and Statistics Division and the P.O.S.T. Board over correctional officer training continued to exist as originally enacted at the time of the Attorney General's opinion. The practice became, and still is, that the DOCR coordinated and scheduled training for new correctional officers at the Law Enforcement Training Academy, with the actual training provided by DOCR staff, local correctional staff, law enforcement, and Attorney General staff. The curriculum and training, while updated and expanded from year to year, was based on the curriculum approved by the POST Board, although those particular statutes were repealed in 2003 as part of a reorganization of the POST Board chapter.

At the present time, correctional facilities and sheriffs are looking to provide correctional training in locations more proximate to their facilities, similar to Lake Region State College's current law enforcement basic training programs in Devils Lake, Grand Forks, Fargo, and Minot, instead of having to wait until classes may be scheduled in Bismarck and the Law Enforcement Academy and send their correctional officers here. The DOCR and the P.O.S.T. Board support this concept, and the full-circle change to putting correctional officer training curriculum back under the P.O.S.T. Board will facilitate training outside of the Law Enforcement Training Academy. The DOCR will still have to enforce its regulatory authority over the jails to ensure that officers who are supervising and have contact with inmates do receive the required training. That responsibility will not change with the amendment.

Mr. Chairman and committee members, this concludes my testimony. If you have any questions, I will attempt to answer them at this time. Thank you for your time.

1392

Written Testimony on House Bill 1392 Senate Judiciary Committee March 18, 2013 Major Les Witkowski Chief Deputy Burleigh County Sheriff's Department Chairman- North Dakota Peace Officers Standards and Training Board

Good morning Chairman Hogue and Committee members.

For the record my name is Les Witkowski and I am a Chief Deputy at the Burleigh County Sheriff's Department and in 2010 Attorney General Wayne Stenehjem appointed me to the North Dakota Peace Officers Standards and Training Board, I currently serve as that board's chairman. Unfortunately I am unable to be present today to testify so I respectfully request your acceptance of my written testimony.

I ask for a "do pass" recommendation for House Bill 1392. Specifically related to the Peace Officers Standards and Training Board, House Bill 1392 gives the Peace Officers Standards and Training Board the authority to certify what is commonly known as the correctional officer basic training course. Presently the Department of Corrections and Rehabilitation provides this training and then certifies those correctional officers who successfully complete the training. The current Department of Corrections and Rehabilitation correctional officer basic training course is Peace Officer Standards and Training Board certified.

The demand for correctional officer training has increased and to meet this demand other training providers (public and private institutions of higher learning) have indicated an interest in offering this training. The Department of Corrections and Rehabilitation has concerns in allowing others to utilize their course because of liability reasons. Therefore, the Department of Corrections and Rehabilitation is requesting the Peace Officers Standards and Training Board certify the courses offered by these other training providers.

The Department of Corrections and Rehabilitation's request to have the Peace Officers Standards and Training Board approve correctional officer basic training for other training providers was approved at the December 5, 2012 Peace Officers Standards and Training Board meeting. The certification and records management process will remain the responsibility of the Department of Corrections and Rehabilitation. In other words the Department of Corrections and Rehabilitation will need to recognize and certify those correctional officers who have received the Peace Officer Standards and Training Board approved training from the other training providers.

The Department of Corrections and Rehabilitation has agreed to provide support during the course certification process.

House Bill 1392 Major Les Witkowski Senate Judiciary Committee March 18, 2013

The Peace Officers Standards and Training Board has the authority to certify training for peace officers (NDCC 12-63-04). The definition of a peace officer means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law (NDCC 12-63-01). Those peace officers who complete this course will receive training hour credit toward their peace officer license renewal and correctional officers will be certified by the Department of Corrections and Rehabilitation.

I commend members of the Peace Officers Standards and Training Board in providing the leadership to meet the demand for correctional officer training and to work cooperatively with the Department of Corrections and Rehabilitation to develop a mechanism for other entities to assist in meeting the demand for trained correctional staff.

If you have any questions please feel free to contact me at the Burleigh County Sheriff's Department (701-222-6651).