

**2017 HOUSE HUMAN SERVICES**

**HB 1340**

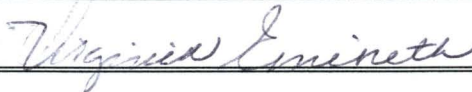
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

HB 1340  
1/23/2017  
27213

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



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

Relating to manufacturing, delivering, inhaling, ingesting, and possessing marijuana and using and possessing marijuana paraphernalia; and to provide a penalty.

**Minutes:**

1, 2,

**Chairman Weisz:** Called the committee to order on HB 1340.

**Rep. Becker:** (attachment 1) we are looking at decriminalization of marijuana. Instead of being a misdemeanor or a felony it would be an infraction.

Drug crimes create huge burden for our law enforcement and court system.  
Instead of a crime and jail time, it is a crime and a fine.  
7:16

**Chairman Weisz:** Questions from the committee?

**Rep. Kiefert:** Could you tell us what the penalty is for an infraction?

**Rep. Becker:** \$1000

**Rep. Porter:** Where is it in the bill that mentions the misdemeanor?

**Rep. Becker:** That is not in the bill. We would have to go into the Century Code.

**Chairman Weisz:** Have you given any thought to delivering and possessing. Why are you wanting to bring that down to an infraction?

**Rep. Becker:** Someone has a little bag of marijuana and he sells it to someone else, I don't see that as distributing something as harmful and dangerous as some other mentioned drugs so let's take it down to infractions.

**Rep. Skroch:** If we lessen the penalties for those people distributing and selling, will that not just open the flood gates for the delivering Mexican cartel coming in to deliver tons of marijuana?

**Rep. Becker:** We can all only speculate on that.

**Rep. Weslind:** What is the penalty for a class A misdemeanor it is just monetary

**Rep. Becker:** It is not just monetary The misdemeanors do all involve jail time as do the Felonies.

**Rep. Becker:** All of the levels for all of the crimes are at the maximum level.

**Rep. McWilliams:** Do you have any information from other states as to what happened in their states?

**Rep. Becker:** There is no comparison with other states because they legalized it. Do you think that all the people that have smoked marijuana should have served jail time?

**Rep. Damschen:** Do you think this change would increase or decrease the use of marijuana?

**Rep. Becker:** I don't think it will decrease it, but I don't know how much it would increase some people believe it will increase it. It is readily available now but it is still a crime. Still it only pertains to the person that is willing to do something illegal. It may increase the Usage slightly.

**Rep. Damschen:** Is there any need to pass the bill then?

**Rep. Becker:** It is not my intention to increase the use, What I want to do is to decrease the penalty. We don't want send productive citizens to jail, our intent is to make the penalty more like it should be.

**Rep. D. Anderson:** When does the possession of marijuana become a felony under federal Law?

**Rep. Becker:** I don't know that. I think that is up to the states unless you are transporting across state lines and it falls into federal law.

**Rep. Westlind:** Looking at the item # 3 which states within 1000 feet of a school including colleges this would also include grade school and junior. Why drop the penalty?

**Rep. Becker:** If you sell to a minor it is already aggravating factor. If you put 1000 ft. perimeter around the school what you have is random occurrence of this house. If it is within 1000 feet but if you go to the neighbor and it is outside of 1000 feet so it would be an infraction if the bill were to pass. This portion of the bill is well meaning but poorly conceived.

**Rep. McWilliams:** What would be the savings to the state if you dropped the penalty?

**Rep. Becker:** I don't think that is available.



**Chairman Weisz:** Further support for HB 1340

**Patrick N. Bohn:** Director for Transitional Planning Services, ND Dept. of Corrections and Rehabilitation (Attachment 2)

We feel that the money spent to incarcerate people would be better done by preventive education and affordable quality behavioral health treatment services.

**Rep. Damschen:** Do you have a percentage of how many crimes committed are committed by someone under the influence of drugs or alcohol?

**Mr. Bohn:** About 75-80% of the people in our state prisons have some kind of addiction diagnose.

**Rep. Damschen:** Will this change that?

**Mr. Bohn:** I think it is a step to improve that.

**Rep. Skroch:** Do you have any data that separates those being incarcerated for Marijuana verses those being incarcerated for other drugs like meth?

