

2015 HOUSE JUDICIARY

HCR 3002

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3002
1/13/2015
21927

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study issues related to restitution for criminal acts.

Minutes:

Chairman K.Koppelman: Opened the hearing on HCR 3002 with testimony in support.

Barnie Tomanek, Director for the Probation and Patrol Department in support of the resolution. How to deal with correction and restitution has been a big concern of ours for a long time. In 2014 the cases we closed we collected a little of \$1.7 million in restitution. Of those same cases the amount ordered exceeded \$3 million. Several of those orders exceed \$100,000 and the likely hood of repayment is minimal. The officers have to gage a lot of different things when looking at repayment of restitution. What is the offender's current financial situation and what is their ability to pay. The most important thing to consider is the victim in the case. Officers work hard to collect what is owed and some things the money is just not there. Payment for restitution fall into three categories: those that pay and those that don't pay. The most frustrating are those that don't pay, but they have an ability to at least pay something. It is the final group that is most frustrating and time consuming for the officers. Our caseloads now exceed 6500 offenders. Individual officer's caseloads sometimes exceed 100 offenders so focusing on collections becomes increasingly difficult. Officers are forced to hold onto cases because outstanding restitution obligations or at times extend probation terms to allow additional time to pay. Many times these cases are lower risk offenders who do not require the supervision of an officer but are continued by the officer in hopes of collecting more money. This is an extremely important thing and that is why we support this resolution and we would like to find more ways to work together to do a better job in this area.

Rep. Kretschmar: (mike not on) What percentage was collected?

Barnie Tomanek: That is a very difficult question. We can look at the total amount that was ordered. Most of the offenders pay something. It various in such a great degree so that is hard to answer.

Rep. Brabandt: How much money is outstanding right now?

B. Tomanek: The figure that I gave you was for those cases that we closed in 2014; of that there was \$3 million that was ordered for restitution and about \$1.7 Million that was collected. About \$1.3 Million in doing that math.

Rep. G. Paur: Here you are asking to take latitude away from the courts. That is basically the intent of this?

B. Tomanek: No I don't believe that is the intention at all. The resolution is to just look at more options on how to deal with the restitution obligations and what to do with them. There are things available for people who don't pay can have their criminal judgments turned over into a civil judgment upon completion. I think it does not take any discretion away from the judges. The idea is trying to find more options on how to effectively collect more restitution for the victims.

Rep. P. Anderson: Your probation officers are supposed to collect restitution besides everything else they do.

B. Tomanek: Yes that is correct. We also collect fines, court costs, court fees, supervision fees so there are a number of financial obligations that we are responsible to collect.

Rep. P. Anderson: There should be an easier way.

B. Tomanek: The focus of this is going to look at the resolution obligation. Collecting all those fees can be challenging at times especially as the numbers continue to go up.

Rep. K. Wallman: Do these relate to individuals or corporation. It has been unclear on collections; who does that? The restitution being collected; is there a business component to this?

B. Tomanek: I believe this is talking about the individual offenders that we deal with.

Opposition: None

Hearing closed.

Motion Made Do Pass by Rep. P. Anderson: Seconded by Rep. K. Wallman:

Discussion: None

Rep. P. Anderson: Patrol and probation officers; it did not dawn on me they were trying to collect as well as trying to get them a job or place to live. Yes this is very much needed.

Chairman K.Koppelman: Yes and are there better ways to do it. Discussed how the interim studies work. It says that the Legislative Management study the issues related. Rep. Kretschmar would that be construed as a shall?

Rep. Kretschmar: Legislative Management will do what they want with it.

Rep. K. Wallman: If they don't get studied so we have to go through this process in the next session?

Chairman K.Koppelman: You would need to introduce another study resolution. Explained how this works.

Rep. G. Paur: I am going to vote against this. The fact they don't like doing it; that is their job. Personally I would like to leave it to the judges.

Rep. D. Larson: What they were looking for is discursion on their collections. They are looking at other ideas or ways to be more effective and not to get out of doing it, but be more effective in trying to collect the money for the victims and being more successful at it.

Rep. G. Paur: That is what he said, but it doesn't appear that way to me in the resolution.

Rep. Brabandt: What about a fiscal note?

Chairman K.Koppelman: No not on a study unless it called for the formation of a new entity to conduct that study. I think their intent was just to say how we can do this more effectively and efficiently.

Vote: 8 Yes 1 No 4 Absent Carrier: Rep. Brabandt:

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3002**

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. P. Anderson: Seconded By Rep. K. Wallman:

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

Total (Yes) 8 No 1

Absent 4

Floor Assignment Rep. Brabandt:

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

REPORT OF STANDING COMMITTEE

HCR 3002: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (8 YEAS, 1 NAYS, 4 ABSENT AND NOT VOTING). HCR 3002 was placed on the Tenth order on the calendar.

