

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1350

2001 HOUSE JUDICIARY

HB 1350

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1350

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-29-01

Tape Number	Side A	Side B	Meter #
TAPE III	x		01 to 3661
Committee Clerk Signature <i>Joan Ellis</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1350. Relating to the transporting of violent or dangerous prisoners.

Rep Mahoney: District 33 form Center. Introduced the bill, this bill came as a result of the Kyle bill case. He explained the circumstances why they decided to move Bell and how he was moved. Rep Mahoney, Rep Eckre and Rep Disrud were part of the members who traveled to Nashville to view the situation. They were also to check to see if the state should be using a private company to transport prisoners. HB 1350 is a provision to provide transportation of violent or dangerous persons. One question is should the US Marshall service be used for this service. We will have amendments to add to the bill, to include the penitentiary personnel and also what offenses or to specify the crime level. Senator Dorgan had federal legislation passed as what to do with federal prisoners. When we settled with the agency for a dollar amount there was a provision that we would resume with their services, and we don't want that.

Rep Delmore: Would this bill get us out of the agreement?

Page 2

House Judiciary Committee

Bill/Resolution Number H.R. 1350

Hearing Date 01-29-01

Rep Mahoney: I don't believe this agreement does bind us.

Rep Eckre: Do any of the local police departments use private companies?

Rep Mahoney: It is my understanding that they use them in state.

Rep Eckre: Are there any companies in North Dakota.

Rep Mahoney: Not in state.

Rep Klemin: Does this bill apply to outside the state coming thru North Dakota?

Rep Mahoney: That would be correct.

Rep Klemin: What about federal prisoners?

Rep Mahoney: Federal prisoners have to be escorted by the US Marshall's service.

Chairman DeKrey: Is there a fiscal note on this, where would be the cost to them not us.

Rep Mahoney: They are not our prisoners.

Chairman DeKrey: How is another state going to know that we have this law?

Rep Mahoney: I would hope that the department of corrections should become aware of our laws and laws in other state, just as we watch.

Rep Klemin: What is the effect of inter-state commerce?

Rep Mahoney: It is a possibility.

Rep Klemin: My concern is, a private transport company would have to stop at the western border and pick up a US Marshall or law enforcement officer, some sort of commerce clause that we would be violation. Could we make this into two sections?

Rep Mahoney: I would explore this.

Rep Klemin: If there are two sections, if they threw one out the other would remain.

Senator C Nelson: District 21, spoke in favor of this bill. Urge a DO PASS.

Rep Disrud: Did you offer an amendment.

Senator Nelson: no, just offering a view point.

Rep Mahoney: We had talked about holding the hearing open, as we have people who wish to testify.

Chairman DeKrey: We are holding the hearing open.

Tim Schuetzle: representing the North Dakota Department of Corrections and Rehabilitation.
(see attached testimony) One also from Warren R Emmer.

Rep Mahoney: Ms Little testified about the costs of transporting, do you remember what the costs were?

Tim Schuetzle: It costs the US Marshall service around \$800 and and private company around \$570.00.

Rep Klemin: How do we know when inmate are being transported thru North Dakota.

Tim Schuetzle: We don't know.

Rep Klemin: We have no requirement of notice?

Tim Schuetzle: No.

Chairman DeKrey: One of the reasons using transport is they like to keep it confidential, because of the security risk. If we pass this bill, could we be setting ourselves for some kind of break on one of our highways?

Tim Schuetzle: Yes, I would agree with that.

Vice Chr Kretschmar: Would it work better if we used A and AA felonies.

Tim Schuetzle: That would help.

Chairman DeKrey: Thank you for appearing.

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1350
Hearing Date 01-29-01

John Olson: appearing on behalf of the States Attorney Association and the Peace Officers Association. We were against this bill, but it is getting better. Also attached is testimony Pat Heinert Deputy Sheriff Burleigh County Sheriff Department. I hope at the end the bill just keeps getting better. One interesting feature is convicted and not just charged.

Rep Mahoney: I agree we need to become more specific. Give specific definitions.

John Olson: That would define the bill more.

Rep Klemm: Do you know was this something that the Interim Criminal Justice Committee considered?

Rep Mahoney: We basically concluded that the department of corrections was not at fault.

Chairman DeKrey: Is there any one wishing to testify for or against HB 1350. If not we will close the hearing on HB 1350.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1350b

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		1215 to 2627
Committee Clerk Signature <i>Jean Deere</i>			

Minutes: Chairman DeKrey called the committee to order. we will take up HB 1350.