**Mr. Bohn:** Data from 2016 We have People in prison for multiple offences, I looked at what would keep them in prison for the longest time. There were 265 drug offenses 10 that were were there for possession of marijuana.

**Rep. Skroch:** That doesn't match the reasoning for change. This really effects very few people. Why would we do this?

**Mr. Bohn:** We tend to have the longer sentences so our numbers are small in terms in representation of the marijuana within our prison system.

**Chairman Weisz:** Multiple infractions increases the time spent in prison?

**Rep. Becker:** It is hard to say. Timing and disposition can change.

**Rep. Porter:** I understand the intent of the bill, but I have issue with the difference between the dealer and user and the decriminalizing of the dealer in regards of the bill?

**Mr. Bohn:** We are more interested in the possession individual. We would say there are legitimate concerns.

**Rep. Porter:** I have concerns about the school aspect of this. I am concerned about where the adults go to school. especially from K-12 and not having increased penalty or keeping it where it is currently.

**Mr. Bohn:** Our position is that 1000 feet is rather arbitrary and really does create some problems when you look at some maps that are out there. Our position would be being that when you want to have some penalties do it for using, delivering, possessing, while you are on school property rather than this buffer which is difficult to look at what the implications are

for the community.

**Rep. McWilliams:** Law as it is written now If there was a drug dealer and this was his spot to drop his drugs for a long time and now a daycare moved in that would change the class as I understand.

**Mr. Bohn:** Yes.

**Rep. Damschen:** We are hearing that this would reduce the jail times, but there are so few involved that it won't cut it down very much is that correct?

**Mr. Bohn:** It would have more impact in county jails instead of prison. It would be how do we want to use our correctional resources, judicial resources, I would take a lot of changes to write this and get things leveled off.

**Rep. Pam. Anderson:** Can you explain for me for example in Fargo someone gets arrested for marijuana the court time and the bail and whatever between the class A misdemeanor and an infraction?

**Mr. Bohn:** I can't answer that.

**Chairman Weisz:** Further support? Any opposition to HB 1340.

**Aaron Birst:** I am with the association of Counties. I am here to oppose HB 1340. Section 2 We handle about 95 % of all the prosecution and municipal courts prosecutors that are members of our association and the attorney general's office has staff that helps out in cases are requested for assistance. There are 8 states and the District of Columbia that have moved to recreation marijuana and our group takes no position on what the legislation wants to do regarding personal use. However, section 2 of this bill applies to all delivery not just a single joint that has been passed. It doesn't appear that that was the intent but that is not true if you look at 19-03.1-23 those are the aggravating factors that Rep. Becker. Was taking about however, those still require deliver to be a certain level of offense.

**Rep. Pam. Anderson:** Say I am a new freshman at NDSU and we decide to try some marijuana. If one guy goes to get some and gets arrested how long would he be in jail?

**Aaron Birst:** If you are arrested for a joint or two, you might go to jail, bond out, get a court Date, and you get what is called a deferred imprecision sentence.

**Chairman Weisz:** 19031-23.1 is talking about increased penalty but based on what you are saying this wouldn't apply on an infraction?

**Aaron Birst:** That is correct because if you look at section 2 that is the delivery section. Marijuana goes to infraction under the delivery section. As it is written right now delivery is only an infraction.

**Rep. McWilliams:** We need to clarify section 4 a little bit more about the school zones and I see that as a simple amendment. What would be the position of the counties with marijuana as a misdemeanor?

**Aaron Birst:** There are going to be about 20 bills to look at sentencing practices and prison terms. Delivery is an infraction period. They do something else too.

Most are not going to jail. The majority of those that do go to prison are not there just for drug use.

**Rep. McWilliams:** Moving the marijuana from an infraction to a misdemeanor wouldn't have much of an impact on the areas.

