

FISCAL NOTE
Requested by Legislative Council
01/20/2015

Bill/Resolution No.: HB 1473

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for state reimbursement of \$40 per day to correctional facilities for incarceration costs of each inmate serving a mandatory minimum sentence imposed by the courts.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will have a fiscal impact, but that amount can not be determined.

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.*

The court system is currently unable to determine the number of inmates sentenced to correctional facilities under a mandatory minimum sentence. We anticipate modifying our case management system in the future to collect this data.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill does not have an appropriation.

Name: Don Wolf

Agency: ND Court System

Telephone: 328-3509

Date Prepared: 01/21/2015

2015 HOUSE JUDICIARY

HB 1473

2015 HOUSE STANDING COMMITTEE MINUTES

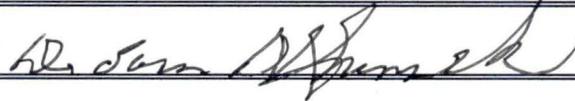
House Judiciary Committee
Prairie Room, State Capitol

HB 1473
1/26/2015
22523

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to state reimbursement of incarceration costs for inmates in correctional facilities.

Minutes:

Testimony #1, Handout #2

Chairman K.Koppelman: Opened the hearing with testimony in support.

Rep. Nelson: (See testimony #1) (1:00-4:00) This bill rose out of the fact our county jail is old and out of date. My county is a 90 day incarnation there. I am saying the state would share in the cost. The DUI law has not impacted our county greatly. We have a real problem with child support. We have people who have no money to get out of jail either.

Rep. Lois Delmore: How difficult is it going to do you do the figures for county by county?

Rep. Nelson: As far as I can tell we don't keep that statistic. Part of the reason to do this bill is to get the fiscal not and as you can see it cannot tell you.

Rep. Lois Delmore: Could the correction facilities get us that information?

Rep. Nelson: I know if there is money for reimbursement they would do that without any problem. No one seems to keep that statistic?

Chairman K.Koppelman: Do you have any sense how many people are setting county jails because they have violated a state law versus a county or city ordinance?

Rep. Nelson: No. My experience is that the majority of them are there for violating a state law. Not very many go to jail for a local ordinance.

Chairman K.Koppelman: If our county jails are there as part of our law enforcement and incarceration process in the state. Why pick and choose between the two?

Rep. Nelson: At least get it so it is not getting worse for the counties. We are not adding a lot of new laws that will put prisoners in jail. Now it seems like the legislature is guessing on minimum mandatories.

Rep. Mary Johnson: Is the jail you eluted to earlier is that the only jail in Rolette County?

Rep. Nelson: Yes there is a BIA jail for the reservation there, but it is the only county jail.

Rep. Mary Johnson: Suppose it is full 365 days a year and they are all subject to minimum state required mandatory so you start at \$320,000 a year and then you work backward so the worst case scenario for Rolette County so it doesn't seem that overwhelming for me.

Rep. Nelson: We are a smaller county with a small tax base. Our jail is very old and needs to be replaced.

Rep. Mary Johnson: From a state level it does not seem that overwhelming, but I am sure it is at the county because obviously it is.

Opposition: None

Hearing closed

Chairman K.Koppelman: (See handout #2) I asked the intern to give us an overview of what burdens of proof are in law. Many of you are very familiar with this; especially the attorneys. It talks about the three basic standards which are preponderance of the evidence; clear and convincing evidence and beyond a reasonable doubt. That may be helpful as we look at various bills.

Motion Made Do Not Pass by Rep. Kretschmar; Seconded by Rep. G. Paur

Discussion:

Rep. P. Anderson: If they aren't in the county jail someone has to pay for them somewhere I am confused what the fiscal note would be.

Chairman K.Koppelman: I think that is the confusion on the bill. I understand Rep. Nelson's intent here and it is probably to make a statement more than anything else. County jails are for more short term sentences and so that is how the system works. We typically don't throw someone in the pen for 30 days, but they might spend 30 days in the county jail.