DISCUSSION

Several of the committee members brought concerns about moving violent offenders, jailers being able to move prisoners, how it would effect other states, stopping at boarders

COMMITTEE ACTION

Rep Mahoney moved amendments 10578.0101, seconded by Rep Maragos.

DISCUSSION

Chairman DeKrey asked for a voice vote on the amendments, the amendments carry

Rep Klemin further amended the bill by deleting lines 7 and 8, seconded by Rep Mahoney. Voice vote on the amendments. Amendments carry. What are the wishes of the committee. Rep

Maragos moved a DO PASS as amend, seconded by Rep Delmore. The clerk will call the roll on a DO PASS as amend on HB 1350. The motion passes with 14 YES, 0 NO 1 ABSENT. Carrier

Rep Onstad.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1350c

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-20-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		294 to 494
TAPE I	x		5540 to 6200
Committee Clerk Signature <i>Jan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on HB 1350.

Rep Mahoney explained the reasons to correct the amendments.

DISCUSSION

After the discussion on the amendments, it was decided that Rep Mahoney would get the amendments together and the committee would take up the bill in the afternoon session of committee work.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1350d

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-20-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		5540 to 6200
Committee Clerk Signature <i>Grian Diers</i>			

Minutes: Chairman DeKrey called the committee to order on HB 1350. We have amendments on the bill. What are the wishes of the committee. Rep Wrangham moved Rep Mahoney's amendments, seconded by Rep Onstad. Is there any discussion, if not we will have a voice vote on the amendments. Amendments carry.

COMMITTEE ACTION

Chairman DeKrey: we have the amended bill before us, what are the wishes of the committee?

Rep Onstad moved a DO PASS as amend, seconded by Rep Delmore. The motion passes by a vote of 13 YES, 0 NO and 2 ABSENT. Carrier Rep Onstad.

FISCAL NOTE
Requested by Legislative Council
02/16/2001

Bill/Resolution No.:

Amendment to: HB 1350

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Elaine Little	Agency:	Dept. of Corrections & Rehabilitation
Phone Number:	328-6390	Date Prepared:	02/16/2001

FISCAL NOTE

Requested by Legislative Council
01/26/2001

Bill/Resolution No.: HB 1350

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0		\$0		\$0
Appropriations	\$0	\$0		\$0		\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill provides that only a law enforcement officer employed by a governmental agency can transport violent and dangerous offenders between correctional facilities within or outside of the State. As defined in this bill Department of Corrections and Rehabilitation (DOC) correctional officers and parole officers could no longer transport inmates. The DOC could no longer transport its own inmates that are considered violent or dangerous between the state's three correctional facilities. The Division of Juvenile Services also transports about fifty percent of the juveniles in its custody to various placements all across the state. Also, parole officers could no longer transport inmates to facilities for the Department.

In Year 1999 Department of Correction's correctional officers transported more than 16,000 inmates between the three North Dakota prison facilities. Many of these offenders have some type of violent offense on their records. The cost for the DOC to contract with law enforcement agencies to transport all of its violent or dangerous offenders would be high. Considering that the Department makes at least one transport of offenders to the JRCC in Jamestown from the Penitentiary each week, the cost to contract with law enforcement to make just these transports to the JRCC would be approximately \$30,000 for one biennium (assumes payment for the salary of two officers for a six-hour block of time and assumes that the DOC's vehicles would be used for the transports). There are also several trips made each day between the MRCC and the Penitentiary; these transports also include offenders who have violence in their history. It would be extremely expensive for the DOC to contract with local law enforcement agencies to make these inmate transports for the DOC. The Department would also need to contract with local law enforcement for the transport of inmates from the Penitentiary and the JRCC to the private prison in Appleton, MN where the DOC houses inmates. **The Department estimates that the total cost to the**

DOC'R to implement HB1350 would be several hundred thousands of dollars each biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Please see narrative above for detail. The Department estimates that the cost for law enforcement to transport all of the DOC'R's transports of violent and dangerous offenders between correctional facilities inside and outside of the State would be several hundred thousands of dollars each biennium. Because of the short time available to the Department prior to the hearing of this bill, the Department was unable to calculate the cost for all of the many transports of inmates it makes each day from all three of its prison facilities.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Please see narrative above for detail. The Department estimates that several hundred thousands of dollars would need to be appropriated to the DOC'R in order to cover the cost for law enforcement to make all of the DOC'R's transports of dangerous and violent offenders between correctional facilities inside and outside of the State. Because of the short time before the hearing of the bill the Department was not able to compile the exact cost for all of the many transports of inmates it makes on a daily basis from its three prison facilities.

