

2021 HOUSE JUDICIARY

HB 1112

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1112
1/13/2021

Relating to the prioritization of admission of inmates.

Chairman Klemin called the meeting to order at 10:38AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, Vetter, and Roers Jones.

Rep. Heinert: Introduced the bill.

Discussion Topics:

- DOCR compensation
- Organizational conflicts
- Negotiation of rates
- Currently law requirements
- Prioritized level of crime
- Average costs of incarcerations.
- Proper reimbursements for counties
- Housing people long term

Jesse Jahner, Sheriff in Cass County Jail: Testimony #690 10:48

Kelly Leben, Sheriff Burleigh County: Testimony #710 10:58

Donnell Preskey, ND Assoc. of Counties: Testimony #711 11:05

Dave Krabbenhoft, Interim Director of DOCR: Testimony # 625 11:14

Additional Written Testimony: # 726

Chairman Klemin adjourned at 11:55 AM

Delores L. Shimek, Committee Clerk

Testimony in Support of HB 1112

Members of the House Judiciary Committee my name is Jesse Jahner and I am the Sheriff in Cass County North Dakota. As Sheriff of Cass County my staff and I oversee the Cass County Jail. The Cass County Jail has a capacity to house 348 Inmates. I write in support of House Bill 1112, which would codify a responsibility to compensate counties, according to a negotiated agreement, when the Department of Corrections and Rehabilitation (DOCR) executes their prioritization plans, where they seek to house Inmates in county jail for any reason, or where they seek to delay transfer of legally sentenced prisoners into the prison system.

The DOCR has long sought to have standing contractual agreements with county facilities to house state Inmates. Some counties have signed them, Cass County is not one that has chosen to contract state beds, for a number of reasons. The main reason is that on a day to day basis we are struggling for space to meet our local needs. When our local needs for incarceration are not met it can cause safety issues within our community. As we speak, we are in the process designing an addition to our facility to meet growing needs. The Cass County Jail does not have space to house Inmates sentenced to DOCR for a lengthy period of time. As Sheriff, I do understand that there are going to be times where we will have to house those sentenced to DOCR for a few extra days and in those instances the tax payers of Cass County should be reimbursed for housing and medical costs according to our requests.

A couple of biennium's ago, the DOCR introduced a prioritization and housing contingency plan that effectively imposed- delays in the transfer of inmates when the DOCR lacked available bed space. At that time, we were assured by the agency director that it was not something that we needed to worry about, that there was no intention or expectation that it would actually have to be used.

And then it ultimately was necessary to implement. The DOCR advocated to build a new unit and renovate. They advocated to reduce penalties for certain offenses, and redirect support and funding to address addiction. But not to increase beds according to trends in sentencing, and it became necessary to implement the contingency plan and delay entry of newly sentenced inmates due to space concerns despite all of the other efforts and approaches.

Only a handful of inmates were delayed each year from 2017 thru 2019, and those that were delayed were typically only a week or two outside of the normal transportation schedule.

Then in 2020, the pandemic impacts of COVID thru the whole system into disarray, as we all tried to cope with our new reality and keep our inmates safe. And the DOCR agreed to pay for the massive delays that they imposed as part of their own safety plans.

There are real costs to supervising, feeding, and managing inmates who are delayed due to space availability. There are real medical expenses. The DOCR already seeks to contract with counties to hold some prisoners. Some counties have space to do this, others do not. But the DOCR pays for that space when they use it. This bill seeks to establish that they have an obligation to compensate the counties

when transfer delays or denials are imposed on them, the same as they would compensate according to an agreement in cases where bed space has been pre-arranged and pre-approved.

This bill actually does one other thing. It requires the DOCR to negotiate individual agreements with each county, a stipulation that accounts for the fact that each county has different expenses, different services available, different programming, and different space availability. Some counties may want to contract for longer term housing, others may want to do so only for absolute emergencies, or maybe not at all. Whatever the reason, and for whatever the length, it is only right to ensure that counties will be sufficiently compensated when they are used as the solution to a prison system that runs out of beds.



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

Testimony Prepared for the

House Judiciary Committee

January 12, 2021

By: Kelly Leben, Sheriff

RE: Supportive Testimony for House Bill 1112 – Prioritization of Admission of Inmates

My name is Kelly Leben and I currently serve as the elected Sheriff of Burleigh County. In addition to my duties as Sheriff, I currently serve as the Jail Administrator for the Burleigh Morton Detention Center (BMDC), which is a jail jointly owned by Burleigh and Morton counties. I testify today in support of House Bill 1112. HB 1112 adds requirements to North Dakota Century Code (NDCC) 54-23.3-11 which is commonly known as the North Dakota Department of Corrections (ND DOCR) Inmate Prioritization Plan. HB 1112 will require ND DOCR to negotiate with local jails and pay costs of housing, to include medical costs, for inmates that are sentenced to the ND DOCR, but left in county jails due to the Prioritization Plan.

The Prioritization Plan was passed during the 2017 legislative session. When this legislation was passed, the informal discussion was that this plan would hopefully never be implemented. On May 6th 2019, Burleigh County was notified by e-mail that the female capacity had been reached at ND DOCR. In accordance with the plan, after 30 days of the quota being met, the plan would be implemented and female inmates would be transferred from the Burleigh Morton Detention Center (BMDC) in accordance with the plan. On May 29th, 2019, the first female inmate of BMDC was refused by ND DOCR. BMDC had female inmates in the Prioritization Plan from that date until September 2019 when the last female inmate was transferred to ND DOCR. As part of the Prioritization Plan, ND DOCR assumed no financial responsibility for inmates sentenced to ND DOCR and all costs became the responsibility of the county from which they were sentenced. During the implementation of the plan, Burleigh County experienced the following:

- 16 female inmates sentenced to ND DOCR remained in BMDC for a total of 172 days with a cost to Burleigh County taxpayers of \$13,500.
- One female inmate was involved in a fight with injuries sustained that required medical attention. Burleigh County incurred medical costs of \$1,403.
- BMDC held inmates for contracting counties that also fell under the Prioritization Plan. BMDC was able to bill the other counties for the cost of housing these inmates.

COURTHOUSE

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Although these numbers by themselves may not seem overly significant, I feel there are some things that are important to consider. During the time the plan was in place for female inmates, we watched the numbers at ND DOCR rising for male inmates. This gave us great concern because female inmates account for a smaller percentage of inmate populations. If the quota was implemented for male inmates, we knew the costs to Burleigh County tax payers would raise considerably. Another factor that gives us concern is that every inmate that is sentenced to ND DOCR, but remains in our jail, takes away an available bed for our county to use to house inmates. Lastly, we were fortunate that the only medical expense we incurred was for injuries sustained in a fight and not medical expenses from a much more serious situation such as a heart attack, cancer, or any other serious medical condition.