Rep. D. Larson: I have some concerns about the whole thing anyway. It seems to me that the state penitentiary is taking in a lot of federal prisoners and taking up a lot of space with that and that is one of the reasons then they don't have as much room for people and they put them out into the counties. I am not sure what I think about this bill right now. This \$40 wouldn't come out of the prison system's budget right? It would just come out of the general fund dollars.

Rep. D. Larson: I think the penitentiary brings in these federal prisoners because they can make a profit by housing them, but then the community suffers because the families of

those people come in and create more problems. Maybe having the prison system pay the \$40 would make more sense then maybe there would be more incentive to house ND prisoners instead.

Chairman K.Koppelman: There is also the issue we have some prisoners from the pen that are being housed in county jails if the pen has been full and they pay the county.

Rep. P. Anderson: I am not sure I am ready to vote yes or no.

Rep. Karls: I think it was quite telling that we didn't have a whole room full of county commissioners to testify in favor of this bill if it is something they really want in the counties.

Rep. Lois Delmore: I think it is also telling we did not have anybody in here in favor of the bill one way or the other. There was so little testimony that I think that is part of the problem in making the decision on whether the bill has merits or not because we have not heard from any of the players.

Chairman K.Koppelman: Rep. Nelson more than anything else is trying to make a statement and he has done that.

Rep. L. Klemin: I think this bill is unworkable. The Department of Corrections has nothing to do with the sentences handed out for persons who are not incarcerated at the state penitentiary. So the Dept. of Corrections would not be the entity to pay this. Who would pay it? Maybe the state and how do we determine how much is owed by the state and what is mandatory minimum sentence for someone who is put in a county jail where it has to be a Class A misdemeanor or less and does this include jails?

Roll Call Vote: 9 Yes 4 No 0 Absent Carrier: Rep. L. Klemin:

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL NO. HB 1473**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Kretschmar Seconded By Rep. G. Paur

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson		X
Vice Chairman Karls	X		Rep. Delmore		X
Rep. Brabandt	X		Rep. K. Wallman		X
Rep. Hawken	X				
Rep. Mary Johnson		X			
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 9 No 4

Absent 0

Floor Assignment: Rep. L. Klemin:

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

REPORT OF STANDING COMMITTEE

HB 1473: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1473 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

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HB 1473

Chairman Koppelman, members of the Judiciary Committee. HB 1473 would set up the situation where if counties and cities have prisoners due to mandatory minimum sentences that then the state would share in the cost at \$40 a day.

I am not a fan of mandatory minimums and am seeing a swing away even from the push to have more of them. We are fudging where we created mandatorys.

But pendulums tend to swing back and forth. Our county jail and for that matter jails across the state are full, overfull actually, and cities and counties are undertaking very expensive construction projects. Jails are built to the projected size needed.

One thing that changes needed prison size is mandatory sentences. Mandatory sentences can easily cause overcapacity problems and the need to transport and contract for prisoners. Because of that, I feel it is only fair if the state shares in the cost if we decide to increase the prison population through mandatory sentences.

BURDENS OF PROOF

Burden of Proof

In a legal action, one party typically has the burden or duty to affirmatively prove a fact or facts in dispute. That is called the "burden of proof." To what degree the party has to establish a fact or facts varies depending on the type of action.

Beyond a reasonable doubt (criminal actions)

In criminal actions the government must establish each element of the offense "beyond a reasonable doubt." This means the jury or judge must be fully satisfied or entirely convinced the individual committed the alleged crime. The N.D. Supreme Court has said: "Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs."

Clear and convincing evidence (civil actions)

In some types of actions, such as involuntary treatment or termination of parental rights, the burden of proof is "clear and convincing evidence." This means the jury or judge must have a firm belief or conviction that the allegations are true. "Clear and convincing evidence" is an intermediate standard of proof, requiring less certainty than "beyond a reasonable doubt," but more certainty than "a preponderance of the evidence."

Preponderance of the evidence (civil actions)

"Preponderance of the evidence" simply means the greater weight of the evidence indicates that the fact [sought to be proved] is more likely true than not true. A plaintiff in the typical civil action must meet this burden of proof.