

2009 HOUSE JUDICIARY

HB 1040

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/12/09

Recorder Job Number: 6805

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1040.

**Rep. Shirley Meyer:** (sponsor) Chairman of the Judicial Process Committee that heard this bill during the Interim. The language in this bill comes from the National Institute of Justice.

Rep. Meyers explained the background and why this bill needed to be brought forward. This bill makes recommendations as to what will happen to missing persons' cases as well as DNA remains that are found and not immediately identified.

**Chairman DeKrey:** Thank you.

**Rep. Nancy Johnson:** I support this bill. This bill is designed to help law enforcement get a policy in place to deal with these issues.

**Chairman DeKrey:** Thank you.

**Vonette Richter, Legislative Council:** (see attachment).

**Rep. Dahl:** In domestic violence cases, a person may want to go missing. Is there a policy in place with law enforcement now to deal with this?

**Ms. Richter:** Chief Witt mentioned this during the Interim and he felt this was addressed in the bill, and was okay with the language.

**Ch. DeKrey:** Thank you. Further testimony in support.

**Janelle Moos, ND Council on Abused Women's Services:** Support. (Attachment)

**Chairman DeKrey:** The fiscal note is \$647,200 in the 09-11 biennium and \$326,930 in the 11-13 biennium. Any questions? Thank you. Further testimony in support of HB 1040.

**Jim Jacobson, Director of the ND Protection and Advocacy Project, Protective Services Unit:** Support. (Attachment)

**Rep. Kretschmar:** What is the definition of venerable adult?

**Jim Jacobson:** A venerable adult includes someone with a substantial mental or functional impairment. This language is in federal statute as well.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.

**John Olson, ND Peace Officers Association:** Opposition (attachment). We want this bill amended so that a policy can be adopted by each jurisdiction, but the way the bill is now, it says shall be adopted, not may be adopted. What works in one jurisdiction may not work as well in another jurisdiction. Some jurisdictions already have policies in place and have more resources to devote to these cases than others.

**Rep. Delmore:** Did you appear before the Interim committee to offer some amendments to this bill.

**John Olson:** I'm only employed during the legislative session, so I don't know who appeared. I know they followed.

**Rep. Delmore:** Did people from the Police Officer's Association appear?

**John Olson:** I'm unaware if they did, I know they followed this very closely, they were very concerned.

**Rep. Delmore:** If we go through the AG's office, are we going to have different policies and will any of them have any teeth if we take away this bill. It's important to a lot of people to have some consistency.

**John Olson:** Excellent point, I believe we can. For example, some of the concerns that I have here is that the investigation unit being required to secure certain information. Some of this information may be beyond their control to secure, such as a social security number or credit card number. I think some of the mechanics of that have to be worked out. Are there going to be search warrants required to get information, where it may not be available or turned over to the investigating agency. I think some of the kinks can be worked out through their policy, with training and uniform application throughout the state. This is a good thing to have, but we feel that this should be in the policy of the departments, rather than a requirement in state law.

**Rep. Delmore:** Do you have amendments or do you intend to hog house the bill.

**John Olson:** I don't like hog housing anything. I think it would be pretty simple to bring some amendments and I will gladly help do that.

**Rep. Klemin:** I remember another bill that we had last session, on a different subject, with regards to another entity adopting policy, that what we said was that the other entities throughout the state could adopt policy addressing this particular subject, but if they didn't, then that bill set out a default policy that they were deemed to have adopted. They didn't have to have a policy that was identical to the default policy in the statute. It was just that, if they didn't have one at all, then this was policy. Now would you have a problem with that sort of approach?

**John Olson:** I certainly would have less difficulty with that approach. There again, the same thing is going to happen. If one jurisdiction doesn't get a policy adopted then they are going to provide detailed policy for that jurisdiction that may or may not be different than what the AG and the law enforcement community work out in terms of what's good and what's not good in that particular policy.

**Rep. Klemin:** That approach says you either do something or we've done it for you. But if you do something, you don't have to do it identical to what we've done.

**John Olson:** That's your prerogative.

**Rep. Zaiser:** Uniformity was a critical aspect of the testimony we heard here today. We don't have uniformity across the state, which creates some gaps.