Name:	Elaine Little	Agency:	Dept. of Corrections
Phone Number:	328-6390	Date Prepared:	01/28/2001

10578.0101
Title.0200

Prepared by the Legislative Council staff for
Representative Mahoney
February 13, 2001

VR
2/14/01

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1350

HOUSE AMENDMENTS TO HB 1350 HOUSE JUDICIARY 02-15-01

Page 1, line 2, replace "violent or dangerous" with "certain"

Page 1, line 6, remove "**violent or dangerous**" and replace "violent or dangerous offender" with "prisoner who has pled guilty to or has been convicted of a class A or class AA felony"

Page 1, line 8, after "except" insert "by employees of the department of corrections and rehabilitation or"

Renumber accordingly

Date: 02-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1350

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Rep Maragos Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande					
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Onstad

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

REPORT OF STANDING COMMITTEE

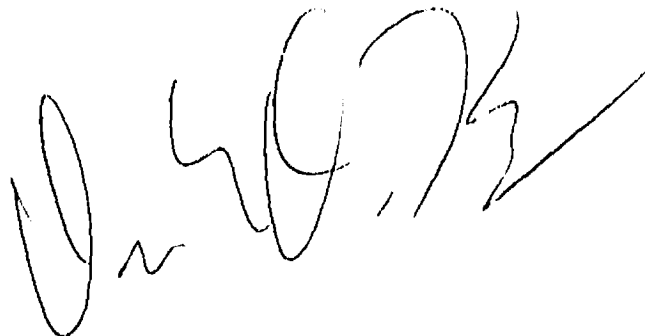
HB 1350: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1350 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "violent or dangerous" with "certain"

Page 1, line 6, remove "**violent or dangerous**" and replace "violent or dangerous offender" with "prisoner who has pled guilty to or has been convicted of a class A or class AA felony"

Page 1, line 8, after "except" insert "by employees of the department of corrections and rehabilitation or"

Renumber accordingly

A handwritten signature in black ink, appearing to be 'D. DeKrey', is written across the middle of the page.

10578.0201
Title.0300

Adopted by the Judiciary Committee
February 20, 2001

VR
2/20/01

HOUSE AMENDMENTS TO ENGROSSED HB 1350 HOUSE JUDICIARY 02-21-01
Page 1, line 7, after "facility" insert "within the state" and remove the comma

Page 1, line 8, remove "whether inside, outside, or through the state,"

Renumber accordingly

Date: 02-20
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1350

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep Onstad Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande					
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury					
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Onstad

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

REPORT OF STANDING COMMITTEE

HB 1350, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1350 was placed on the Sixth order on the calendar.

Page 1, line 7, after "facility" insert "within the state" and remove the comma

Page 1, line 8, remove "whether inside, outside, or through the state,"

Renumber accordingly

2001 SENATE JUDICIARY

HB 1350

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1350

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 19th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0-24.7
2			7-32.2
March 21 tape 1		x	23.6-32.7
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1350.

Senator C. Nelson, district 21, bill was put in because of a reaction to Kyle Bell's escape. Bill was changed in the house. Peace officers have amendments, I don't mind them. This is a good bill.

Senator Trenbeath, why is there no fiscal impact?

Tim Schuetel, Warden of the Penitentiary, has some proposed amendments. County correctional officers is the person who does the transporting and is a licensed peace officer. Add "county correctional officers" on line 9. (Amendments attached) Remove lines 10 through 13. Should define licensed officers to include more in this scope. The amendment removes the language.

Senator Traynor, the amendment presented you feel the law enforcement officer should be included?

Senator Trenbeath, with respect to the idea of the bill. How do you feel about contracting private enterprise?

Tim Schuetel, it comes down to a fiscal issue. It boils down to a fiscal impact. Department of corrections didn't send in a fiscal note, wasn't significant enough to do so.

Senator Trenbeath, this doesn't address the Kyle Bell situation.

Tim Schuetel, that would be correct. Private prison transports can transport less costly. It makes more sense fiscally to contract private transports.

Senator Watne, it says on line 9 "----" did you want an "or" there?

Tim Schuetel, yes, that was my mistake.

Pat Henlrent, from the ND peace officers association, here to support the bill as Tim presented it.