**Aaron Birst:** One year or less in county jail.

**Rep. Weisz:** Further opposition? Meeting was adjourned.



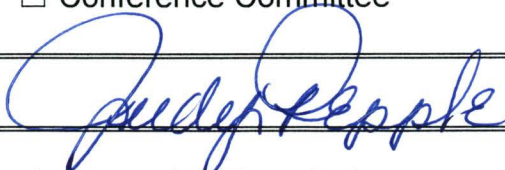
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

HB1340  
1/25/2017  
27405

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



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

Relating to manufacturing, delivering, inhaling, ingesting, and possessing marijuana and using and possessing marijuana paraphernalia; and to provide a penalty

## Minutes:

Chairman Weisz: called the committee to order

Opened the hearing on HB 1340

Rep. Becker

Explained his amendment to HB 1340

What I heard from the committee above all was a concern about the distribution and delivery. I think you got an email from the opposition about the aggravating circumstances do actually apply to whatever we are doing in this law. An infraction would become a class B misdemeanor and a class A misdemeanor would become a class C felony. The first part of the bill deals with possession. It simply says that possessing marijuana is an infraction. The aggravating factors like having a gun, being at a school, having more than a pound. Those would be aggravating factors that would increase it from an infraction to a class B misdemeanor. Page 10 is where the amendment really is. It deals with the distribution. I did separate it out to 1 ounce and above 1 ounce. If you give a friend one joint, that is distribution. I wanted to clarify that. What we have in mind when we are talking about dealing is maybe something different than what occurs. I believe the 1 ounce division addresses that. We have at 1 ounce and under it is an infraction. If you are dealing an ounce and above, it is a Class A misdemeanor. A Class A misdemeanor is up to a year in prison. If you are dealing to a minor, have a gun, or if you are dealing a pound or more your Class A misdemeanor jumps to a Class C felony so it is now 5 years in prison. Drug paraphernalia. If you have a pipe or something it takes it down to a class B misdemeanor. That is 30 days in jail. So we have essentially taken out jail time for possessing marijuana. Left in jail time for dealing marijuana if it is above an ounce.

Chairman Weisz: I had a conversation with one of those opposing this bill and that was their objection delivery. He said they had no objection now, but they would be neutral.

Chairman Weisz: If you are caught with a pound it would automatically be considered to be intent to deliver, so you would be considered dealing.

Rep. Becker: Yes, that is my understanding.

Representative McWilliams: How much is an ounce of marijuana?

Rep. Becker: I contacted someone that I thought would know. He said if you have an ounce or less you are using it for yourself. If you have more than that you are probably dealing.

Representative Porter: In section 2 on page 2 in that section because we exempt on line 11 except for marijuana, then all tickets under an ounce stay at the infraction level. There isn't anything that says after your 20<sup>th</sup> infraction it goes up to a misdemeanor or after your 42<sup>nd</sup> it jumps up to a misdemeanor. So anything under an ounce is an infraction with nothing else.

Rep. Becker: If you are considered dealing then it is different. If you get arrested and get an infraction and you are arrested again within a year, it goes up to a class B misdemeanor. That is just by virtue of how our penalties work.

Representative Porter: In section 4 dealing with the distance away from a school. There is a companion bill of yours that I believe takes it to a 0.

Rep. Becker: There is an amendment that I offered there that changed it to on school property. I thought both bills would go to the same committee. It is not consistent. One house could be in an aggravated zone and a house next door is not.

Representative Porter: What is that bill number?

Rep. Becker: HB 1341

Representative Porter: The last one signed is the one that will be law. We want to have that discussion to see where they stand.

Rep. Becker: I agree they need to be able to work together.

Representative Porter: The down side to that is that when they come back to be conferenced they are still going to be split. The more coordination there is the better it will be. My other question is going into section 5. I want to be clear on a couple of things and how it ties into the century code. Is it only marijuana or could it be opium poppies that I am growing too.

Rep. Becker: I believe it is only marijuana.

Representative Porter: As I go through it I get into a fine line now of 1 ounce and greater and 1 ounce and less. I could have a whole operation set up and growing and it is only and infraction.



Rep. Becker: If you have a big operation it goes to sections 5 and 6. Section 5 deals only with use and possession. Section 6 deals with manufacturing and delivery. That is why I amended 6 to follow along with section 2 which also deals with the same thing.

