

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1089

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Yalosta Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE JUDICIARY

HB 1089

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1089

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-21-03

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | xx | | 0-31 |
| | | | |
| | | | |
| Committee Clerk Signature <i>M. Penrose</i> | | | |

Minutes: 10 members present, 3 members present (Rep. Bernstein, Rep. Grande, Rep. Delmore)

Chairman DeKrey: We will open the hearing on HB 1089.

Ken Sorenson, Asst. AG: (see amendment attached). We needed to address a number of concerns that came up from the time the bill was being filed, until the committee hearing. One of the concerns was that there was a potential conflict between the bill as drafted and Rule 32 of the ND Rules of Criminal Procedure. Rule 32 requires that in order for a probation officer to take a probationer in custody, the officer has to have probable cause to do that. The first amendment basically incorporates Rule 32 into the text of the bill. The second concern about the scope of HB 1089, who is going to be responsible for the operation of the assessment center. The second amendment provides that, it will be operating under the direction of, contract with, the Dept of Corrections. The other concern was the involvement of the courts, probation is a court situation, it is up to the court's under our sentencing statutes to commit a person to the supervision and management of the DOCR. So the third part of the amendment, provides for that.

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House Judiciary Committee

Bill/Resolution Number HB 1089

Hearing Date 1-21-03

Rep. Kretschmar: In the original bill in line 10, it says reasonable cause. Is there a distinction between reasonable cause and probable cause.

Mr. Sorenson: The terms are used interchangeably.

Chairman DeKrey: Thank you.

Warren Emmer, Director, Dept. of Corrections & Rehabilitation, Field Services Division:

(see attached testimony)

Chairman DeKrey: Is there a fiscal note on this bill.

Mr. Emmer: There will actually be a negative cost. We will be saving money. It will cost less not more.

Chairman DeKrey: This will need to be rereferred to Appropriations.

Mr. Emmer: Our budget director has this budget in Appropriations and he is aware of HB 1089.

Chairman DeKrey: I attended two Meth. conferences. The people need treatment.

Rep. Klemin: The original language on probation officer taking a person into custody, then taking that person to an assessment center, requires reasonable cause. This amendment has no such requirement that I can see. Doesn't there have to be some sort of factual basis for the belief that the person is in need of this kind of treatment, and if so, should that be set out in the statute somewhere.

Mr. Emmer: Rule 32 of the Rules of Criminal Procedure, it requires that we have probable cause to effect an arrest. Then it also requires court action. Probable cause that's going to affect the arrest, is going to be almost invariably, a treatment issue. Actually I would say with the amendment is going to require more court intervention that originally laid out.

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House Judiciary Committee
Bill/Resolution Number HB 1089
Hearing Date 1-21-03

Rep. Klemin: I am looking at Rule 32, of the ND Rules of Criminal Procedure, it has to do with sentencing and judgment? Taking into custody on probable cause to believe the probationer had violated a condition of his probation.

Mr. Emmer: One of the conditions of probation, required on all probation cases, that the defendant not commit a crime. So if are using drugs, they are in violation. We then petition the court for revocation of probation, or we'll take the person into custody and then petition the court for revocation, or we'll take the person into custody and initiate some kind of intermediate measure.

Rep. Klemin: Ok for drugs, for committing a crime, but using alcohol is not a crime, and this also applies to alcohol. My concern is that I actually some of this other language that you've just eliminated, with reasonable cause to believe the defendant is a chemically dependent person, under the amendment, there is no grounds required at all.

Mr. Emmer: We actually do talk about the alleged violation, for an evaluation to determine whether the defendant is a chemically dependent person or is in need of drug and alcohol treatment and rehabilitation or is in need of other treatment.

Rep. Klemin: My point is that the alleged violation may be something other than drugs or alcohol, so I think you need to have some of this other language.

Mr. Emmer: I will ask Ken Sorenson to take another look at this, and we might offer you an additional amendment, and if you could help us with that, with some sense of how you might want to have it structured. Keep in mind, if a person is failing to report, or if a person is using alcohol and have gone for treatment on another occasion for meth., these are all major triggers

Page 4

House Judiciary Committee
Bill/Resolution Number HB 1089
Hearing Date 1-21-03

that suggest that the person is in need of further treatment. We need to recognize that it can't just be a drug related violation that will trigger a referral into a treatment center.