2015 SENATE JUDICIARY

HCR 3002

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HCR 3002
3/17/2015
24963

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on HCR 3002.

John Bjornson, Legislative Council: We provide neutral testimony. The Commission on Alternatives to Incarceration recommended this resolution to the legislative management and it was part of a larger study that the commission does it during every interim on what its title implies. This study provides for a legislative management study of issues related to restitution for criminal acts. During the interim, the representatives of the Dept of Corrections and Rehab came before the commission and indicated that there were a lot of offenders who were being incarcerated for probation violations because they weren't meeting their restitution requirements. There are always a variety of reasons for that. Sometimes they simply can't afford it, sometimes it might be willful. In any event, the number of revocations due to failure to meet restitution requirements seems to be in the eyes of the DOCR a concern. The commission looked briefly at some options. One of them was a state victims' fund in which the state would provide money to help make victims of crime whole through basically taking the restitution obligation off of the offender and place it on the state. That obviously isn't before you and was not favored by the commission as an option, it would simply make the state liable for things that the offenders should have been liable for. Another option that was discussed was providing for an automatic conversion to civil judgments of these restitution orders and also there were issues that came up and there were questions revolving around that that went unanswered. That's what led to the idea that maybe this issue needs further study to see if there are some good options that could help victims become whole, while holding the offenders accountable but also recognizing that there might be some instances in which that restitution may not come as quickly as some would hope. This would simply put it back in the hands of Leg. Management to

determine if this is an appropriate study during the interim. If it is, one option would be to send it back to the Commission on Alternatives to Incarceration but that would be in the hands of Leg. Management.

Ch. Hogue: Thank you. Further testimony in support.

Les (Barney) Tomanek, Director of Probation and Parole Dept., DOCR: Support (see attached 1).

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are the committee's wishes in regard to HCR 3002?

Sen. Grabinger: I move a Do Pass.

Sen. Luick: Second the motion.

Ch. Hogue: Is this commission a statutory committee.

John Bjornson: Yes, it is. It's set up to go for two additional years. It does have an expiration date of July 31, 2017.

Ch. Hogue: Can the committee study what they want to study, or do they have to have some direction from the Legislature.

J. Bjornson: This particular commission has a broad directive to study alternatives to incarceration and mandatory sentencing, but it also does, on occasion, receive directives such as this from the legislative management.

Ch. Hogue: Any further discussion. The clerk will take the roll.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Hogue

Date: 3/17/15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 3002

Senate _____ **JUDICIARY** _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

HCR 3002: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3002 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

HCR 3002

Senate Judiciary Committee

Senator David Hogue, Chairman

Les (Barney) Tomanek

Director, North Dakota Parole and Probation

North Dakota Department of Corrections and Rehabilitation

Presenting Testimony on HCR 3002

Tuesday, March 17, 2015

Good morning Chairman Hogue and members of the Senate Judiciary Committee. My name is Barney Tomanek, Director of the North Dakota Parole and Probation Department. I am here on behalf of the Department of Corrections and Rehabilitation to provide testimony in support of House Concurrent Resolution Number 3002.

How to deal with collection of restitution has been a concern for some time. In 2014, Parole and Probation Officers collected about 1.7 million dollars in restitution. During that same time frame, the total amount of North Dakota court ordered obligations for restitution exceeded 3 million dollars. Several of these orders for restitution exceed \$100,000 and the likelihood of repayment is minimal. When looking at the collection for restitution, the officers must gauge the offender's current financial situation and ability to pay on their obligations. Many things need to be considered, one of utmost importance is the victims in the case. Officers work hard to collect them what is owed, but when the money is just not there, it becomes difficult to get them their restitution.

Payments of restitution, or lack thereof, basically fall into three categories. There are those who are able to pay as ordered, those who do not pay and do not have the financial means to do so, and those who do not pay but have the means to at least pay something. It is that final group that is most frustrating and time consuming for Officers. Our caseloads have risen sharply with total numbers today exceeding 6600 offenders. With individual officer caseloads often

approaching, or even exceeding 100 offenders, focusing on collections becomes increasingly difficult. Officers are forced to hold onto cases because of outstanding restitution obligations, or at times extend probation terms to allow for additional time to pay. Many times these cases are lower risk offenders who do not require supervision of the officer, but are continued on supervision with hopes of collecting more money. This takes additional officer time, and diverts the resources that could more effectively be used to supervise our more high risk and violent offenders.

Collection of restitution is important, and every effort should be made to get the victims back what they so rightly deserve. That is why the Department of Corrections supports House Concurrent Resolution Number 3002 and urges a "Do Pass" vote.

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

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3/17/15