Representative Porter: You are sure section 5 is only tied to the use and possession even though it talks about manufacturing and compounding and basically making derivatives of marijuana, packaging and repacking. So if you were doing that and you only had 5 plants and it was over an ounce you would immediately end up in the other category.

Rep. Becker: Yes that is my understanding. Section 5 is only dealing with use. If it were dealing or manufacturing it would be section 6.

Representative Porter: Inside of how these two play together in the infraction category. If law enforcement was to walk into the room and there were 20 plants and they say that you are in the manufacturing category and you said no you were just in the use category and they took those 20 plants and plucked all the leaves off and dry them and weigh them and see what it weighs. Is that how you see this playing out with the limiting factors inside of section 5?

Rep. Becker: How it plays out doesn't enter into the decision, because sections 5 and 6 exist now. So however they deal with things now to discern and make the decision of whether it goes into section 5 or 6.

Representative Porter: They used to carry the same penalty and now they are different. I guess I look at it like when they were both criminal. Now that we would split it I am not sure that we don't need to put possession into that component. It was easier to deal with before, but now it needs to be spelled out.

Chairman Weisz: There is a difference under current law. Section 6 does allow for a class C felony in some cases where section 5 doesn't.

Representative Porter: This makes it more difficult for law enforcement.

Chairman Weisz: What did the other bill change?

Rep. Becker: There were two things. The school perimeter and in our law now if you are 16 and under and delivering to a minor it is an aggravated offense. That seemed weird to me. You could be 16 delivering to a 17year old and convicted of delivering to a minor, so that got changed out to be 21.

Chairman Weisz: We are not dealing with the distance here, so it would not have any effect if the other one.

Rep. Becker: This bill only deals with marijuana. The other one deals with aggravating factors for all drugs.

Representative Kiefert: What if a teacher has a prescription for marijuana. My point is when the health department tries to develop all of these new laws to deal with medical marijuana are we handcuffing their ability to do their job by passing new laws.

Chairman Weisz: If the teacher has a prescription she still can't take it to school. Those are some of the things we would have to deal with. Some of these things will have to be dealt with in medical marijuana. We are only talking about decriminalizing having an ounce or less.

Rep. Becker: I don't know anything about medical marijuana.

Chairman Weisz: Those are issues we will have to deal with. We need to separate that. We are simply dealing with whether we should decriminalize possession of one ounce or less.

Rep. Becker: These are two different issues. This one still respects that it is against the law federally. It reflects somewhat of a changing attitude on how we view it severity.

Chairman Weisz: Questions?

Closed the hearing on HB 1340

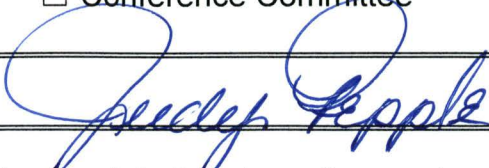
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

HB 1340  
2/8/2017  
28077

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



Relating to manufacturing, delivering, inhaling, ingesting, and possessing marijuana and using and possessing marijuana paraphernalia; and to provide penalty

## Minutes:

Chairman Weisz: Called the committee to order and opened the discussion on HB 1340.

Representative Westlind: I recommend a do not pass

Chairman Weisz: I would rather we deal with the amendments first.

Representative Westlind: Ok I will withdraw my motion.

Representative Porter: I do think we have to put the amendments into place as a starting place.

Representative Schneider: I make a motion for a do pass on the 1001 amendment

Representative P. Anderson: I will second it.

Chairman Weisz: All he is doing is changing

We have a motion on the amendment on the floor to accept the amendment.

Voice vote to accept the amendment  
Motion carried.

Chairman Weisz: any more amendments? Further discussion?

Representative Westlind: I move a do not pass as amended.

Representative Skroch: second



House Human Services Committee

HB 1340

2/8/17

Page 2

Roll call vote taken for the motion for a do not pass as amended.

Yes 7 No 6 Absent 1

Motion carried for a do not pass as amended on HB 1340.

Chairman Weisz: do I have a volunteer to carry this bill?