Senator Watne, the US Marshall service was more expensive?

Tim Schuetel, using the US Marshals was \$500 more expensive than using our own, which would be \$700.

Bill Butcher, representing Transcor America Inc., testifies against HB 1350. (testimony attached)

Senator Traynor, as I understand this process, this have been left to the Governor. The legislature has never been involved with this before.

Bill Butcher, correct.

Senator Nelson, if the transport had gone right it would have cost less, but, he escaped.

Bill Butcher, the escape costs were substantial. I don't think if you used the US Marshals there would be assurances of prisoners not escaping.

Senator Traynor, Transcor gave money to the state?

Bill Butcher, they paid 50,000 dollars.

Senator Dever, do they use private transport now instate?

Tim Schuetel, anything instate is done by the department of corrections.

Senator Traynor, the bill with your proposed amendments, does it do anything or is it present practice?

Tim Schuetel, we want it to be present practice.

Senator Traynor, it strikes me as not doing anything.

Senator Dever, this bill would include the transport of criminals through the state?

Tim Schuetel, we thought about that, and that is why we added the language to the amendment.

I don't control who comes to the Penn.

Senator Traynor, could you control that?

Bill Butcher, I would like to make a comment on "interstate" would create problems of interstate travel.

Rep. Mahoney, district 33, states attorney in regular life. Bill came from the Kyle Bell escape.

While he was being transferred by Transcor in Arizona he escaped. It was a horrible mess.

There was concern about the use of their methods. (Describes Kyle Bell's escape)

US Marshals could have been used for the same price and their record is flawless.

Senator Lyson, on line 6 "plead guilty" should be added. Hospitals and right before conviction are the highest times to run..

Rep. Mahoney, I wouldn't object to that.

Senator Lyson, I would suggest or "government agency."

Senator Nelson, this wouldn't have an effect on our transport?

Page 4
Senate Judiciary Committee
Bill/Resolution Number 1350
Hearing Date March 19, 2001

Rep. Mahoney, interstate commerce come up at the tail end by Rep. Klemen, a lawyer, brought it up.

Senator Traynor, is it your intention to say a ND prisoner?

Rep. Mahony, yes.

Senator Traynor, is this bill going to accomplish anything?

Senator Traynor, closed the hearing on HB 1350.

SENATOR WATNE MOTIONED TO ADOPT AMENDMENT 10578.0301, SECONDED BY SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH MOTIONED TO AMEND ON LINE 7 TO INSERT AFTER "FELONY" "IN THIS STATE" IN ORDER NOT TO INTERRUPT FLOW OF PRISONERS THROUGH THIS STATE. VOTE INDICATE 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR BERCIER MOTIONED TO DO PASS, SECONDED BY SENATOR NELSON. VOTE INDICATED 6 YEAS, 1 NAY AND 0 ABSENT AND NOT VOTING. SENATOR LYSON VOLUNTEERED TO CARRY THE BILL.

PROPOSED AMENDMENT TO REENGROSSED HOUSE BILL NO. 1350

Page 1, line 9, after "officers", insert "correctional officers" and remove "For purposes of this section,"

Page 1, Remove lines 10 through 13

Renumber accordingly

PROPOSED AMENDMENT TO REENGROSSED HOUSE BILL NO. 1350

Page 1, line 9, after "officers", insert: "or correctional officers"; and after "For purposes of this section," insert: "a governmental agency means an agency or department of this state or of any political subdivision of this state, or of another state or of a political subdivision of another state, or of the United States."

Page 1, Remove lines 10 through 13

Renumber accordingly.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1350

Page 1, line 6, after the first "has" insert "been charged with," after "to" insert a comma, and remove the second "has"

Page 1, line 7, remove "from one correctional facility within the"

Page 1, line 8, remove "state to another"

Page 1, line 9, after "officers" insert "or correctional officers" and after the comma insert ""governmental agency" means an agency or department of this state or of any political subdivision of this state, of another state or of a political subdivision of another state, or of the United States."

Page 1, remove lines 10 through 13

Renumber accordingly

Page 1 Line 7 after "Colony" ~~and~~ insert "in this state"

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1350

Page 1, line 6, after the first "has" insert "been charged with," after "to" insert a comma, and remove the second "has"

Page 1, line 7, after "felony" insert "in this state" *and,*

~~Page 1, line 7,~~ remove "from one correctional facility within the"

Page 1, line 8, remove "state to another"

Page 1, line 9, after "officers" insert "or correctional officers" and after the comma insert
""governmental agency" means an agency or department of this state or of any political
subdivision of this state, of another state or of a political subdivision of another state, or
of the United States."