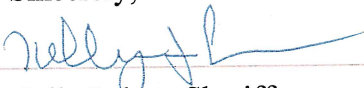
The duties of the Sheriff are spelled out in NDCC 11-15-03. The first three duties of the Sheriff are to preserve the peace, arrest and take before the magistrate all persons who attempt or who have committed a public offense, and to prevent and suppress all affrays and breaches of peace. In addition, North Dakota Administrative Rule 109-02-05-02 requires all peace officers to take an oath to uphold the constitution and law. At the Burleigh County Sheriff's Department (BCSD), we accomplish this through enforcement, education, and discretion. Unfortunately, some violations cannot be solved with education and discretion requiring enforcement action to be taken.

I have stated many times throughout my career that the role of law enforcement is not to create public policy, but rather to carry it out. In the course of our duties, we arrest people that have broken a law created by elected state leaders, bring them before a District Judge for the State of North Dakota, with some of them being sentenced to imprisonment under the North Dakota Department of Corrections. The only way we can control the costs that this plan imposes on our counties is for us to simply not do our duty.

As a jail administrator, I understand the concerns of ND DOCR and fully appreciate that inmate bed space is a limited resource. Unfortunately, at the county level, we cannot just quit accepting prisoners. When ND DOCR quits taking prisoners remanded to their custody, this puts a financial and logistical burden on counties. In a perfect world, we would prefer to not have to house any state inmates we don't enter into a contract to house, but at a minimum, I believe the citizens of Burleigh County should be compensated for those inmates that remain in our jail.

Thank you for your time and consideration and please feel free to contact me with any questions you may have.

Sincerely,



Kelly Leben, Sheriff
Burleigh County



Testimony to the

House Judiciary Committee

January 13, 2021

By Donnell Preskey, NDACo

ND Sheriffs & Deputies Association

RE: HB 1112 – Prioritization Plan - Reimbursement

Chairman Klemin and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. NDACo serves many of the county member associations as well ranging from Commissioners to Sheriffs. In my role at NDACo, I serve as the executive director for the North Dakota Sheriffs and Deputies Association. The Sheriffs Association, NDACo and ND County Commissioners Association all passed a resolution supporting this legislation.

HB 1112, simply ensures that when and if the prioritization plan is in place DOCR must enter into an agreement with our county and regional facilities if they are unable to take an inmate that has been sentenced to DOCR. The agreement includes DOCR paying for the housing and medical costs incurred. This is what is fair to the taxpayers of North Dakota.

I will provide you a statewide perspective on how the prison prioritization plan has impacted our counties and why we are seeking reimbursement for when the prioritization plan is utilized in the future.

The 2017 Legislature provided NDDOCR the authority to implement a prioritization plan in order to manage the prison population. In May 2019, DOCR notified Sheriffs and Jail Administrators that the prison prioritization plan would go into effect for female inmates. It's important for you to know, these female inmates are individuals who a District Court Judge has sentenced on a state crime to the North Dakota Department of Corrections. With the prioritization plan in place – DOCR denied admission to these inmates, until DOCR's "operational capacity" allowed for their transfer. This resulted in state sentenced inmates, serving at least part of their sentence in a county facility, at the county expense – which falls on local property taxes.

House Judiciary Committee
Representative Lawrence Klemin, Chairman
January 13, 2021

Department of Corrections and Rehabilitation

Dave Krabbenhoft, Interim Director

House Bill 1112

Chairman Klemin and members of the Judiciary Committee, I am Dave Krabbenhoft the Interim Director of the Department of Corrections and Rehabilitation (DOCR). I am here today in opposition to House Bill (HB) 1112. If adopted, HB1112 will require the DOCR to pay counties housing and medical costs for inmates awaiting admission to prison due to prioritized admissions.

Section 54-23.3-11 which was enacted by the 63rd Legislative Assembly provides the DOCR with the authority to refuse the admission of people sentenced to the physical custody of the department only when such admission will cause the department to exceed its maximum operational capacity. When the maximum operational capacity is exceeded, the DOCR is required to use a prison population management plan to prioritize future admissions based on sentences and the availability of space in the penitentiary and affiliated facilities. In practice, when the average daily inmate population, specific to gender, for a discrete month exceeds the maximum operational capacity, the DOCR will begin to prioritize admissions to its facilities in the following month. While in prioritization, local correctional facilities are responsible for the care and custody of people awaiting admission to prison. This practice remains in effect until the average daily inmate population, specific to gender, for a discrete month drops below the maximum operating capacity. From the effective date of this section of Century Code

(8/1/2013), the DOCR has exercised this authority only once and was applicable only to women admissions from June 1, 2019 through September 30, 2019.

By requiring both the DOCR and local correctional facilities (Section 12-44.1-07.1) to develop inmate population plans based on authorized budgets, the North Dakota Legislature has recognized that state and local correctional resources are finite and expensive. If HB1112 is adopted in its present form, state corrections will only become more expensive. HB1112 does not address correctional reform and in my opinion may stifle it. Instead of directing additional money towards incarceration, consider access to community resources and programs that work with the jails rather than requiring the State to pay for people sitting in a jail. Jails and prisons without resources will not help people become better citizens.

If the State is going to invest in the criminal justice system in our communities, why wouldn't we focus on resources in our communities that may deter people from having a prison experience. The proposed legislation is only looking at the one resource we know doesn't work and this is simply housing people in jail. The DOCR prison population management plan shouldn't result in a battle between the DOCR and the counties over dollars and cents, but instead should result in a collaborative effort to improve our communities. Our jails got bigger, our prisons got bigger, our budgets got bigger with no impact on successful outcomes. For us to improve the situation for those involved in the criminal justice system, we need to invest, but not invest by expanding the prison through the jails. We need to focus on inmate management plans like Ward County and ask what we can do to help. What else can we do to incentivize our partners to keep people from having the prison experience? How do we keep families together, people working at their jobs and ensuring we don't have to continue to expand high end prison resources?