Representative Westlind: I will carry it.

Adjourned

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1340

Page 2, line 24, after "e." insert "Marijuana involving more than one ounce [28.35 grams], is guilty of a class A misdemeanor.

f."

Page 2, line 24, after "Marijuana" insert "involving one ounce [28.35 grams] or less"

Page 5, line 29, remove the overstrike over "a-class"

Page 5, line 29, after "A" insert "B"

Page 5, line 29, remove the overstrike over "-misdemeanor"

Page 5, line 29, remove "an infraction"

Renumber accordingly

Date: 2/8/17  
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1340

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 17.0170. 01001

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 Rep. Schneider Seconded By Rep. P. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. P. Anderson		
Vice Chairman Rohr			Rep. Schneider		
Rep. B. Anderson					
Rep. D. Anderson					
Rep. Damschen					
Rep. Devlin					
Rep. Kiefert					
Rep. McWilliams					
Rep. Porter					
Rep. Seibel					
Rep. Skroch					
Rep. Westlind					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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



Date: 2/8/17  
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1340

House Human Services 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 Westlind Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		<input checked="" type="checkbox"/>	Rep. P. Anderson		<input checked="" type="checkbox"/>
Vice Chairman Rohr		<input checked="" type="checkbox"/>	Rep. Schneider		<input checked="" type="checkbox"/>
Rep. B. Anderson	<input checked="" type="checkbox"/>				
Rep. D. Anderson		<input checked="" type="checkbox"/>			
Rep. Damschen	<input checked="" type="checkbox"/>				
Rep. Devlin		<input checked="" type="checkbox"/>			
Rep. Kiefert	<input checked="" type="checkbox"/>				
Rep. McWilliams	<u>ab.</u>				
Rep. Porter	<input checked="" type="checkbox"/>				
Rep. Seibel	<input checked="" type="checkbox"/>				
Rep. Skroch	<input checked="" type="checkbox"/>				
Rep. Westlind	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Westlind

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

**REPORT OF STANDING COMMITTEE**

**HB 1340: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1340 was placed on the Sixth order on the calendar.

Page 2, line 24, after "e." insert "Marijuana involving more than one ounce [28.35 grams], is guilty of a class A misdemeanor.

f."

Page 2, line 24, after "Marijuana" insert "involving one ounce [28.35 grams] or less"

Page 5, line 29, remove the overstrike over "a-class"

Page 5, line 29, after "A" insert "B"

Page 5, line 29, remove the overstrike over "~~misdemeanor~~"

Page 5, line 29, remove "an infraction"

Renumber accordingly

**2017 TESTIMONY**

**HB 1340**



Att. 1  
HB 1340  
1-23-17

HB1340 - Rick Becker

Decriminalizes marijuana. Instead of misdemeanor or felony, makes it an infraction.

DOES NOT LEGALIZE!!

An infraction carries a penalty of up to \$1000.

Why this bill?

- 1) 2015/2016 I was reviewing appropriations and various state issues. Looked at ways to find efficiencies with DOCR as well as other agencies. Meeting with Director Bertsch and staff. They indicated many things that could be addressed, including the burden of drug crimes.
- 2) Long-standing issues with crowded jails and backlogged court dockets. Several cases are marijuana related. Much time is spent with pretrial hearings that could be avoided with decriminalization.
- 3) Andrew Sadek case. Why was a college kid facing 40 years in prison for \$80 worth of marijuana?
- 4) General election. Very high approval of medical marijuana at 64% (vs Donald Trump's 63%). The stigma and fear of marijuana has subsided dramatically in the last 10-20 years. Even most voters that believe marijuana should absolutely *not* be legalized agree that we don't need jail time for it (very unscientific polling while I was on campaign).