Page 1, remove lines 10 through 13

Renumber accordingly

Date: ~~3/21/01~~ 3/21/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1356

Senate	Judiciary	Committee
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Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken	Mue Amendment	10578.0301
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Motion Made By Watne Seconded By Bercier

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment _____

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

Date: 3/21/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1416 / 350

Senate	Judiciary	Committee
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☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken	Amerd
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Motion Made By Trenbeath Seconded By Nelson

[illegible]

Total (Yes) _____ No _____

Absent _____

Floor Assignment

If the vote is on an amendment, briefly indicate intent: Amended on line 7 to insert: After "in this state." Not to interrupt flow of prisoners through felony this state. after "felony"

Roll Call Vote #: 3

BILL/RESOLUTION NO. ~~1448~~ 1350

Committee

Subcommittee on

or

Conference Committee

Legislative Council Amendment Number

Action Taken

Nelson

[illegible]

1

Absent

Lyson

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

REPORT OF STANDING COMMITTEE

HB 1350, as reengrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Reengrossed HB 1350 was placed on the Sixth order on the calendar.

Page 1, line 6, after the first "has" insert "been charged with," after "to" insert a comma, and remove the second "has"

Page 1, line 7, after "felony" insert "in this state" and remove "from one correctional facility within the"

Page 1, line 8, remove "state to another"

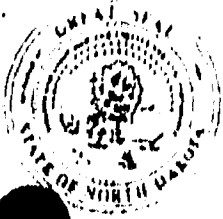
Page 1, line 9, after "officers" insert "or correctional officers" and after the comma insert ""governmental agency" means an agency or department of this state or of any political subdivision of this state, of another state or of a political subdivision of another state, or of the United States."

Page 1, remove lines 10 through 13

Renumber accordingly

2001 TESTIMONY

HB 1350



STATE OF NORTH DAKOTA

OFFICE OF THE GOVERNOR

600 E Boulevard Ave Dept 101

BISMARCK NORTH DAKOTA 58505-0001

(701) 328-2200

FAX (701) 328-2205 TDD (701) 328-2887

E-MAIL: governor@state.nd.us

EDWARD T. SCHAFER
GOVERNOR

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

1.1 For the consideration set forth hereinafter, this Settlement Agreement and Release ("the Agreement") is given by the STATE OF NORTH DAKOTA and the STATE OF NORTH DAKOTA DEPARTMENT OF CORRECTIONS, (hereinafter collectively referred to as "the STATE") settling with and releasing all claims against (1) TRANSCOR AMERICA, LLC ("TRANSCOR") and (2) any and all of their past or present officers, directors, agents, contractors, managers, employers, employees, heirs, assigns, affiliates, subsidiaries or successors (items 1-2 are hereinafter collectively referred to as "TransCor").

II. RECITALS

2.1 The State has asserted a claim (hereinafter "the Claim") for expenses and costs incurred by the State and arising out of the escape on October 13, 1999, and subsequent recapture of Jonathan Shaw a/k/a Kyle Bell (hereinafter referred to as "the Incident").

2.2 Although TransCor denies and continues to deny any liability for the Incident and any allegedly resulting damages arising from said Incident, the parties wish to reach a full and final settlement of the Claim against TransCor, and all matters and all causes of action against TransCor arising out of the Claim, including those by TransCor and its past or present agents, officers, directors, employees, employers, contractors, managers, heirs, affiliates, subsidiaries, assigns or successors, that occurred prior to the date of this Agreement.

2.3 The parties, for the consideration set forth in the Agreement, agrees to settle and compromise, according to the terms and conditions of this Agreement, the Claim, whether heretofore asserted or not, specifically including those against any and all of TransCor's past or present officers, directors, agents, contractors, managers, employers, employees, heirs, assigns, affiliates, subsidiaries or successors, for any costs and expenses incurred by the State for the recapture.

2.4 The statements in the "Recitals" section of this Agreement are not intended by the parties to be mere recitals, but are intended to be, and are, binding contractual provisions which express the intentions of the party signing this Agreement.