We have learned from COVID that it is possible to decrease the number of people in prisons and jails. Every facility in the state was on board and made it happen. I know it wasn't without

issues and stress. If we could do it over again, we would have had better communication and more of a team approach. However, it still worked, and our prisons and jails were able to reduce populations quickly and safely. Our county partners have continued to find ways to be successful in their approach to keeping the numbers lower and focused on their individual population plans. Because of their efforts, our prisons have been successful in protecting the most vulnerable in our prisons and not burdening local health resources. COVID forced this work much like it felt when the legislation requiring management of inmate populations was proposed. However, the difference is that COVID made it happen and we have been able to work together on improving the management of our inmate populations. We have an opportunity to use what we have learned during COVID to make existing legislation work better. I'm afraid that if HB1112 is approved in its current form, all the lessons learned from this horrific pandemic will be diminished and the focus on reducing prison and jail capacities will be lost. Don't give a blank check to incarceration, instead effort should be given to increase community resources and programs that will lessen the reliance on incarceration.

Attached Documents

- Prioritization Deferred Admissions – Women
- 21-23 Estimated Population – Women
- 21-23 Estimated Population – Men
- DOCR Inmate Admission
- Ward County Detention Center Inmate Population Plan

Department of Corrections and Rehabilitation

Prioritization Deferred Admissions - Women

	7/1/17 - 6/30/19		7/1/19 - 12/31/20	
County	Deferred Admission - ADP	Deferred Admission - Total Days	Deferred Admission - ADP	Deferred Admission - Total Days
Bottineau	-	-	0.02	9
Burleigh	0.10	70	0.28	156
Cass	0.04	26	0.16	89
Grand Forks	0.04	27	0.12	64
Grant	0.02	12	-	-
McHenry	0.01	9	-	-
McKenzie	-	-	0.02	9
McLean	-	-	0.01	4
Morton	0.04	29	0.03	18
Mountrail	0.01	7	0.03	18
Pierce	0.00	3	0.02	10
Ramsey	-	-	0.05	26
Rolette	-	-	0.03	18
Stark	-	-	0.02	9
Stutsman	0.02	15	0.01	7
Walsh	-	-	0.01	8
Ward	0.04	27	0.16	89
Williams	0.09	66	0.08	45
Total	0.40	291	1.05	579

North Dakota Department of Corrections and Rehabilitation

2021 - 2023 Estimated Population - Women

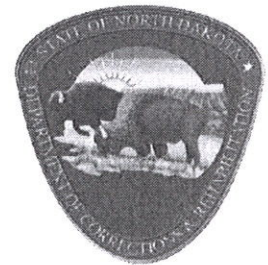
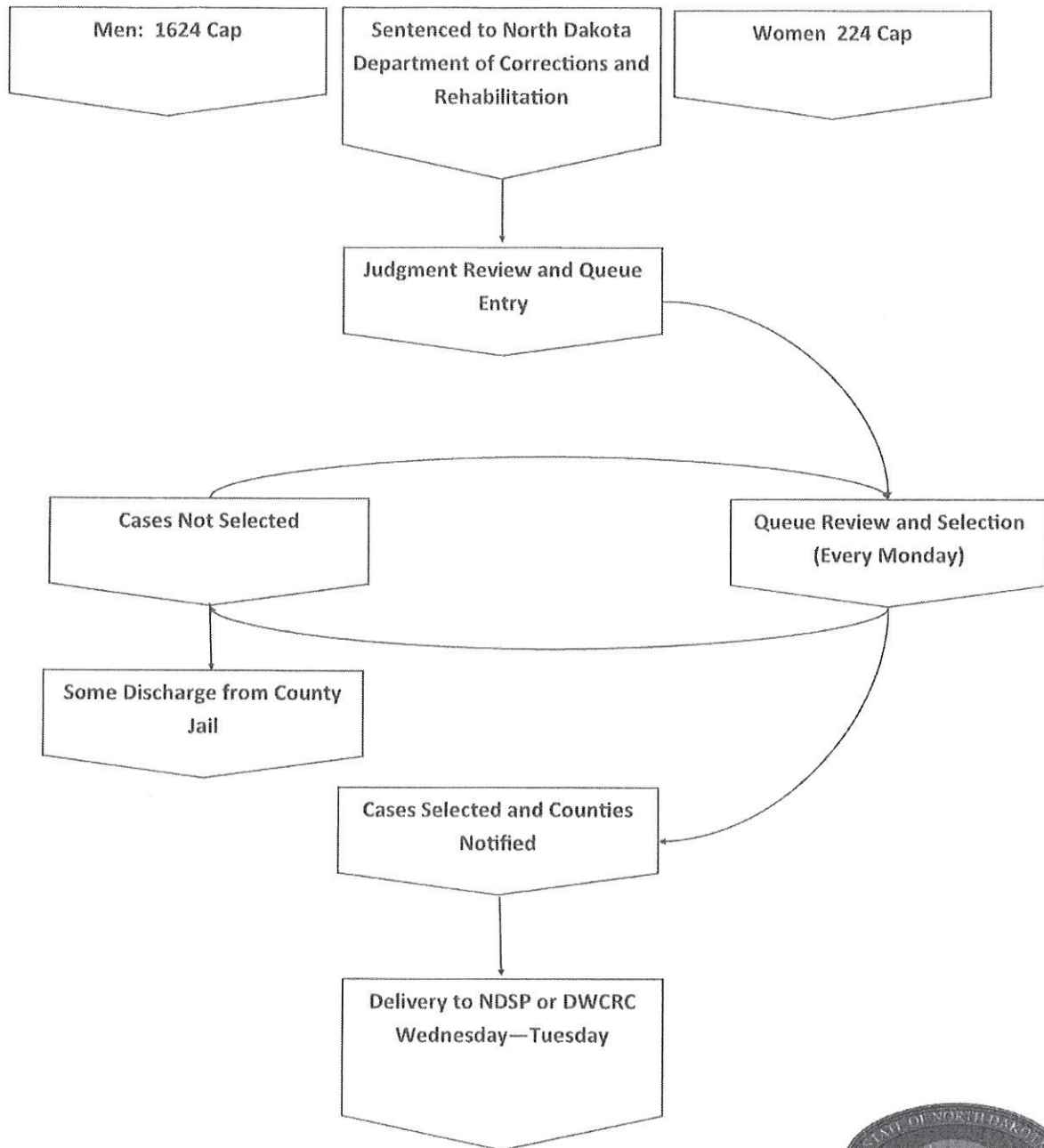
Based on actual population thru August 31, 2020