**John Olson:** I don't know of any huge problem here in the state in security investigations, looking for missing persons, etc. I don't know if there is a lack of uniformity. I assume that we all can assume that smaller jurisdictions probably don't have the resources that are necessary to generate consistent step-by-step investigations. I think our law enforcement agencies do a great job and certainly we can improve.

**Rep. Koppelman:** The purpose of this bill is because there must be some concern that there aren't policies in place everywhere across the state. How would you change this?

**John Olson:** I think we could easily do that by just requiring that a policy be adopted.

**Rep. Koppelman:** Well, the policy could be to do nothing. I'm not saying that is going to happen, but it could happen very easily.

**John Olson:** Let's ask the Chief of the Bismarck Policy Dept, who is here. The point is that this is a policy that law enforcement should do its best to comply with the investigation requirements that are contained in this. I think that is more of a policy than it is a detailed mandate under state law. I'd like the committee to do that, to have law enforcement recognize that they have an obligation under this and that they have flexibility, and jurisdictions may differ, etc.

**Chairman DeKrey:** Further testimony in opposition.

**Keith Witt, Chief, Bismarck Police Department:** Opposed. I did appear during the Interim. I did voice my concerns at that time. I believe that this is a detailed policy which shouldn't be

in the statute. It was my recommendation to the Interim Committee to do similar to what we've done with domestic violence policies in the state requiring each department to have a policy in place to help. My concern is having a detailed procedure like this in the statute. I think that if this is adopted, there will be unintended consequences that come down to my agency in trying to deal with these issues. Mr. Olson touched on a number of good points. For example, on page 2, the statute talks about accepting the report of a missing person, shall gather information which shall include...an officer does ask these questions right away. We have to look at policies all the time, to see if they need to be changed in any way because of potential problems.

**Rep. Delmore:** I appreciate your testimony. Do you feel that it is mandatory to collect all the information listed in A-Z, or can it include just five of those items, of what you need when you need it?

**Keith Witt:** This is very similar to the language that we use in our policies. My department's interpretation is that they shall gather information that includes all of these, plus any additional things that may be pertinent to the case. The way I read it, my interpretation is that the officer would have to gather everything that is listed here, in addition to any specific things that may be outside the realm of this.

**Rep. Delmore:** Do you have a copy of your policy that we can look at.

**Keith Witt:** I don't have a copy with me but I can provide one. One was given to LC, that is our policy. That is what we follow. I don't know if it is appropriate to have in statute.

**Chairman DeKrey:** Vonette has a copy of it, and she will provide the committee with a copy.

**Rep. Koppelman:** The problem that I have is that the people that brought this forward have indicated that there are problems with this now with missing people; coming to the police department and not having anyone follow up with their case. Where is the solution, the middle

ground without being so specific in law, which I can understand is your concern, and doing nothing in law, without adopting a policy.

**Keith Witt:** Good question but I'm not sure I have the answer. That's the crux of the issue and we have dealt with this on occasion. You do get these certain cases where you don't know who has the jurisdiction, it's not clear. Who has the authority based on jurisdiction to do anything with it?

**Rep. Koppelman:** Isn't that the whole point of the bill, to establish jurisdiction.

**Keith Witt:** That addresses part of the problem of who has authority; we could at least get the ball rolling.

**Rep. Klemin:** On page 2, subsection 4, there are 26 items listed, would you have the same concern about this section if, instead of saying "shall gather information that includes" to "at the time of the report, the information may include to the extent available" that list, so that the report can be started right away. I don't believe that is what was intended with this bill.

**Keith Witt:** I think what you are saying would resolve my concerns with that portion of the bill, but there are other things in this bill that would also create unintended consequences. I think everything in here is good, but I don't want to see it as a statute, should be a policy that jurisdictions adopt. Officers know how to investigate missing persons' cases, they know what they need to gather, it's case specific, it depends on how long they've been gone, the surrounding circumstances, etc.

**Rep. Klemin:** Is your objection to the whole bill, like the human remains, do you have a problem with that section.

**Keith Witt:** The DNA part is done by the State Bureau of Criminal Investigation and I can't really speak for them. I'm sure that they already have policies in place as well.

**Rep. Zaiser:** What about the ambiguity of no policy.

**Keith Witt:** That is an issue, because it's not clear-cut who would have jurisdiction if this crosses several jurisdictions even within the state.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Pat Heinert, Sheriff, Burleigh County:** Opposed (attachment). This bill shouldn't be tied to law with specifics; each jurisdiction should have a policy in place. We feel that the AG shall require law enforcement to develop policy.