Rep. Kretschmar: Where are these assessment centers? Are they in hospitals?

Mr. Emmer: We anticipate that we will be contracting for treatment services with the State Hospital. There is a vacant building, along with a nurses building. This will be a part of our Tompkins Rehabilitation and Correction Center. We have been operating two treatment programs, independent of each other for the past several years. One is the Tompkins Rehab and Correct. Unit and the other is Corrections and Rehab (DUI program, CRRP). Now they will be co-located in the nurses building. They are both clinical programs, they are going to be set apart from the assessment program, and clinical staff will assess the individual to see if they are appropriate for those programs or for appropriate programming in the community.

Rep. Kretschmar: It will just be the one in Jamestown, no place else in the state.

Mr. Emmer: Initially that is what we are planning for, but Williston has expressed some interest in a program like this.

Rep. Maragos: Does Williston have a facility that would be available to set up a program.

Mr. Emmer: We have been looking at some. They have treatment resources available to us and they are in the epicenter of the meth. problem in ND. They can gear up differently than in the past and become a pilot program.

Rep. Kingsbury: There is the development center in the Grafton area.

Mr. Emmer: We have crafted a program at the State Hospital and the DUI program. We have been using a very intense program. Both of those programs are a minimum of 100 days, this assessment center, which is a pretreatment program, is going to be 60 days.

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House Judiciary Committee
Bill/Resolution Number HB 1089
Hearing Date 1-21-03

Rep. Maragos: I was looking at the very last amendment, is that particular section, the 60 days a person can be in jail. Have the counties expressed any problems that would put undue pressure, financial pressure on them.

Mr. Emmer: Our amendment, I believe has taken that language out, for the reasons you stated. Association of Counties doesn't want to give us carte blanche. I assured them that we would make it absolutely clear to the committee that we would amend the language out. They think that it could generate more people in county beds. In my opinion, is actually going to have a positive impact on the counties, because these people would have been going to the county jails.

Rep. Kretschmar: What are the statistics on recidivism?

Mr. Emmer: One-third are found in violation of probation at some point. I don't think we have identified strictly the drug offender. If I had to guess what is driving the revocation process, it is more often than not, it is a drug related issue that has brought them back to court.

Chairman DeKrey: Thank you.

Ken Sorenson spoke, but couldn't be heard on the tape.

Rep. Klemin: In the next amendment, the court has to make a two part finding, violated terms of probation and is a chemically dependent person. You have to have the two parts from the first amendment.

Mr. Sorenson: I will have that changed. (Further testimony could not be picked up by mic.)

Rick Hoekstra, Program Manager, Dept of Corrections & Rehab. Field Services Div.: (see testimony) Support.

Chairman DeKrey: Thank you. Any testimony in support? Any testimony in opposition? We will close the hearing on HB 1089. Rep. Klemin, will you get together with Mr. Sorenson.

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House Judiciary Committee
Bill/Resolution Number HB 1089
Hearing Date 1-21-03

Rep. Klymka: Yes.

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1089

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-27-03

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|---------|
| 1 | | xx | 48-end |
| 2 | xx | | 0-5 |
| Committee Clerk Signature <i>[Signature]</i> | | | |

Minutes: Committee work was held on HB 1089.

Chairman DeKrey: What are the committee's wishes on HB 1089.

Rep. Klemin: Move do pass on Revised Proposed Amendments.

Rep. Eckre: Seconded.

Voice vote: Aye (11) 0 No 2 Absent (Rep. Onstad and Rep. Maragos)

Rep. Wrangham: Move to Do Pass as Amended.

Rep. Kingsbury: Seconded.

11 YES 0 NO 2 ABSENT DO PASS W/AMENDMENTS CARRIER: Rep. Wrangham

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[Signature]
Operator's Signature

10/2/03
Date

38256.0101
Title.0200

Adopted by the Judiciary Committee
January 27, 2003

VR
1/28/03
1062

HOUSE AMENDMENTS TO HOUSE BILL NO. 1089 JUD 1-29-03

Page 1, line 3, replace "; and to amend and reenact subsection 3 of section 12.1-32-07 of the North" with "in lieu of revocation of probation."