Date	Estimated Average Population	Deferred Admission Status	Estimated DOCR Population	---- Traditional Beds ----			---- Nontraditional Beds ----		
				Interstate Compact	DWCRC	DOCR Facilities	Transition	Holds	Total
July-21	182	-	182	-	113	15	50	4	182
August-21	183	-	183	-	114	15	50	4	183
September-21	184	-	184	-	115	15	50	4	184
October-21	185	-	185	-	85	46	50	4	185
November-21	185	-	185	-	85	46	50	4	185
December-21	186	-	186	-	86	46	50	4	186
January-22	187	-	187	-	87	46	50	4	187
February-22	188	-	188	-	88	46	50	4	188
March-22	188	-	188	-	88	46	50	4	188
April-22	189	-	189	-	89	46	50	4	189
May-22	190	-	190	-	90	46	50	4	190
June-22	191	-	191	-	91	46	50	4	191
July-22	191	-	191	-	91	46	50	4	191
August-22	192	-	192	-	92	46	50	4	192
September-22	193	-	193	-	93	46	50	4	193
October-22	194	-	194	-	94	46	50	4	194
November-22	194	-	194	-	94	46	50	4	194
December-22	195	-	195	-	95	46	50	4	195
January-23	196	-	196	-	96	46	50	4	196
February-23	196	-	196	-	96	46	50	4	196
March-23	197	-	197	-	97	46	50	4	197
April-23	198	-	198	-	98	46	50	4	198
May-23	198	-	198	-	98	46	50	4	198
June-23	199	-	199	-	99	46	50	4	199

North Dakota Department of Corrections and Rehabilitation
2021 - 2023 Estimated Population - Men
Based on actual population thru August 31, 2020

Date	Estimated Average Population	Deferred Admission Status	Estimated DOCR Population	---- Traditional Prison Beds ----		---- Nontraditional Prison Beds ----		Holds	Total
				DOCR Facilities	Interstate Compact	James River Minimum Unit	Transition I4		
July-21	1,451	-	1,451	1,227	21	60	138	6	1,451
August-21	1,454	-	1,454	1,230	21	60	138	6	1,454
September-21	1,457	-	1,457	1,233	21	60	137	6	1,457
October-21	1,460	-	1,460	1,236	21	60	137	6	1,460
November-21	1,463	-	1,463	1,239	21	60	137	6	1,463
December-21	1,466	-	1,466	1,242	21	60	137	6	1,466
January-22	1,469	-	1,469	1,245	21	60	137	6	1,469
February-22	1,472	-	1,472	1,248	21	60	137	6	1,472
March-22	1,475	-	1,475	1,251	21	60	137	6	1,475
April-22	1,478	-	1,478	1,254	21	60	137	6	1,478
May-22	1,482	-	1,482	1,257	21	60	137	6	1,482
June-22	1,485	-	1,485	1,261	21	60	137	6	1,485
July-22	1,488	-	1,488	1,264	21	60	137	6	1,488
August-22	1,491	-	1,491	1,267	21	60	137	6	1,491
September-22	1,494	-	1,494	1,269	21	60	137	6	1,494
October-22	1,497	-	1,497	1,272	21	60	137	6	1,497
November-22	1,500	-	1,500	1,275	21	60	137	6	1,500
December-22	1,503	-	1,503	1,278	21	60	137	6	1,503
January-23	1,506	-	1,506	1,281	21	60	137	6	1,506
February-23	1,508	-	1,508	1,284	21	60	137	6	1,508
March-23	1,511	-	1,511	1,287	21	60	137	6	1,511
April-23	1,514	-	1,514	1,290	21	60	137	6	1,514
May-23	1,517	-	1,517	1,293	21	60	137	6	1,517
June-23	1,520	-	1,520	1,296	21	60	137	6	1,520

Inmate Admission Prioritization Plan



Level	Priority	Offense Level	Violent or Nonviolent
Level 1	Priority 1	Felony AA	Violent
Level 2	Priority 1	Felony A	Violent
Level 3	Priority 1	Felony B	Violent
Level 4	Priority 2	Felony AA	Nonviolent
Level 5	Priority 2	Felony A	Nonviolent
Level 6	Priority 2	Felony C	Violent
Level 7	Priority 3	Felony B	Nonviolent
Level 8	Priority 3	Misdemeanor A	Violent
Level 9	Priority 3	Felony C	Nonviolent
Level 10	Priority 3	Misdemeanor A	Nonviolent

WARD COUNTY DETENTION CENTER INMATE POPULATION PLAN

The 65th Legislative Assembly of North Dakota under Senate Bill No. 2015 and the North Dakota enacted the following Management of Inmate Population for all correctional facilities.

The governing body of a correctional facility, in cooperation with law enforcement, state's attorney, and the judiciary in the judicial district, in which the correctional facility is located, shall develop an inmate population plan to prioritize admissions and inmate retention based on the correctional facility's authorized budget.

The inmate population plan must take into consideration:

- a. The governing body's authorized budget;***
- b. The inmate offense;***
- c. Whether the inmate has been charged, adjudicated, or sentenced;***
- d. Whether the inmate presents a risk of flight or is a danger to others or self;***
- e. The inmate's medical needs and mental and behavioral health needs; and***
- f. Whether the inmate is subject to mandatory incarceration.***

The Ward County Detention Center (WCDC) along with the Ward County Sheriff's Department, The Ward County State's Attorney's Office and the North Central Judicial District has developed a plan to manage the inmate population. A uniform bond schedule was introduced that has taken the WCDC's budget and all aspects of the inmate's incarceration status as listed above. The uniform bond schedule is as follows:

• Infractions	Promise to appear
• Class B Misdemeanors	Promise to appear
• DUI, except felony	\$750 (cash post 10%)
• Class A Misdemeanors	\$1,500.00 (cash, post 10%)
• Class C Felonies	\$5,000.00 (cash or corporate surety)
• Class B Felonies	\$10,000.00 (cash or corporate surety)
• Class A Felonies	Hold <u>without bond</u> pending an appearance before a judge
• Class AA Felonies	Hold <u>without bond</u> pending an appearance before a judge

Offenses held without bond

- Assault (of any nature)
- Bail Jumping or Escape
- Corruption of a Minor
- Harassment
- Terrorizing
- Felonious Restraint
- Menacing

- Stalking
- Surreptitious Intrusion
- Violation of a Domestic Violence Protection order
- Violation of a Disorderly Conduct Restraining Order
- All Sex Offenses
- All Offenses Against Children, including Child Pornography, and Luring By Computer
- Felony Driving Under the Influence of Alcohol or Drugs
- Felon in Possession of a Dangerous Weapon

Programs Officer

The WDC has added a new position to help monitor all aspects of the Inmate Population plan. Some of the positions duties will include:

1. Monitoring inmates on home monitoring
2. Monitoring inmates on Work release
3. Developing a plan to re-integrate inmates back into society. A plan will be developed for all inmates that are serving more than 30 days. This plan will include employment and housing.
4. Coordinating the volunteer programs at the WDC
5. Run the believe program for female inmates
6. Coordinate Parenting classes
7. Work with Free through Recovery for incarcerated inmates

The inmate population plan must include:

- a. Placement in community setting;***
- b. Work release;***
- c. Home detention;***
- d. Electric home detention;***
- e. Global positioning system monitoring;***
- f. Medical, psychiatric, and drug and alcohol treatment;***
- g. Employment;***
- e. Pretrial risk assessment; and***
- f. Pretrial supervision.***

Placement in Community Setting

The North Central Judicial District has the option of ordering inmates to several community settings around the state. Center Inc. and Teen challenge are being utilized as an alternative to incarceration.