The bill in Sections:

- 1) Possession or ingestion is an Infraction instead of Class A Misdemeanor
- 2) Deliver/distribute is an Infraction instead of a Class B Felony
- 3) Within 1000 ft of schools including colleges, is infraction instead of B Felony
- 4) Clarifies an upcharge for Aggravating factors associated with an Infraction
- 5) Possession marij' paraphernalia Infraction instead of Class A Misdemeanor
- 6) Deliver marijuana paraphernalia Infraction instead of Class A Misdemeanor
- 7) Addresses/makes consistent powers of City councils

Problems with current law:

- 1) **Wastes resources/consumes taxpayer dollars**
- 2) Needlessly jails people that do not pose a threat to citizenry
- 3) Jailing does nothing for any "rehab" for marijuana
- 4) Takes otherwise productive members of society out of picture at cost to others
- 5) Potentially separates breadwinners from dependents, creating more poverty

Benefits of HB1340:

- 1) Recognizes and reflects current attitude of ND citizens
- 2) Does not legalize marijuana or conflict with Federal law
- 3) Saves money
- 4) Frees up our jail and prison system for more important things

# Incarceration exacts heavy toll on state



NOVEMBER 05, 2015 11:45 PM • BY ANDREW SHEELER

The level of North Dakota's incarceration can be understood if the Department of Corrections and Rehabilitation is imagined as a county: Its population would be more than Slope, Burke, Billings, Sheridan, Golden Valley and Oliver counties, according to data provided by the 2010 U.S. Census.

If it were a city, it would be the 10th largest in

the state, just behind Jamestown.

North Dakota's incarcerated population is not only large, it's growing.

A 2014 study released by the Pew Charitable Trust found that North Dakota's incarceration rate saw a 175 percent increase from 1994 to 2014, second in the country only to West Virginia.

In a one-day count on Jan. 1, the North Dakota Department of Corrections and Rehabilitation determined that 1,716 inmates were in custody statewide. An additional 6,167 men and women were on parole or probation.

Four years ago, the state inmate population was half what it was in September. And DOCR projects the inmate population to nearly double again in the next 10 years, to around 3,000 inmates by 2025.

## A system problem

Leann Bertsch, DOCR director, said she believes the problem with North Dakota's growing incarceration rate goes far beyond what her department can handle.

"This isn't a prison problem. It's a system problem," she said.

A chart that Bertsch recently presented to state legislators and the public revealed several spikes in North Dakota's inmate population from 1992 to 2014. Many of these corresponded with the opening of a new detention facility or the

implementation of new or tougher criminal laws. North Dakota is in the middle of its most dramatic spike yet, jumping from 960 inmates in December 2011 to 1,800 inmates in September 2015.

"We're literally out of space," said Dave Krabbenhoft, the director of administration at DOCR. "Everybody's full."

Numbers alone don't tell the whole story, said Judge Gail Hagerty, the presiding judge of the South Central Judicial District — covering Burleigh, Emmons, Grant, McLean, Mercer, Morton, Oliver, Sheridan and Sioux counties. It's one of the busiest districts in the state, and the caseload has gotten so high that the North Dakota Legislature recently approved funding for a new judge, John Grinsteiner, who was sworn into office in September.

Hagerty said it takes a lot for a judge to send somebody to prison.

"If the public saw they would be shocked," said Hagerty, explaining that she and

Drugs & ETOH #1 reason  
for incarceration in ND  
ND one of the highest in  
the world for  
overincarceration.

DOCR  
Leann Bertsch  
deputy director

75 ETOH  
170 possession  
220 delivery, mfg  
465

paraphernalia?

11-13 27% ↑ prisoners  
15-17 35% ↑ gang-related



most of her colleagues give offenders several chances, often handing out supervised probation in lieu of prison time.

Even when a judge does send somebody to prison, that decision comes at the end of a long string of warnings and sentencing alternatives, said Hagerty, who added that not everybody is cut out for drug court and its stringent requirements.

"I've seen over the years there are many people who think incarceration is preferable over the drug court program," she said.

The inmate population has gotten so high in recent years that DOCR has contracted with for-profit prison operator Corrections Corporation of America to house about 200 inmates at a facility in Colorado.

Krabbenhof said the move was driven by necessity.

"We need to find places to keep these people. We're bursting at the seams," he said.

A review of inmate admission numbers over the past few years revealed that nearly every category of offender has increased, including violent offenders, sex offenders and drug and alcohol offenders.

Alcohol-related offenders, in particular, have increased.