**Chairman DeKrey:** Have you heard from any of your more rural brethren, because I can tell you that the smaller communities are not going to be able to do this. The first thing that is going to happen is that they are going to call BCI. They don't have the resources.

**Rep. Delmore:** If the policy is adopted through the AG's office that everybody is happy with, why couldn't they put that in Code, so that at least for those people who feel that there's been significant problems in the state where if something happens to my child, there is a policy in place. Is it possible to have something like that, that we can put into statute?

**Pat Heinert:** My thought is that if we put that into Code, where are we going to stop. We are told to develop policies and we do it.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Janelle Moos:** We wrote a discretionary grant to develop a model policy for this purpose, but we need to have a policy in place for every agency to compete on a nationwide basis.

**Ken Sorenson, AG's office:** Neutral (attachment). I appear on behalf of the Crime Lab, they have DNA concerns, we have amendments on page 4, line 4.

**Rep. Delmore:** If we adopt this, would there be a change to the fiscal note.

**Ken Sorenson:** No.

**Chairman DeKrey:** I will appoint a subcommittee of Reps. Griffin, Koppelman, Hatlestad and Kretschmar (chair). We will close the hearing.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7964

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will take a look at HB 1040.

**Rep. Kretschmar:** Explained his amendment. This amendment will replace the bill. I move that amendment.

**Rep. Delmore:** Second.

**Chairman DeKrey:** Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Dahl:** Does this change the fiscal note or not.

**Rep. Kretschmar:** I don't know.

**Rep. Klemin:** I think that would be the main concern.

**Rep. Delmore:** I move a Do Pass as amended with a rereferral to Appropriations.

**Rep. Wolf:** Second.

**11 YES 0 NO 2 ABSENT**

**DO PASS AS AMENDED WITH A REREFERRAL TO APPROPRIATIONS**

**CARRIER: Rep. Kretschmar**

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/13/2009

Amendment to: Reengrossed  
HB 1040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$177,742	\$0	\$160,540	\$0
Appropriations	\$0	\$0	\$177,742	\$0	\$160,540	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0			\$0			\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Office of Attorney General will analyze applicable evidence to assist in locating missing persons.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 - All DNA samples from the missing person case must be forwarded immediately to the state Crime Laboratory to perform a DNA analysis.

**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.*

n/a

**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.*

The expenditures include salaries and operating for 1 forensic scientist to analyze missing person evidence.

The impact, if any, on local law enforcement is unknown.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this purpose.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	03/16/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/17/2009

Amendment to:        Engrossed  
                              HB 1040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$177,742	\$0	\$160,540	\$0
<b>Appropriations</b>	\$0	\$0	\$177,742	\$0	\$160,540	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0			\$0			\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Office of Attorney General will analyze applicable evidence to assist in locating missing persons.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 - All DNA samples from the missing person case must be forwarded immediately to the state Crime Laboratory to perform a DNA analysis.

**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.*

n/a

**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.*

The expenditures include salaries and operating for 1 forensic scientist to analyze missing person evidence.

The impact, if any, on local law enforcement is unknown.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this purpose.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	02/17/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/30/2009

Amendment to: HB 1040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$318,467	\$0	\$326,930	\$0
<b>Appropriations</b>	\$0	\$0	\$318,467	\$0	\$326,930	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0			\$0			\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Office of Attorney General will analyze applicable evidence to assist in locating missing persons. The office will assist law enforcement with information to aid in the location and safe return of missing persons, and enter relevant data into available state and federal databases.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 - All DNA samples from the missing person case must be forwarded immediately to the state Crime Laboratory to perform a DNA analysis.

Section 4.4 - The Bureau of Criminal Investigation (BCI) will assist local law enforcement to enter information into available state and federal databases if needed.

Section 4.5 - The BCI person entering data will have specific expertise in medical or dental records.

Section 5.1 - The BCI will provide information to local enforcement about best practices for handling death scene investigations. A procedures manual will be developed to assist local law enforcement regarding missing person investigations.

**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.*

n/a

**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.*

The expenditures include salaries and operating for 1 administrative assistant FTE with medical/dental expertise, 1 forensic scientist to analyze missing person evidence, and professional services costs for death investigation training.