The WDC has also been working with the Sanctuary house in Minot to provide female inmates the opportunity to enter a sober living environment upon release.

The WDC is collaborating with F5 to provide male inmates with a housing option after release.

Work release-Employment

The North Central Judicial District has the option of ordering inmates that are gainfully employed to the Work release program at the WDC. Inmates who qualify are able to work 40 hours per week. This helps the inmate stay employed during their incarceration period, lessening their financial burden after release.

WDC has also implemented work release for Trustee inmates. Inmates who have worked over thirty days without incident are eligible to apply for work release during their last two weeks. The WDC will allow the inmate work release without a fee in order to try to get an inmate a paycheck before they are released. The WDC has also been working with the Command Labor Center in Minot for those trustee inmates that are not employed.

Home Detention-Electronic Home Detention-Global positioning system monitoring

The WDC currently has electronic home detention for sentenced offenders. Satellite Tracking of People (STOP) uses the latest technology in global positioning to keep track of all the clients on this program. Emails are received daily that show exact positions of the clients. The jail staff are notified if the client deviates at all from the zones that they have permission to be in. Using this program also allows the client to remain gainfully employed.

Medical

The WDC has three Nurse Practitioners under contract that conduct sick call Monday-Friday for up to four hours. The WDC also has a weekly appointment set up for dental care. The WDC also employs one full time Corporal to handle all aspects of medical.

Psychiatric

The WDC has a Psychiatric Nurse Practitioner contracted that visits inmates twice weekly for up to six hours. The WDC also uses North Central Human Service Center (NCHSC) for evaluations and crisis situations.

Drug and alcohol Treatment

NCHSC provides day treatment for sentenced inmates ordered by the North Central Judicial District. The last five weeks of an inmate's sentence they are transported to NCHSC to attend treatment Monday-Friday. The WDC has an Alcoholics Anonymous meeting on Monday night and a Narcotics Anonymous meeting on Saturday afternoon. Local volunteers from the community provide both programs.

The WDC has also been working with the Community Medical Services who come into the facility and provide medically assisted treatment for the use of opiates.

The WCDC has been working with Goodman addiction to provide Chemical evaluations within the Detention Center. This speeds up the process of getting into treatment and eliminates the risk of transporting inmates outside the facility

Pre-trial risk assessment

The WCDC is currently a part of the ND Pilot program for Pre-trial release. The ND DOCR employees are using risk assessment tools.

Pre-trial supervision

The WCDC is currently a part of the ND Pilot program for Pre-trial release. The program started in August of 2020.

Greeting Representative Magrum

RE: Support of HB1112

I hope you and your family are well.

I am writing you in regards to seeking your support of HB1112 which will be heard tomorrow morning.

The purpose and intent of HB1112 is to require DOCR enter into negotiations with local jails for inmate reimbursement costs when a defendant through due process is sentenced to serve their incarceration time in the State Prison System with DOCR for a crime they committed that they have either Plead Guilty to, was found guilty by a Judge in a Bench Trial or by their peers in a Jury Trial.

The purpose and the reasoning for HB1112 is because of the associated cost of housing State Inmates in Local Jails which is then paid by the citizens of the jurisdiction in which they were arrested, after they have been sentenced and remanded over to DOCR by a District Judge to serve their time. Any time served by an inmate prior to being found guilty and sentenced is paid by the local arresting jurisdiction.

In 2020 the cost to the tax payers of Emmons County citizens was **\$8,175.00 for two inmates** that committed crimes in Emmons County and who eventually plead guilty in District Court and were sentenced to serve time at DOCR, but had to remain in the local jail until DOCR would accept them into their system. The two inmates who's crimes were several counts of burglary and the possession and selling of narcotics served a total of 109 Days combined @ \$75.00 per day in the Burleigh/Morton Jail after they plead guilty and sentenced to DOCR. The cost for serving these 109 days after they were sentenced was the responsibility of Emmons to pay to Burleigh/Morton while the Emmons County Inmate awaits to be accepted into the DOCR system. Our office has since paid Burleigh/Morton and has requested reimbursement from DOCR for those costs incurred which is pending at this time.

Recently DOCR, state-wide has agreed to pay some of these costs when it was given Federal CARES ACT funds through the state to be used to pay these reimbursement costs should a county seek reimbursement, which most if not all have done or in is the process of seeking.

Prior to these Federal funds becoming available, the frustration by Sheriff's state-wide was that DOCR was not offering or willing to pay those costs paid by local jails and appeared reluctant to do so, even though they are considered and legally DOCR Inmates.

HB1112 will require DOCR to negotiate with local jails for reimbursement costs in the future.

The Emmons County Sheriff's Office only has a temporary hold cell which allows us to temporarily hold an arrested person for a maximum of 8 hours. Anyone required to spend more time or unable to post bond must be transferred a larger facility certified or classified to house inmates for an extended period of time. Our holding cell is classified as a Class 4 facility by DOCR who classifies, inspects and regulates all local jails state-wide. If someone arrested in Emmons County is unable to post Bond or must be held longer then our facility can allow, the person must be transferred to a larger facility that is licensed to hold them for a longer period of time if necessary.

Emmons County primarily utilizes the Burleigh/Morton facility which is classified as a Class 1 facility and located within our South Central District Court region that we also are a part of. Our current Inmate Housing Contract with Burleigh/Morton requires Emmons County to pay Burleigh County \$75.00 per day

to house an inmate that we bring them. It remains the responsibility for Emmons County to transport the inmate to any necessary court proceedings and any medical appointments. It is also the financial responsibility of Emmons County to pay for any medical costs while in custody if the inmate has no insurance coverage. We were fortunate that the two inmates listed above had no serious medical costs while awaiting to get into DOCR, but that is a great concern going forward should HB1112 not go forward to address these potential financial costs that could become several thousands of dollars very quickly.

In ending I would appreciate your support in HB1112 to ensure that DOCR is required to negotiate with Local jails for these reimbursement costs after they have been sentenced to DOCR custody but are forced to remain in a local jail at the expense of the various local taxpayers.

Should you have any questions or concerns that I can be of assistance please don't hesitate to call on me.