Page 1, remove line 4

Page 1, remove the underscore under line 8

Page 1, replace lines 9 through 21 with:

- "1. If a parole and probation officer takes a defendant into custody in accordance with rule 32 of the North Dakota Rules of Criminal Procedure for a violation of probation and has reasonable cause to believe the defendant is a chemically dependent individual who requires drug and alcohol treatment and rehabilitation or is in need of other treatment and rehabilitative programming, the parole and probation officer may place the defendant in an assessment center pending a hearing on the alleged violation for an evaluation to determine whether the defendant is a chemically dependent individual who is in need of drug and alcohol treatment and rehabilitation or is in need of other treatment and rehabilitative programming. The assessment center shall conduct the evaluation within seventy-two hours after the defendant has been placed in the assessment center."

Page 1, line 22, remove the underscore under "2. For purposes of this section, an assessment center means a facility", and insert immediately thereafter "operated under the direction of, or under contract with, the department of corrections and rehabilitation," and remove the underscore under "for the"

Page 1, remove the underscore under lines 23 and 24

HOUSE AMENDMENTS TO HB 1089 JUD 1-29-03

Page 2, replace lines 1 through 9 with:

- "3. Upon completion of the evaluation, the assessment center shall refer the defendant to the sentencing court for a hearing on the alleged probation violation along with a report of its evaluation. If the court finds that the defendant violated a term or condition of probation and is a chemically dependent individual in need of drug and alcohol treatment or is in need of other treatment and rehabilitation, the court may continue the defendant on the existing probation and extend or enlarge the conditions of probation to require the defendant to return to the assessment center to undergo further assessment and treatment and rehabilitation and impose other conditions the court deems reasonably necessary to assure that the defendant complies with the terms and conditions of probation, or the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of the initial sentencing or deferment."

Page 2, remove the underscore under lines 10 through 21

Page 2, remove lines 22 through 31

Page No. 1

38256.0101

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10/2/03
Date

HOUSE AMENDMENTS TO HB 1089
Page 3, remove lines 1 through 10

JUD 1-29-03

Renumber accordingly

Page No. 2

38256.0101

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Date

Date: 1/27/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1089

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38256. 0101 .0200

Action Taken Do Pass as Amended

Motion Made By Rep. Wrangham Seconded By Rep. Kingsbury

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman DeKrey | ✓ | | Rep. Delmore | ✓ | |
| Vice Chairman Maragos | AB | | Rep. Eckre | ✓ | |
| Rep. Bernstein | ✓ | | Rep. Onstad | AB | |
| Rep. Boehning | ✓ | | | | |
| Rep. Galvin | ✓ | | | | |
| Rep. Grande | ✓ | | | | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Wrangham | ✓ | | | | |
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Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Wrangham

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

REPORT OF STANDING COMMITTEE (410)
January 29, 2003 11:42 a.m.

Module No: HR-17-1243
Carrier: Wrangham
Insert LC: 38256.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1089: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1089 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "; and to amend and reenact subsection 3 of section 12.1-32-07 of the North" with "In lieu of revocation of probation."

Page 1, remove line 4

Page 1, remove the underscore under line 8

Page 1, replace lines 9 through 21 with:

- "1. If a parole and probation officer takes a defendant into custody in accordance with rule 32 of the North Dakota Rules of Criminal Procedure for a violation of probation and has reasonable cause to believe the defendant is a chemically dependent individual who requires drug and alcohol treatment and rehabilitation or is in need of other treatment and rehabilitative programming, the parole and probation officer may place the defendant in an assessment center pending a hearing on the alleged violation for an evaluation to determine whether the defendant is a chemically dependent individual who is in need of drug and alcohol treatment and rehabilitation or is in need of other treatment and rehabilitative programming. The assessment center shall conduct the evaluation within seventy-two hours after the defendant has been placed in the assessment center."