In 2014, the first full year that North Dakota's tougher DUI law went into effect, the number of alcohol offenders in prison more than doubled from the year before — from 32 in 2013 to 73 in 2014.

The tougher DUI laws were overdue, but came with an added cost for North Dakota state taxpayers, Krabbenhof said.

### **Obligation to care**

One male inmate costs an average of \$17.50 a day, more than \$6,300 a year, in health care costs, Krabbenhof said. Add food, lodging, transport and other expenses, and the average amount to house a male inmate for a year is \$42,460, with female inmates costing slightly less.

That's just the average: A few have cost more than \$100,000, Krabbenhof said.

All told, DOCR's budget for the 2015-2017 biennium is more than \$215 million, and, if inmate rosters continue to trend upward, Krabbenhof said that amount will only increase.

Many of those offenders suffer from health problems related to their addiction, such as alcoholics with organ failure or methamphetamine addicts with dental problems and upper respiratory problems.

All of which the state is constitutionally bound to treat.

"We don't have a choice. We really don't have a choice," Krabbenhof said.

Bertsch put it another way.

"The only group of citizens that have a constitutional right to health care are inmates," she said.

In order to meet those needs, DOCR employs a small army of medical staff.

North Dakota State Penitentiary, a maximum-security facility for male prisoners, has an infirmary — with 22 hospital beds — and a clinic that sees about 80 inmates a day.

The prison employs two doctors, a physician's assistant, a dentist, two pharmacists and more than a dozen nurses, dental assistants and pharmacy technicians, all on state payroll. The facility also has a psychiatrist on contract and is capable of conducting MRI and CT scans on-site through a local contractor.

## **The silent R**

The average sentence in 2014 was slightly more than eight years, though, with time off for good behavior and early parole, inmates often get out much earlier.

Fewer than two dozen inmates statewide were serving a sentence 20 years or longer in 2014.

Nearly every inmate who walks into a North Dakota prison will one day walk out. That's why Bertsch said she's dedicated to making sure "the 'R' in our name (DOCR) isn't silent."

When inmates enter the DOCR system, they are evaluated to determine their needs and risks.

Tom Erhardt, DOCR deputy director of transitional planning, called it triage. He said his department has finite resources, so staff need to spend them where they will do the most good.

Erhardt said he and his staff devote their efforts toward addressing inmate associations and substance abuse problems.

He said every member of his department is trained in motivational interview techniques, in which inmates are asked to consider the consequences of their actions.

"Our department is a recidivism-reduction model," said Erhardt, explaining his department tracks inmates for three years following release.

DOCR divides recidivism into two categories: new crimes and technical violations.

For the past decade, the number of inmates committing new crimes while on parole or probation has trended downward, from 16 percent in 2004 to 12 percent in 2011, the last year in which the full three-year review was available.

When an inmate violates a condition of his or her supervised release, such as failing a drug test or not reporting to a parole officer, that is counted as a technical violation. No new crime was committed, but the inmate can still return to incarceration.

Over the past decade, the number of technical violators has increased, from 23 percent in 2004 to 27 percent in 2011.

From her perspective on the bench, Hagerty said the problem with recidivism lies in the inadequacy of aftercare for inmates.

"It's almost like setting people up for failure," said Hagerty, adding that DOCR needs "a lot more resources to do what they are supposed to do."

"But the plain fact is, it's going to cost a lot," she said.

## **Time for a conversation**

Bertsch, Erhardt and Krabbenhoft are emphatic: It's time for North Dakota to have a serious conversation about its criminal justice model, to look at what works and what doesn't.

"The time is right to take a look at everything," Krabbenhoft said. "What does the research say?"