Respectfully;

Gary R. Sanders, Sheriff
Emmons County Sheriff's Office
P.O. Box # 159
100 4th St NW.
Linton, ND 58552-0159
Phone: (701) 254-4411
Email: gsanders@nd.gov

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1112
1/19/2021

Relating to the prioritization of admission of inmates.

Chairman Klemin called the meeting to order at 3:07PM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	A
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Committee work

Do Pass Motion Made by Rep. Paur; Seconded by Rep. Vetter

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

13-0-1 Carrier: Rep. Magrum

House Judiciary Committee
HB 1112
January 19, 2021
Page 2

Chairman Klemin closed at 3:13.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1112: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1112 was placed on the Eleventh order on the calendar.

2021 SENATE JUDICIARY

HB 1112

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1112
3/16/2021

Relating to the prioritization of admission of inmates
--

Hearing called to order, [8:30] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Female Inmate housing prioritization
- Responsibility of indigent detention medical costs

Representative Heinert [8:30] introduced HB 1112

Kelly Leben [8:32] Burleigh County Sheriff testified in favor

Donnell Preskey, [8:51], Exec Dir ND Sheriffs & Deputies Assoc NDACo testified in favor #9394

David Krabbenhoft, [9:05] Interim Director ND Dept of Corrections and Rehabilitation testified Neutral #9357

Hearing adjourned [9:25]

Jamal Omar, Committee Clerk



Testimony to the
Senate Judiciary Committee
March 16, 2021
By Donnell Preskey, NDACo
ND Sheriffs & Deputies Association

RE: HB 1112 – Prioritization Plan - Reimbursement

Chair Larson and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. NDACo serves many of the county member associations as well ranging from Commissioners to Sheriffs. In my role at NDACo, I serve as the executive director for the North Dakota Sheriffs and Deputies Association. The Sheriffs Association, NDACo and ND County Commissioners Association all passed a resolution supporting this legislation.

HB 1112, simply ensures that when and if the prioritization plan is in place DOCR must enter into an agreement with our county and regional facilities if they are unable to take an inmate that has been sentenced to DOCR. The agreement includes DOCR paying for the housing and medical costs incurred. This is what is fair to the taxpayers of North Dakota.

I will provide you a statewide perspective on how the prison prioritization plan has impacted our counties and why we are seeking reimbursement for when the prioritization plan is utilized in the future.

The 2017 Legislature provided NDDOCR the authority to implement a prioritization plan in order to manage the prison population. In May 2019, DOCR notified Sheriffs and Jail Administrators that the prison prioritization plan would go into effect for female inmates.

It's important for you to know, these female inmates are individuals who a District Court Judge has sentenced on a state crime to the North Dakota Department of Corrections. With the prioritization plan in place – DOCR denied admission to these inmates, until DOCR's "operational capacity" allowed for their transfer. This resulted in state sentenced inmates, serving at least part of their sentence in a county facility, at the county expense – which falls on local property taxes.

PRIORITIZATION PLAN IMPACT TO COUNTIES

- **79 FEMALES**
 - NUMBER OF FEMALES SENTENCED TO STATE AND DENIED ADMISSION TO DOCR FACILITIES UNDER PRIORITIZATION PLAN FROM MAY-SEPTEMBER
- **870 DAYS**
 - NUMBER OF DAYS STATE SENTENCED FEMALE INMATES SPENT IN COUNTY FACILITIES DENIED ADMISSION TO DOCR FACILITIES
- **\$65,250**
 - COUNTY COST FOR HOUSING FOR STATE SENTENCED FEMALE INMATES DUE TO PRIORITIZATION PLAN

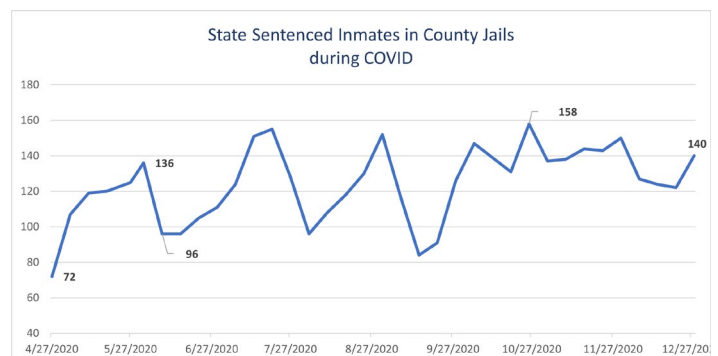
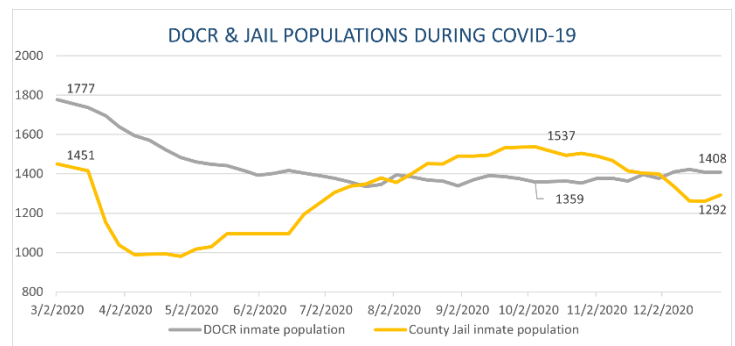
The prioritization plan was in effect from June 1, 2019 through September 30th, 2019 for female inmates. In those 4 months... DOCR denied admission for **79 inmates in 18 counties**. Those inmates spent **870 days in county facilities** instead of in the DOCR's custody. At \$75/day – this equates to a **\$65,250 expense** that under current

law is the responsibility of county taxpayers. This cost is just for housing. While that state sentenced inmate is in the county facility, that county is responsible for the medical costs as well. Fortunately, we avoided a major medical event for these inmates. A major medical event could be devastating to a county's budget. Addressing this issue is a top priority for the Sheriff's Association and NDACo.

I also want to add that the state has based the prioritization plan on DOCR's "operational capacity" which is not solely based on available beds but also their budget. We ask you to recognize that local jails have operational capacities as well. During the prioritization plan in 2019, DOCR reduced their female population all while the population at the local facilities grew, reaching a population of 1592 inmates. The prison population prioritization plan essentially uses property taxes to subsidize the DOCR budget.

DOCR deferrals during COVID-19

For the committee's information, I'm also providing supplemental information as it relates to deferred inmates during the COVID-19 pandemic. DOCR notified counties they were closing admissions in March 2019 and in June started taking state inmates on a scheduled basis. As of March 14th, counties are still holding 103 state sentenced inmates. The cost to house these inmates over the course of the past ten months has exceeded \$2 million. CARES funds were approved to be used to reimburse the local facilities, which counties are grateful for.