Page 1, line 22, remove the underscore under "2. For purposes of this section, an assessment center means a facility", and insert immediately thereafter "operated under the direction of, or under contract with, the department of corrections and rehabilitation," and remove the underscore under "for the"

Page 1, remove the underscore under lines 23 and 24

Page 2, replace lines 1 through 9 with:

- "3. Upon completion of the evaluation, the assessment center shall refer the defendant to the sentencing court for a hearing on the alleged probation violation along with a report of its evaluation. If the court finds that the defendant violated a term or condition of probation and is a chemically dependent individual in need of drug and alcohol treatment or is in need of other treatment and rehabilitation, the court may continue the defendant on the existing probation and extend or enlarge the conditions of probation to require the defendant to return to the assessment center to undergo further assessment and treatment and rehabilitation and impose other conditions the court deems reasonably necessary to assure that the defendant complies with the terms and conditions of probation, or the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of the initial sentencing or deferment."

Page 2, remove the underscore under lines 10 through 21

Page 2, remove lines 22 through 31

(2) DESK, (3) COMM

Page No. 1

HR-17-1243

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
January 29, 2003 11:42 a.m.

Module No: HR-17-1243
Carrier: Wrangham
Insert LC: 38256.0101 Title: .0200

Page 3, remove lines 1 through 10
Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

HR-17-1243

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2003 SENATE JUDICIARY

HB 1089

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1089

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/11/03

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 1 | | X | 2.1 - End |
| | | | |
| | | | |
| Committee Clerk Signature <i>Marion L. Salby</i> | | | |

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony in Support of HB 1089

Warren R. Emmer, Director of Department of Corrections and Rehabilitation Field Service

Division. Introduced Bill (meter 2.1) Read Testimony - Attachment #1. 2,600 out of 3,500 offenders use Drug/Alcohol.

Sen. Lyson question process (meter 5.3) from offender pickup and assessment. Only assessment location is Jamestown. The pilot project is Jamestown but we need one in the NW corner of the state. Presently this could be a 14 hour drive. Discussion (meter 7.9) Time frame of treatment is 60-90 days from what I understand this wont even get the Meth out of their system.

Mr. Emmer discussed that they can be in the system up to a year. Discussion of the courts effect on the bill.

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10/2/03
Date

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1089

Hearing Date 03/11/03

Sen. Trenbeath questioned what is in this bill-other than that it allows them to be picked up and assist without a court order-that is not already being done? (meter 11) No Discussion c

legislation that we recently passed for assessment being done within 72 hr. Sen. Trenbeath question it odd that we would pass legislation to encourage a person to waive there rights?

Al Stenjem - Mental Health Department (meter 15.9) In support of the bill. Discussed during an arrest for a violation this allows us to identify a violator vs substance abuse/mental illness.

Sen. Trenbeath stated that there are laws already to do this.

Sen. Lyson questioned a revolving door issue that this bill may encourage. (meter 17.5)

Discussion of even an addict needs to serve there time.

Rick Hucksburg - Representing Parol Officers (meter 19.3) In support of bill. Intent of the center is to address a risk. Reduce the risk before they return into the community with a plan. If they fail they go back

Discussion of a parol officer and the amendments.

Sen. Trenbeath discussed circumventing the present authority of the court system/Judges. (meter 23)

Sen. Traynor asked Mr. Emmer if we adopt this bill with a one shot chance would it truly motivate them to change? Mr. Emmer discussed it would cost less to keep them in this location and they have the room.

Testimony in Opposition of HB 1089

None

Testimony Neutral to HB 1089

None

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1089

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/12/03

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|--------|----------|
| 3 | X | | 3.4 -5.1 |
| | | | |
| | | | |
| Committee Clerk Signature | | | |

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill: Questions: 1. Is this a revolving door?

2. What in this bill is not already in law presently.

Discussion of holding time not long enough to get meth out of ones system.

Sen. Lyson discussed a judge interpreting this legislation as saying "we do not want the criminal in the Penitentiary and we want more money to build an assessment center". Center is not presently open.