The impact, if any, on local law enforcement is unknown.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency*

*and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this purpose.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	02/03/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: HB 1040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$647,192	\$0	\$326,930	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0			\$0			\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The office will analyze law enforcement evidence to assist in locating missing persons. The office will provide law enforcement with information to aid in the location and safe return of high risk missing persons, and enter relevant data in federal and state database.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 - All DNA samples from the missing person case must be forwarded immediately to the state Crime Laboratory to perform a DNA analysis.

Section 4.4 - The Bureau of Criminal Investigation (BCI) shall enter collected information into state and federal databases.

Section 4.5 - The person entering data shall have specific expertise in medical or dental records.

Section 5.1 - The Bureau of Criminal Investigation shall provide information to local enforcement about best practices for handling death scene investigations.

An effective date section should be added indicating it is effective when the state database is operational since it will take some time before it is available for use.

**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.*

n/a

**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.*

The expenditures include salaries and operating for 1 administrative assistant FTE with medical/dental expertise, 1 forensic scientist to analyze missing person evidence, and professional services costs for death investigation training. The expenditures also include development of the necessary state database.

The impact, if any, on local law enforcement is unknown.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation did not include an appropriation for this purpose.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	701-328-3622	<b>Date Prepared:</b>	12/31/2008

YK  
1/28/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a procedure for missing person investigations."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Missing person reports.**

1. A report of a missing person may be made to any law enforcement agency in the state. The law enforcement agency may not refuse to accept a missing person report solely on the basis that:
  - a. The missing person is an adult;
  - b. The circumstances do not indicate foul play;
  - c. The person has been missing for a short period of time;
  - d. The person has been missing for a long period of time; or
  - e. There is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance.
2. Notwithstanding subsection 1, if, upon receiving sufficient information from the person making the report, the law enforcement agency that receives the initial report of a missing person determines that a law enforcement agency in another jurisdiction is clearly the more appropriate law enforcement agency to receive the missing person report, the law enforcement agency that receives the initial report may refer the missing person report to the more appropriate law enforcement agency. The responsibility for the missing person report remains with the law enforcement agency that receives the initial missing person report until the law enforcement agency in the other jurisdiction confirms, in writing, its acceptance of responsibility for the missing person report. If the law enforcement agency to which the missing person report is referred is located within this state, that law enforcement agency shall accept or decline the responsibility for the referred missing person report within twenty-four hours after receiving the request from the initial law enforcement agency. The law enforcement agency to which the report is referred may not decline acceptance of responsibility for the missing person report without good cause shown and may not decline acceptance of responsibility for the report solely on the basis of the factors listed in subsection 1.
3. The law enforcement agency shall accept a missing person report in person. A law enforcement agency also may accept reports by telephone or by electronic or other media to the extent that the reporting is consistent with law enforcement policies or practices.

**SECTION 2. Notification and other action.**



1. When possible, the law enforcement agency shall inform the person making the report, a family member of the missing person, or other person who may be in a position to assist the law enforcement agency regarding the agency's efforts to locate the missing person about general information regarding the handling of the missing person case or information regarding intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance.
2. All DNA samples obtained in missing person cases must be forwarded immediately to the state crime laboratory to perform a DNA analysis. The state crime laboratory shall establish procedures for determining how to prioritize analysis of the samples relating to missing person cases.
3. The law enforcement agency shall submit relevant information to the federal bureau of investigation's violent criminal apprehension program as soon as is practicable.

### **SECTION 3. Prompt determination of high-risk missing person - Law enforcement agency reports.**

1. A high-risk missing person is an individual whose whereabouts are not currently known and the circumstances indicate that the individual may be at risk of injury or death.
2. Upon the determination by the law enforcement agency that the missing person is a high-risk missing person, the law enforcement agency shall notify the bureau of criminal investigation. The law enforcement agency shall provide to the bureau of criminal investigation the information most likely to aid in the location and safe return of the high-risk missing person.
3. The responding local law enforcement agency immediately shall enter all collected information relating to the missing person case in available state and federal databases. If the responding local law enforcement agency does not have the capability to enter this data directly in the state and federal databases, the bureau of criminal investigation shall enter all collected information relating to the missing person case in available state and federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases.
4. The bureau of criminal investigation shall ensure that the person entering data relating to medical or dental records in state or federal databases is specifically trained to understand and correctly enter the information sought by these databases.