Senate Judiciary Committee
Senator Diane Larson, Chairman

March 16, 2021

Department of Corrections and Rehabilitation

Dave Krabbenhoft, Interim Director

House Bill 1112

Madam Chairman Larson and members of the Judiciary Committee, I am Dave Krabbenhoft the Interim Director of the Department of Corrections and Rehabilitation (DOCR). I am here to testify neutral on House Bill (HB) 1112 and to offer suggestions to address DOCR concerns regarding payment, access to individuals in custody, and reporting.

- Prioritization of admission of inmates – NDCC 54-23.3-11
 - Awareness that state and local correctional resources are finite and expensive
 - DOCR can refuse admissions when operating capacity is exceeded
 - Inmates remain in county facilities until DOCR facility space available at local correctional facility cost (county cost)
 - Prison admissions managed through population management plan (based on sentence and availability of space)
 - Since inception (8/1/2013) prioritization has been in effect one time – June 1, 2019 through September 30, 2019 applicable to only to women admissions
- HB1112 requires DOCR to pay local correctional facilities a minimum daily rate, including medical costs, for persons awaiting admission to prison due to prioritized admissions
 - Consider language to define the period DOCR is liable for costs from the day after court notification to the DOCR approved admission date

- Consider language that encourages the local correctional facility to provide DOCR with access (in-person and electronic) to individuals in custody to complete assessment, examination, treatment, and other appropriate services.
- Consider language that encourages the DOCR and local correctional facilities to develop annual reporting requirements regarding the status and use of state and local population management plans.
- Allow for the DOCR to request a deficiency appropriation from the sixty-eighth legislative assembly for the housing and medical costs incurred under this section.

HB1112 specifically addresses local correctional facility concerns regarding the financial obligation of housing DOCR sentenced individuals during prioritization. However, HB1112 is silent to correctional reform. Focus needs to be placed on resources needed in our communities that can deter or divert people from incarceration. The DOCR is committed to working with our county partners in a collaborative manner that will lead to safer communities and successful individual outcomes.

We have learned from COVID that it is possible to decrease the number of people in prisons and jails. We all need to recognize the lessons learned from this horrific pandemic and be responsive to opportunities to increase community resources and programs that will lessen the reliance on incarceration.

Attached Documents

- Prioritization Deferred Admissions – Women
- 21-23 Estimated Population – Women
- 21-23 Estimated Population – Men
- DOCR Inmate Admission

Department of Corrections and Rehabilitation

Prioritization Deferred Admissions - Women

	7/1/17 - 6/30/19		7/1/19 - 12/31/20	
County	Deferred Admission - ADP	Deferred Admission - Total Days	Deferred Admission - ADP	Deferred Admission - Total Days
Bottineau	-	-	0.02	9
Burleigh	0.10	70	0.28	156
Cass	0.04	26	0.16	89
Grand Forks	0.04	27	0.12	64
Grant	0.02	12	-	-
McHenry	0.01	9	-	-
McKenzie	-	-	0.02	9
McLean	-	-	0.01	4
Morton	0.04	29	0.03	18
Mountrail	0.01	7	0.03	18
Pierce	0.00	3	0.02	10
Ramsey	-	-	0.05	26
Rolette	-	-	0.03	18
Stark	-	-	0.02	9
Stutsman	0.02	15	0.01	7
Walsh	-	-	0.01	8
Ward	0.04	27	0.16	89
Williams	0.09	66	0.08	45
Total	0.40	291	1.05	579

North Dakota Department of Corrections and Rehabilitation

2021 - 2023 Estimated Population - Women

Based on actual population thru August 31, 2020

Date	Estimated Average Population	Deferred Admission Status	Estimated DOCR Population	---- Traditional Beds ----			---- Nontraditional Beds ----		
				Interstate Compact	DWCRC	DOCR Facilities	Transition	Holds	Total
July-21	182	-	182	-	113	15	50	4	182
August-21	183	-	183	-	114	15	50	4	183
September-21	184	-	184	-	115	15	50	4	184
October-21	185	-	185	-	85	46	50	4	185
November-21	185	-	185	-	85	46	50	4	185
December-21	186	-	186	-	86	46	50	4	186
January-22	187	-	187	-	87	46	50	4	187
February-22	188	-	188	-	88	46	50	4	188
March-22	188	-	188	-	88	46	50	4	188
April-22	189	-	189	-	89	46	50	4	189
May-22	190	-	190	-	90	46	50	4	190
June-22	191	-	191	-	91	46	50	4	191
July-22	191	-	191	-	91	46	50	4	191
August-22	192	-	192	-	92	46	50	4	192
September-22	193	-	193	-	93	46	50	4	193
October-22	194	-	194	-	94	46	50	4	194
November-22	194	-	194	-	94	46	50	4	194
December-22	195	-	195	-	95	46	50	4	195
January-23	196	-	196	-	96	46	50	4	196
February-23	196	-	196	-	96	46	50	4	196
March-23	197	-	197	-	97	46	50	4	197
April-23	198	-	198	-	98	46	50	4	198
May-23	198	-	198	-	98	46	50	4	198
June-23	199	-	199	-	99	46	50	4	199