Motion Made to DO NOT PASS HB 1089 Sen. Trenbeath and seconded by Sen Lyson.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator Stanley W. Lyson, Vice Chairman

Senator John T. Traynor, Chairman closed the hearing

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Halston Rickford

Date

10/2/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1089

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/17/03

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 1 | X | | 36.1 - End |
| 1 | | X | 0.0 - 6 |
| Committee Clerk Signature <i>Maria L. Helberg</i> | | | |

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Motion to reconsider Action to bring the bill back to committee. Motion made by Sen.

Lyson and seconded by Sen. Dever.

Roll Call Vote: 5 Yes. 0. No 1 Absent

Warren Emmer - Director, Department of Corrections (meter 35) Submitted amendment -

Attachment #1. We are trying to strengthen this bill.

Discussion of present process-what do the courts not already have the power to do that this bill is asking for? Could not find any.

Sen. Nelson questioned our previous bill that changed involuntary commitment time. Mr.

Warren answered that they would still do this.

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1089
Hearing Date 03/17/03

Sen. Trenbeath questioned what does this bill do that is not being done presently? Mr. Warner stated the procedures are the same but the process is different allowing the probation officer to immediately divert the person into the treatment and evaluation process. The person wouldn't just sit there and wait either for an appearance or a bond hearing of a final revocation. Sen. Trenbeath asked why this should be laudable for these people and not laudable for the ordinary drunk or drug addict who's mom or brother just turned them in. Discussion (meter 49) This is a diversion that can be done already. If this person is in such bad shape that he needs to be diverted to treatment facility, then why is he going to be sitting in jail awaiting a bond hearing. Obviously at that point whomever it is who brought him in is going to start the procedure to have him committed anyway. This bill only give a judge notification of the process-not any participation with the process. This would be the only way a person can be committed without a judge- into a treatment program; whereas, we allow this-in no other situation. It always has to be in order, to ensure a person's rights to do process. A person has to go in front of a judge, unless they waive there rights. Sen. Lyson stated "If they did the crime, they should do the time"

Discussion of waiver process. (meter 3)

Sen. Traynor discussed the revolving door syndrome. Yes, but this is no different then presently going on. Reviewed amendment.

Motion Made to DO NOT PASS HB 1089 Sen. Trenbeath and seconded by Sen. Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Senator Stanley W. Lyson, Vice Chairman

Senator John T. Traynor, Chairman closed the hearing

Valosta Rickford
Operator's Signature

10/2/03
Date

Date: March 12, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1089

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Lyson

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. John T. Traynor - Chairman | X | | Sen. Dennis Bercier | X | |
| Sen. Stanley Lyson - Vice Chair | X | | Sen. Carolyn Nelson | X | |
| Sen. Dick Dever | X | | | | |
| Sen. Thomas L. Trenbeath | X | | | | |
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Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment Sen. Lyson

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

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10/2/03

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 4:03 p.m.

Module No: SR-44-4615
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1089, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1089 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-44-4615

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10/2/03
Date

6R

Date: March 17, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1089

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider Action of DO NOT PASS

Motion Made By Senator Stanley Lyson Seconded By Sen. Dever

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. John T. Traynor - Chairman | X | | Sen. Dennis Bercier | A | A |
| Sen. Stanley Lyson - Vice Chair | X | | Sen. Carolyn Nelson | X | |
| Sen. Dick Dever | X | | | | |
| Sen. Thomas L. Trenbeath | X | | | | |
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Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment _____

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

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Yalosta Rickford
Operator's Signature

10/2/03
Date

Date: March 17, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1089

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Dever

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. John T. Traynor - Chairman | X | | Sen. Dennis Bercier | A | A |
| Sen. Stanley Lyson - Vice Chair | X | | Sen. Carolyn Nelson | X | |
| Sen. Dick Dever | X | | | | |
| Sen. Thomas L. Trenbeath | X | | | | |
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Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Lyson

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

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 5:29 p.m.