III. RELEASE

3.1 In consideration of the payments, terms and conditions stated in this Agreement, the State hereby RELEASES, ACQUITS, AND FOREVER DISCHARGES TRANSCOR, and all their past, present and future officers, directors, shareholders, employees, employers, agents, representatives, affiliates, subsidiaries, contractors, assigns, heirs, successors of and from any and all claims, demands, damages, causes of action, debts, liabilities, attorneys' fees, experts' fees, costs, expenses, or controversies of any kind whatsoever, whether known or unknown, whether liquidated or unliquidated, and whether heretofore asserted or not, which the State has, or may have, against any of them, in any way for costs and expenses related to the recapture.

3.2 IT IS UNDERSTOOD AND AGREED that this is a FULL AND FINAL RELEASE made to fully and finally compromise the Claim. BY ACCEPTING THE FOLLOWING ASSURANCES AND ITEMS OF VALUE FROM TRANSCOR, AND BY SIGNING THIS RELEASE, THE STATE WAIVES ALL RIGHTS TO ANY POSSIBLE CLAIMS FOR COSTS AND EXPENSES RELATED TO THE RECAPTURE THAT IT MIGHT HAVE MADE AGAINST TRANSCOR, including, but not limited to, and all claims arising under the common law of the State of North Dakota.

IV. NO ADMISSIONS OR ADDITIONAL CONSIDERATION GIVEN FOR SETTLEMENT

4.1 IT IS FURTHER UNDERSTOOD AND AGREED that the payment described herein as consideration is not to be construed as an admission of liability on the part of any of TransCor, but the payment is in compromise and settlement of the State's claim against TransCor, which are not admitted but are completely denied and disputed by TransCor; and the agreed purpose of this Agreement is to avoid the further inconvenience, expense, and uncertainty of litigation.

4.2 IT IS FURTHER UNDERSTOOD AND AGREED that the release being given by the State in this Agreement is given voluntarily and is not based on any representation or statement of any kind made by any person or entity released herein except as may be specifically stated in this Agreement. In particular, the State acknowledges and agrees that, except as specifically stated in this Agreement, there has been no reliance upon any statement or representation by any person or entity released herein with respect to the merits or values of the State's claims.

4.3 This Agreement shall be a fully binding and complete settlement by the State with TransCor and all other persons released by the State in this Agreement; and this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective assigns and successors; and under no circumstances shall TransCor ever be called upon to make any other or additional payments to the State directly or indirectly and relating to the Claim, other than the amount which has been set forth as the consideration stated in this Agreement. The State

specifically covenants that it shall not file any suits or claims against TransCor or any party or person released herein based on the Claim, provided that TransCor deliver to the State the settlement funds which are the consideration for this Agreement. The State specifically covenants that it shall not make any demand or claim on any party or person released herein for attorneys' fees, costs or expenses in this action.

V. CONSIDERATION

5.1 The release, promises, and other items of valuable consideration promised by the State as set forth above are given in consideration of reimbursement of the reward offered and paid for the recapture of Kyle Bell, the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), paid by TransCor in a check made payable to the State.

5.2 The State agrees to resume, on the date of execution of this Settlement Agreement, its use of TransCor for movement of its prisoners.

5.3 The parties agree to participate in a press conference to announce the resolution of this matter.

VI. WARRANTIES

6.1 The State warrants that no other person or entity has any interest in the claim referred to in this Agreement, and that it has not sold, assigned, transferred, pledged, conveyed or otherwise disposed of, in whole or in part, any of the claims, demands, obligations or causes of action referred to in this Agreement.

6.2 The State warrants these terms are fully understood and voluntarily accepted.

VII. CAPTIONS

7.1 The captions of this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement (save and except as the captioning of part "V" hereof fulfills the "conspicuousness" requirement for an indemnification provision).

VIII. APPLICABLE LAW and SEVERABILITY

8.1 This Agreement shall be governed and construed in accordance with the laws of the State of North Dakota.

8.2 If this Agreement is found to be illegal or unenforceable in any respect, such inapplicability, invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement. The parties agree that such provision shall be modified to the extent necessary to cure such inapplicability, invalidity, illegality or other unenforceability, and to give effect to

the maximum extent possible to the express intentions of the parties to the Agreement as stated in this Agreement.

IX. NUMBER and GENDER DEFINED

9.1 As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the other as appropriate.

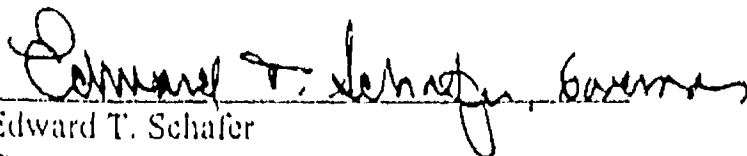
X. FINAL INTEGRATED AGREEMENT

10.1 This Agreement constitutes the final and entire release and agreement with respect to the parties to the litigation. All prior or written statements between the parties with respect to the subject matter are superseded by this Agreement. This Agreement may not be amended or modified except in writing, signed by the parties. A legible copy of this signed Agreement shall be just as enforceable as an original.