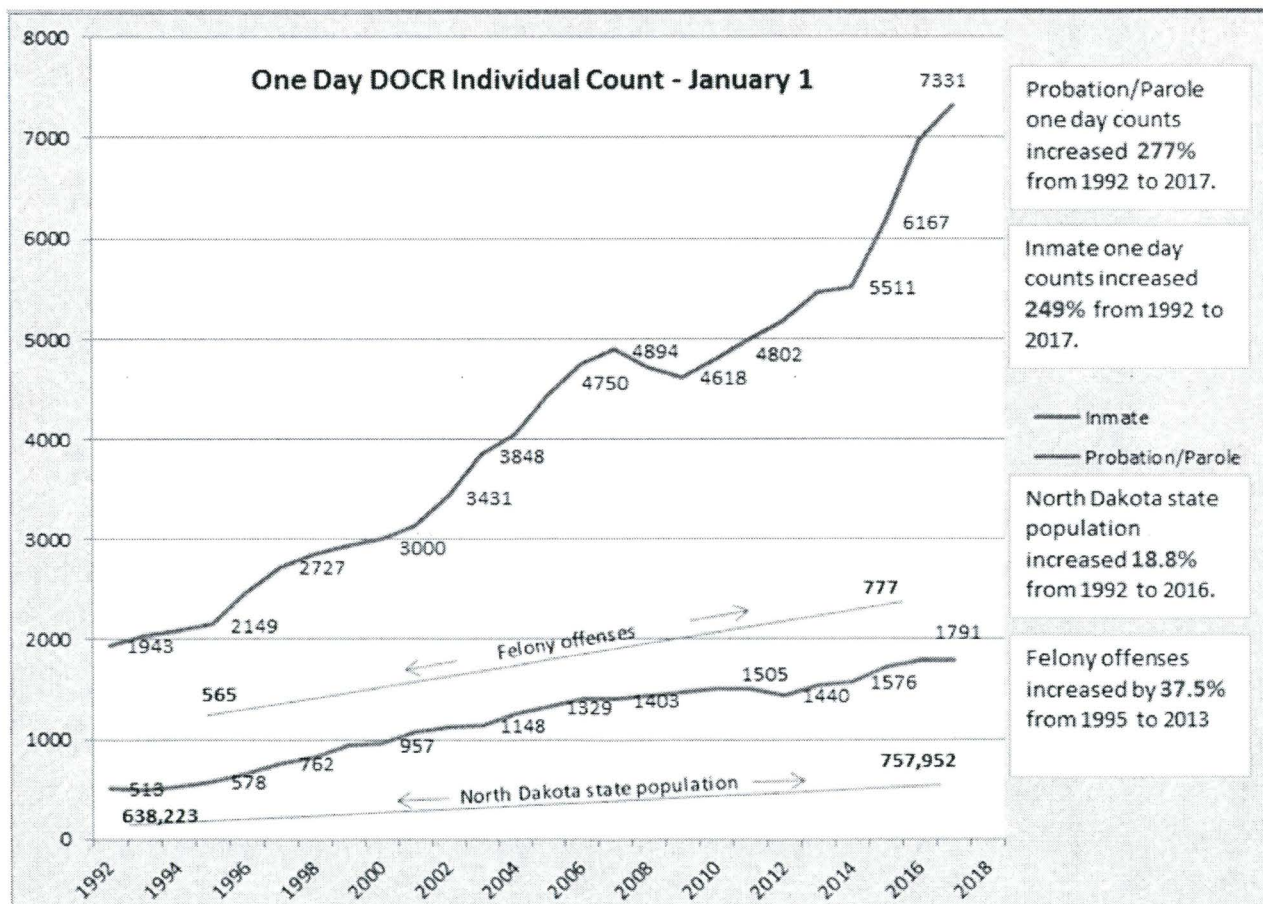
att. 2  
HB 1340  
1-23-17

**HOUSE HUMAN SERVICES COMMITTEE  
REPRESENTATIVE ROBIN WEISZ, CHAIRMAN  
JANUARY 23, 2017**

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1340**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of House Bill 1340.

The department generally supports efforts to reduce penalties for drug possession related crimes. We know drug possession crimes have been a significant contributor to growth in jails, prisons and community supervision populations and the associated costs. By no means are we condoning drug use but also know that we cannot incarcerate our way out of this problem. Efforts may be better spent on preventive education and affordable quality behavioral health treatment services.





# What is the cost?

## General Fund Appropriation In Millions (163% Increase)



In closing, if you have any questions, I'd be glad to try and answer them.