Module No: SR-46-4972
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1089, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1089 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-46-4972

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2003 TESTIMONY

HB 1089

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10/2/03
Date

62

HOUSE JUDICIARY COMMITTEE
Representative Duane L. DeKrey, Chairman
January 21, 2003

Warren R. Emmer, Director
Department of Corrections and Rehabilitation
Field Services Division
Presenting Testimony Re: HB1089

The Department of Corrections, Field Services Division, is on the front line in the efforts to fight the use of illegal drugs in North Dakota. The division currently supervises 1,515 drug offenders for the State of North Dakota. During the course of supervision, parole/probation officers encounter situations where offenders under our supervision have relapsed into drug use. The drug of choice for most probationers in North Dakota is methamphetamine. Methamphetamine is highly addictive to its users. Recovering addicts will almost invariably encounter relapse issues, as they strive for sobriety.

HB 1089 provides the Department of Corrections and the Field Services Division with another tool to fight the use of drugs in North Dakota. The Assessment Center will provide for 30 pre-treatment beds. Trained counselors will evaluate those referred for possible need of drug and alcohol treatment and/or need of other rehabilitative programming.

HB 1089 will allow for the aggressive intervention by a parole/probation officer when he or she suspects that an offender assigned to their supervision is in need of treatment services. At that time, the officer will be permitted to take the offender into custody and to have that offender transported to the Assessment Center for further evaluation and potential treatment. This practice will be in accordance with Rule 32 of the North Dakota Rules of Criminal Procedure.

The Department of Corrections, Field Services Division, urges a ~~do~~ pass concerning this bill.

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- 1 -

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10/2/03
Date

Revised Proposed Amendments to House Bill No. 1089

Offered by the North Dakota Department of Corrections & Rehabilitation
January 21, 2003

Page 1, line 3, after "rehabilitation", insert "in lieu of revocation of probation."

Page 1, line 3, remove ";and to amend and reenact subsection 3 of section 12.1-32-07 of the North"

Page 1, remove line 4

Page 1, delete lines 9 through 21 and insert:

1. If a parole and probation officer has taken a defendant into custody in accordance with Rule 32 of the North Dakota Rules of Criminal Procedure for a violation of probation and has reasonable cause to believe the defendant is a chemically dependent person and requires drug and alcohol treatment and rehabilitation or is in need of other treatment and rehabilitative programming, the parole and probation officer may place the defendant in an assessment center pending a hearing on the alleged violation for an evaluation to determine whether the defendant is a chemically dependent person who is in need of drug and alcohol treatment and rehabilitation, or is in need of other treatment and rehabilitative programming. The assessment center shall conduct the evaluation within seventy-two hours after the defendant has been placed in the assessment center.

Page 1, line 22, after "facility" insert: "operated under the direction of, or under contract with, the department of corrections and rehabilitation."

Page 2, after "3", replace lines 1 through 21 with: Upon completion of the evaluation, the assessment center shall refer the defendant to the sentencing court for a hearing on the alleged probation violation along with a report of its evaluation. If the court finds that the defendant violated a term or condition of probation and is a chemically dependent person in need of drug and alcohol treatment, or is in need of other treatment and rehabilitation, the court may continue the defendant on the existing probation and extend or enlarge the conditions of probation to require the defendant to return to the assessment center to undergo further assessment and treatment and rehabilitation and impose other conditions it deems reasonably necessary to assure that the

defendant complies with the terms and conditions of probation, or
the court may revoke the probation and impose any other sentence
that was available under section 12.1-32-02 or 12.1-32-09 at the
time of the initial sentencing or deferment.

Page 2, delete lines 22 through 31

Page 3, delete lines 1 through 10

Renumber accordingly.

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Operator's Signature

10/2/03
Date

Proposed Amendments to House Bill No. 1089

Offered by Dept of Corrections & Rehabilitation
January 21, 2003

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Yalosta Rickford
Operator's Signature

10/2/03
Date

LP

HOUSE JUDICIARY COMMITTEE
Representative Duane L. DeKrey, Chairman
January 21, 2003

Rick Hoekstra, Program Manager
Department of Corrections and Rehabilitation
Field Services Division
Presenting Testimony Re: HB1089

The implementation of the proposed DOCR Assessment Center will further integrate the efforts of the criminal justice system with the Department of Corrections & Rehabilitation and the Department of Human Services. The results will be efficient and cost effective interventions with the criminal offender population currently under DOCR supervision in our communities.