XI. MULTIPLE COUNTERPARTS

11.1 This Agreement may be executed in multiple counterparts, each of which, along with true and correct photocopies of executed originals, for all purposes shall be deemed to be an original and all of which constitute one and the same Agreement. In making proof of this Agreement, no party to this Agreement shall be required to produce or account for each original counterpart or each copy of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED on this the 31st day of May, 2000.


Edward T. Schafer
Governor


TRANSCOR

STATE OF NORTH DAKOTA
COUNTY OF Burleigh

ACKNOWLEDGMENT

Before me the undersigned authority, on this personally appeared Edward T. Schafer known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he had signed this agreement for the purposes and consideration therein expressed, to certify which witness my hand and seal of office.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of May, 2000.


Alvin A. Jaeger
Secretary of State

Testimony on House Bill 1350

January 29, 2001 3:00 p.m.

House Judiciary Committee

My name is Tim Schuetzle representing the North Dakota Department of Corrections and Rehabilitation, and I want to testify against HB1350 regarding transporting violent or dangerous offenders between correctional facilities. The bill proposes that law enforcement officers from selected agencies can only complete these inmate transports. Employees of the Department of Corrections are not included in this bill.

Last year, the Department of Corrections and Rehabilitation Prisons Division, Field Services Division, and Division of Juvenile Services transported more violent and dangerous offenders than any other law enforcement agency in the state. Transporting offenders is an integral part of our daily duties. Trained employees from the Youth Correctional Center transport youthful offenders to medical appointments in Bismarck and Mandan on a weekly basis. Parole and Probation Officers, licensed peace officers but omitted from this bill, transport offenders from their homes to the jail when they find the offender has violated the terms of their parole or probation agreement. The Field Services Division employees also transported over 90 inmates from the prison to the Community Placement Program facilities in the past year. **In 1999, the three prisons transported over 16,000 inmates.** These transports included moving prisoners between the Penitentiary, JRCC, and MRCC, moving inmates to the private prison in Appleton Minnesota and county jails in this state, and taking inmates to medical facilities for medical treatment that is not available inside the prison. This bill would make it illegal for the Department of Corrections to transport their offenders, and place this burden on the law enforcement agencies specified in this bill. What will be the fiscal impact on these agencies?

14,000 of these transports came from the MRCC, and involved minimum-security inmates that are integrating back into the community. However, this bill does not define which offenders are considered "violent and/or dangerous". Some of these MRCC inmates have violence on their record, but are near the end of their sentence and have earned low risk custody levels. Would these inmates still be considered violent and/or dangerous?

The Department of Corrections and Rehabilitation employees receive specialized training in transporting prisoners outside of the facilities. A class in Transporting Prisoners is mandatory training for all new employees, and Use of Restraints is a mandatory training class for all security officers every year. Despite the volume of prisoners transported each year, we have never had an inmate escape during one of these transports in the past 22 years. The language in this bill omitting the employees of the DOCR from having legal authority to transport inmates will cause a tremendous fiscal burden for those law enforcement agencies that would now need to transport those prisoners. It also fails to recognize the exceptional service record the Department of Corrections employees have accomplished while completing these transports to date.

HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
JANUARY 29, 2001

WARREN R. EMMER, DIRECTOR
FIELD SERVICES DIVISION, PAROLE AND PROBATION
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
TESTIMONY IN OPPOSITION TO HB 1350

Mr. Chairman, Members of the Committee:

The Department of Corrections and the Field Services Division is opposed to HB 1350. The bill relates to the transporting of violent or dangerous offenders.

All Parole officers within the Field Services Division are licensed law enforcement officers as well as certified correctional officers. It is not uncommon in an officer's daily duties to transport dangerous offenders from one correctional facility to another. In addition officers are requested to return dangerous, violent parole violators to the North Dakota penitentiary that may have absconded from parole supervision. Returning these parole violators often requires parole officers to travel out of state to a detention facility to take custody of the offender. The Division of Field Services offers a courtesy service to correctional facilities and sheriff departments of North Dakota, by transporting their prisoners, when appropriate.