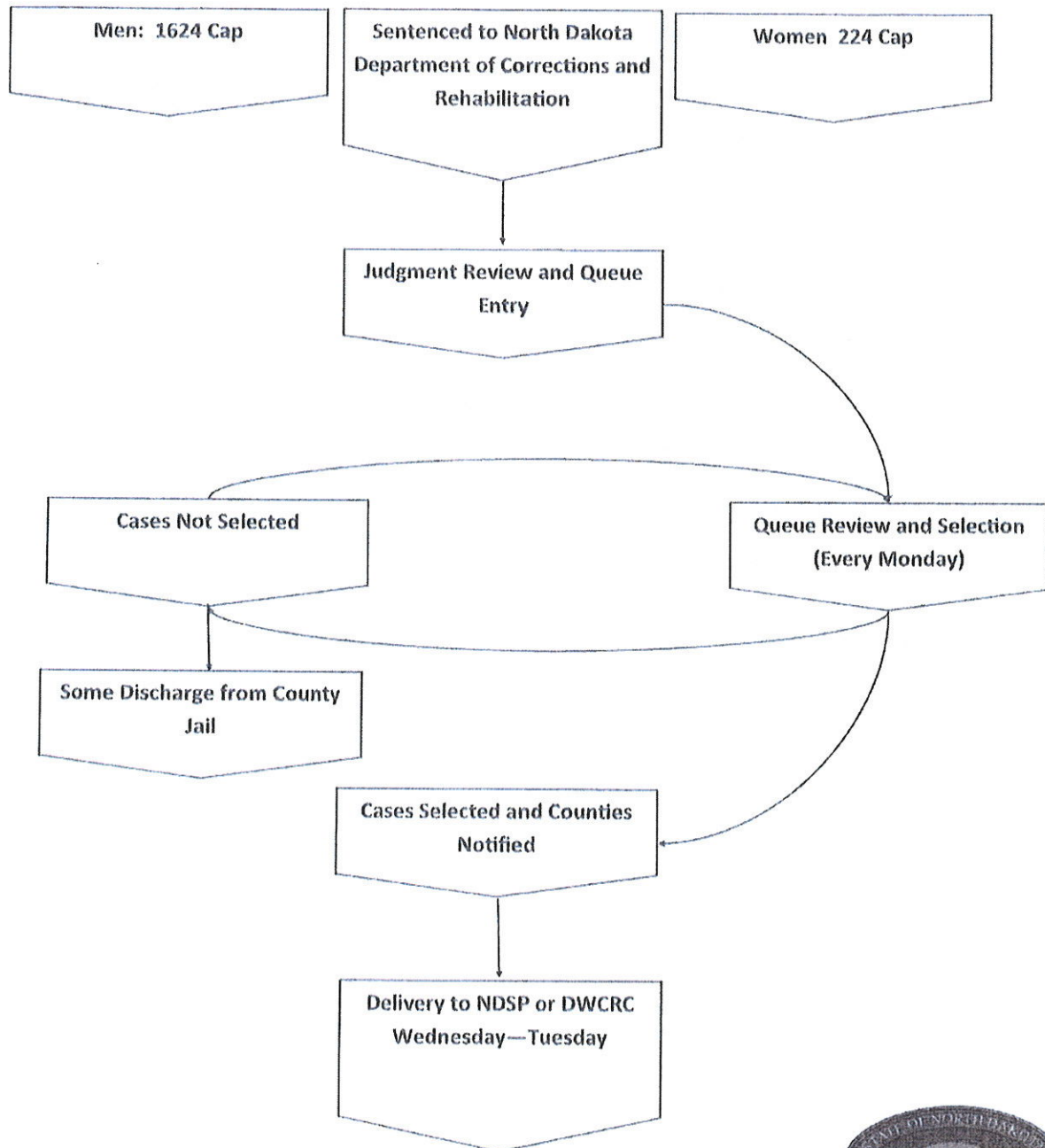
North Dakota Department of Corrections and Rehabilitation

2021 - 2023 Estimated Population - Men

Based on actual population thru August 31, 2020

Date	Estimated Average Population	Deferred Admission Status	Estimated DOCR Population	---- Traditional Prison Beds ----		---- Nontraditional Prison Beds ----		Holds	Total
				DOCR Facilities	Interstate Compact	James River Minimum Unit	Transition \4		
July-21	1,451	-	1,451	1,227	21	60	138	6	1,451
August-21	1,454	-	1,454	1,230	21	60	138	6	1,454
September-21	1,457	-	1,457	1,233	21	60	137	6	1,457
October-21	1,460	-	1,460	1,236	21	60	137	6	1,460
November-21	1,463	-	1,463	1,239	21	60	137	6	1,463
December-21	1,466	-	1,466	1,242	21	60	137	6	1,466
January-22	1,469	-	1,469	1,245	21	60	137	6	1,469
February-22	1,472	-	1,472	1,248	21	60	137	6	1,472
March-22	1,475	-	1,475	1,251	21	60	137	6	1,475
April-22	1,478	-	1,478	1,254	21	60	137	6	1,478
May-22	1,482	-	1,482	1,257	21	60	137	6	1,482
June-22	1,485	-	1,485	1,261	21	60	137	6	1,485
July-22	1,488	-	1,488	1,264	21	60	137	6	1,488
August-22	1,491	-	1,491	1,267	21	60	137	6	1,491
September-22	1,494	-	1,494	1,269	21	60	137	6	1,494
October-22	1,497	-	1,497	1,272	21	60	137	6	1,497
November-22	1,500	-	1,500	1,275	21	60	137	6	1,500
December-22	1,503	-	1,503	1,278	21	60	137	6	1,503
January-23	1,506	-	1,506	1,281	21	60	137	6	1,506
February-23	1,508	-	1,508	1,284	21	60	137	6	1,508
March-23	1,511	-	1,511	1,287	21	60	137	6	1,511
April-23	1,514	-	1,514	1,290	21	60	137	6	1,514
May-23	1,517	-	1,517	1,293	21	60	137	6	1,517
June-23	1,520	-	1,520	1,296	21	60	137	6	1,520

Inmate Admission Prioritization Plan



Level	Priority	Offense Level	Violent or Nonviolent
Level 1	Priority 1	Felony AA	Violent
Level 2	Priority 1	Felony A	Violent
Level 3	Priority 1	Felony B	Violent
Level 4	Priority 2	Felony AA	Nonviolent
Level 5	Priority 2	Felony A	Nonviolent
Level 6	Priority 2	Felony C	Violent
Level 7	Priority 3	Felony B	Nonviolent
Level 8	Priority 3	Misdemeanor A	Violent
Level 9	Priority 3	Felony C	Nonviolent
Level 10	Priority 3	Misdemeanor A	Nonviolent

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1112
3/17/2021

Relating to the prioritization of admission of inmates
--

Hearing called to order, [2:31] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Female Inmate prioritization
- Responsibility of Indigent Costs

Committee work

David Krabbenhoft, [2:34] Interim Director, ND Dept of Corrections & Rehabilitation, additional testimony

Senator Dwyer [2:40] moved amendment

21.0370.02001

Senator Heitkamp [2:40] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G. Heitkamp	Y
Senator Robert O. Fors	Y
Senator JoNell A. Bakke	Y
Senator Diane Larson	Y

The motion passes 7-0-0

Senator Dwyer [2:44] moved to DO PASS AS AMENDED

Senator Myrdal [2:44] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G. Heitkamp	Y
Senator Robert O. Fors	Y
Senator JoNell A. Bakke	Y
Senator Diane Larson	Y

The motion passes 7-0-0

Senator Larson [2:44] will carry

Hearing adjourned [2:44]

Jamal Omar, Committee Clerk

March 17, 2021

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317
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112

Page 1, line 23, after "department" insert "and ending on the admission date provided by the
department"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1112: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Sixth order on the calendar.

Page 1, line 23, after "department" insert "and ending on the admission date provided by the department"

Renumber accordingly