The proposed DOCR Assessment Center facility would be located in the Nursing Education Building at the ND State Hospital. This building is unoccupied and has been studied to determine its capacity and ability to provide housing and services for the 30-40 offenders in the Assessment Center. This building will further support co-locating the populations of both the Tompkin's Rehabilitation & Correction Unit (TRCU) and the Corrections Rehabilitation and Recovery Program (CRRP) to be more cost effective. The TRCU, CRRP staff and resources of the State Hospital to these programs as well as the Department of Corrections, Field Services Division, will continue to collaborate in this effort to manage and deliver the services proposed.

The process of referring an offender to the Assessment Center from the community will result when an offender demonstrates a need for additional corrective action and evaluation regarding an addiction treatment intervention. Operationally, the involved parties will consider agreeing to a process of exhausting our community resources to provide the services needed. However, it is not unusual that offenders under DOCR supervision are less than motivated to seek treatment in the community. Some offenders have failed to engage themselves in the treatment services available. For those offenders who may have started treatment, it is not unusual they reportedly "failed" to complete their treatment by demonstrating inappropriateness and a less than expected level of motivation. Even with offenders who successfully complete treatment their recovery often includes experiencing relapse that places them in need of a quick response that may not be available.

In these instances, the offender can be referred for further evaluation for treatment intervention in lieu of petitioning the court for revocation. For those referred and evaluated in the Assessment Center, recommendations regarding their level of addiction treatment and other corrective action will be cited in their Petition for Modification of their Probation Conditions of supervision.

- 1 -

Rick Hoekstra
Operator's Signature

10/2/03
Date

In some instances, in cooperation with the Regional Human Service Center, the offender will be returned to their community with the additional conditions of supervision needed to effectively deliver treatment and provide supervision. In most instances, before returning to the community, offenders will remain at the Assessment Center for a period of time stated by the Petition for Modification of Probation to complete the recommended services.

There may also be a number of offenders from the community that will require a longer and more intense intervention and corrections treatment strategy. Further services managed by the Department of Corrections beyond the Assessment Center that may become an option if recommended include the existing TRCU or CRRP programs both located in Jamestown in collaboration with the Department of Human Services, ND State Hospital. These programs currently operate with the capability for Field Officers to identify appropriate referrals through a Petition for Modification of Probation after the case has been appropriately assessed and staffed.

It is the expectation that many offenders referred to a DOCR Assessment Center will result in an effective corrections treatment strategy approved by a Judgment & Order of Modification of Probation.

With the timely intervention strategy for an offender referred to the Assessment Center, it can reduce the number of revocation hearings and resulting imprisonment. However, without the resource of the DOCR Assessment Center, our Field Officers are compelled to petition the court for revocation of probation and wait weeks before there is any final disposition.

H:\LEGISLATURE\HB1089RICK.DOC

Valosta Rickford
Operator's Signature

10/2/03
Date

Att #1

SENATE JUDICIARY COMMITTEE
Senator John T. "Jack" Traynor, Chairman
March 11, 2003

Warren R. Emmer, Director
Department of Corrections and Rehabilitation
Field Services Division
Presenting Testimony Re: HB1089

The Department of Corrections, Field Services Division, is on the front line in the State's fight against illegal drug use in North Dakota. The division currently provides supervision to nearly 3,500 felony offenders that, if not for that supervision, would be in prison. Over 1,500 of the offenders supervised by the division have committed drug offenses. Given the nature of our work, parole/probation officers regularly encounter situations where offenders under our supervision have relapsed into drug use.

Methamphetamine has become the drug of choice for most North Dakota offenders that violate their parole or probation supervision by using illegal drugs. Methamphetamine is highly addictive to its users. Recovering addicts almost invariably encounter relapse issues, as they strive for sobriety. Maintaining sobriety is even more difficult for the offenders that also suffer from some type of mental illness.

HB 1089 provides the Field Services Division with another tool to fight the illegal use of drugs in North Dakota. The Assessment Center will provide for 30 pre-treatment beds. Trained counselors will evaluate those referred for possible need of drug and alcohol treatment and/or need of other rehabilitative programming.