In conclusion, if this bill should pass it would eliminate the North Dakota Division of Field Services Parole officers from transporting offenders, thereby restricting job duties and imposing additional fiscal liabilities on the state.

January 29, 2001

Testimony of Pat Heinert, Deputy Sheriff
Burleigh County Sheriff's Department

Reference to House Bill 1350

I have three concerns with this bill as written.

My first concern was the definition of "violent or dangerous" prisoners. I have spoken with Representative Mahoney about this issue and maybe one solution to this problem would be to identify certain felony classes as those that would automatically be considered violent or dangerous.

I have looked at Title 12-47 and Title 12-1 Criminal Code and cannot find any definitions for these two words.

My second concern is that of operating a Detention Center or Jail within the state. The way I read this bill is, we would need to use Deputy Sheriff's to transport inmates for Medical appointments and other transports that are outside of the facility. At present we use Detention Officers, who are trained, to perform many of these tasks.

My third concern is in the area of transport only by a law enforcement officer. If this bill were to be passed as written, Burleigh County would have additional financial hardships. At present we utilize the US Marshall Service as well as private contractors to move our prisoners around the country.

In the year 2000, Burleigh County moved 27 prisoners by use of private contractors. Our total cost for the movement of these prisoners was \$ 8,833.36. If we would have to move all of these prisoners by use of Burleigh County Deputy Sheriff's, we estimate that our costs would have been a minimum of \$ 20,606. This cost only takes into account the use of one Deputy Sheriff. If we would need an additional Deputy Sheriff, the cost would go up dependant on the location of the prisoner.

TESTIMONY BY BILL BUTCHER
REPRESENTING TRANSCOR AMERICA, INC.
AND THE PRIVATE SECTOR

I am here to testify in opposition to House Bill 1350. This bill is known as a "Kyle Bell bill," and as it was originally introduced, forbid the transport of prisoners between correctional facilities by other than law enforcement officers "whether inside, outside or through the state." The House amended the bill so that it now reads "within the state," and employees of the North Dakota Department of Corrections and Rehabilitation (DORC) have been added as authorized transporters of prisoners.

As a longtime FBI agent and private investigator, I was hired in late 1999 by Governor Schafer to investigate, analyze and make recommendations relating to the Kyle Bell escape from the custody of TransCor. With assistance from former warden Winston Satran, I conducted an in-depth study of both DOCR and TransCor policies and procedures as a part of this investigation. I concluded that the State of North Dakota should, despite the Bell escape, continue the practice of contracting with private prisoner transport companies to transport prisoners. I hold to that conclusion today.

My reasoning is that contracting with private transport companies is cost effective, prudent and efficient:

Cost effective - Based upon DOCR historical cost records I found that cost savings realized by the use of private transporters were between 40% and 75%. Had the Bell transport gone as planned it would have cost ND \$1,016 as compared to \$4,371 had DOCR officers handled it. Other similar cost comparisons that I reported were \$969 to \$4180, \$644 to \$2,249, \$773 to \$2,162 and \$528 to \$1,888. Often, whether a transport involves DORC or local officers, it involves payment of overtime.

Prudent - I found that TransCor had written policies and training that cover every conceivable situation and runs a responsible operation. Bell escaped primarily because TransCor guards assigned to him did not follow policy and were personally negligent. Private transport companies' only business is the transport of prisoners and, in the case of TransCor as an example, their personnel get two full weeks of training upon hire and regular in-house and on the job training thereafter solely on the subject of prisoner transport. Most law enforcement officers normally get 8 hours of training at most on the subject and have a host of other responsibilities. Further, the US Marshal Service, for example, has a hold harmless clause in every contract that they enter into to transport prisoners for other agencies which releases that agency from any liability should an escape occur.

Efficient - Time spent by law enforcement officers in the transport of prisoners takes time and manpower away from necessary duties within the state. Private transport companies are better equipped from a manpower and experience standpoint to transfer prisoners interstate and often intrastate.

A further concern is that HB1350 interferes with intrastate commerce by prohibiting the private transport of prisoners. DOCR and other jail administrators have several private transport companies as well as experienced individuals from which to choose the one they believe to be the best. This bill precludes me and others from pursuing an otherwise legitimate business venture. It also eliminates the possibility of the construction and operation of a privately operated prison in North Dakota. Finally, I think that most of you share my belief that government should not be mandated to do what private enterprise can do equally well or better.

I urge that you vote a DO NOT PASS recommendation on HB1350.