HB 1089 will allow for the aggressive intervention by a parole/probation officer when he or she suspects that an offender assigned to their supervision is in need of treatment services. At that time, the officer will be permitted to take the offender into custody and to have that offender transported to the Assessment Center for further evaluation and potential treatment. This practice will be in accordance with Rule 32 of the North Dakota Rules of Criminal Procedure.

The Department of Corrections, Field Services Division, urges a "due pass" concerning this bill.

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Operator's Signature

10/2/03
Date

AH #1

SENATE JUDICIARY COMMITTEE
Senator John T. "Jack" Traynor, Chairman
March 17, 2003

Warren R. Finner Director
Department of Corrections and Rehabilitation
Field Services Division
Presenting Testimony Re: HB1089

Proposed amendments... TO H.B. 1089..

- 1) The evaluation being done locally, but only through an approved provider.
2. The evaluation has to be completed within 72 hours after being brought into custody.
3. The probation officer has to return the defendant to the court...not the evaluator refer the defendant back to court
4. The amendments puts the subsection 3 hearing process back; The hearing process in subsection 3 is done with a view to the emergency civil commitment procedures under 26-03.1-26 which requires a preliminary hearing within seven days after being brought into detention. This is similar to having a preliminary hearing on a probation revocation proceeding; it is not required by Gagnon v. Scarpelli.
5. A significant portion of this bill may already be covered in NDCC Section 12.1-32-07(6), but it sets up a specific process for these kind of cases and that's why it was set up as a separate statute.

Proposed Amendments to Engrossed House Bill No. 1089

Page 1, line 13, replace the words "an assessment center" with "a licensed evaluation and treatment facility approved by the department of corrections and rehabilitation"

Page 1, line 16, after "programming." insert "The probation officer shall place the defendant in the nearest available approved facility for the evaluation."

Page 1, line 17, replace "assessment center shall conduct the evaluation" with "evaluation must be completed"

Page 1, line 18, replace "placed in the assessment center" with "taken into custody. The probation officer shall promptly notify the sentencing court when a defendant is taken into custody and placed for evaluation."

Page 1, remove lines 19-23.

Page 2, line 1, replace "assessment center shall refer" with "the probation officer shall return"

Page 2, line 7, replace "the assessment" with "a licensed evaluation and treatment facility approved by the department of corrections and rehabilitation"

Page 2, line 8, remove "center"

Page 2, line 10, after "defendant" insert "in writing"

Page 2, line ¹⁶~~12~~, replace "in the assessment center" with "for evaluation"

Page 2, line 14, after "hearing." insert "The waiver must be in writing."

Page 2, line 21, remove "in the assessment facility"

Renumber accordingly.

Department of Corrections and Rehabilitation's Division of Field Services Proposed
Amendments to Engrossed House Bill No. 1089

Page 1, line 13, replace the words "an assessment center" with "a licensed evaluation and treatment facility approved by the department of corrections and rehabilitation"

Page 1, line 16, after "programming." insert "The probation officer shall place the defendant in the nearest available approved facility for the evaluation."

Page 1, line 17, replace "assessment center shall conduct the evaluation" with "evaluation must be completed"

Page 1, line 18, replace "placed in the assessment center" with "taken into custody. The probation officer shall promptly notify the sentencing court when a defendant is taken into custody and placed for evaluation."

Page 1, after "2" remove lines 19-23.

Page 2, line 1, replace "3." with "2."

Page 2, line 1, replace "assessment center shall refer" with "the probation officer shall return"

Page 2, line 7, replace "the assessment" with "a licensed evaluation and treatment facility approved by the department of corrections and rehabilitation"

Page 2, line 8, remove "center"

Page 2, line 13, replace "4." with "3."

Page 2, line 13, after "defendant" insert "in writing"

Page 2, line 16, replace "in the assessment center" with "for evaluation"

Page 2, line 17, after "section." insert "The waiver must be in writing."

Page 2, line 18, replace "5." with "4."

Page 2, line 21, remove "in the assessment facility"

Renumber accordingly.