**SECTION 4. Reporting of unidentified persons and human remains.** The bureau of criminal investigation shall provide information to local law enforcement agencies about best practices for handling death scene investigations. The bureau of criminal investigation shall identify any publications or training opportunities that may be available to local law enforcement agencies or law enforcement officers concerning the handling of death scene investigations.

### **SECTION 5. Unidentified person or human remains identification responsibilities.**

1. If the official with custody of the human remains is not a coroner or medical examiner, the official promptly shall transfer the unidentified remains to the coroner or medical examiner to examine human remains for the purpose of identification of the human remains.

2. A coroner or medical examiner or any other person may not dispose of or engage in actions that will materially affect the unidentified human remains before the coroner or medical examiner:
  - a. Obtains samples suitable for DNA identification and archiving;
  - b. Obtains photographs of the unidentified person or human remains;  
and
  - c. Exhausts all other appropriate steps for identification.

**SECTION 6. Attorney general to develop missing person procedural policy.** To provide guidance to law enforcement agencies in the state, the attorney general shall develop a procedures manual, consistent with this Act, relating to the investigation of missing person cases. Upon request, the attorney general shall distribute the manual to law enforcement agencies."

Renumber accordingly

Date: 1/28/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1040

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Kretschmar

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

**REPORT OF STANDING COMMITTEE**

**HB 1040:** Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1040 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a procedure for missing person investigations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Missing person reports.**

1. A report of a missing person may be made to any law enforcement agency in the state. The law enforcement agency may not refuse to accept a missing person report solely on the basis that:
  - a. The missing person is an adult;
  - b. The circumstances do not indicate foul play;
  - c. The person has been missing for a short period of time;
  - d. The person has been missing for a long period of time; or
  - e. There is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance.
2. Notwithstanding subsection 1, if, upon receiving sufficient information from the person making the report, the law enforcement agency that receives the initial report of a missing person determines that a law enforcement agency in another jurisdiction is clearly the more appropriate law enforcement agency to receive the missing person report, the law enforcement agency that receives the initial report may refer the missing person report to the more appropriate law enforcement agency. The responsibility for the missing person report remains with the law enforcement agency that receives the initial missing person report until the law enforcement agency in the other jurisdiction confirms, in writing, its acceptance of responsibility for the missing person report. If the law enforcement agency to which the missing person report is referred is located within this state, that law enforcement agency shall accept or decline the responsibility for the referred missing person report within twenty-four hours after receiving the request from the initial law enforcement agency. The law enforcement agency to which the report is referred may not decline acceptance of responsibility for the missing person report without good cause shown and may not decline acceptance of responsibility for the report solely on the basis of the factors listed in subsection 1.
3. The law enforcement agency shall accept a missing person report in person. A law enforcement agency also may accept reports by telephone or by electronic or other media to the extent that the reporting is consistent with law enforcement policies or practices.

**SECTION 2. Notification and other action.**

1. When possible, the law enforcement agency shall inform the person making the report, a family member of the missing person, or other person who may be in a position to assist the law enforcement agency regarding the agency's efforts to locate the missing person about general information regarding the handling of the missing person case or information regarding intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance.
2. All DNA samples obtained in missing person cases must be forwarded immediately to the state crime laboratory to perform a DNA analysis. The state crime laboratory shall establish procedures for determining how to prioritize analysis of the samples relating to missing person cases.
3. The law enforcement agency shall submit relevant information to the federal bureau of investigation's violent criminal apprehension program as soon as is practicable.

**SECTION 3. Prompt determination of high-risk missing person - Law enforcement agency reports.**

1. A high-risk missing person is an individual whose whereabouts are not currently known and the circumstances indicate that the individual may be at risk of injury or death.
2. Upon the determination by the law enforcement agency that the missing person is a high-risk missing person, the law enforcement agency shall notify the bureau of criminal investigation. The law enforcement agency shall provide to the bureau of criminal investigation the information most likely to aid in the location and safe return of the high-risk missing person.
3. The responding local law enforcement agency immediately shall enter all collected information relating to the missing person case in available state and federal databases. If the responding local law enforcement agency does not have the capability to enter this data directly in the state and federal databases, the bureau of criminal investigation shall enter all collected information relating to the missing person case in available state and federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases.
4. The bureau of criminal investigation shall ensure that the person entering data relating to medical or dental records in state or federal databases is specifically trained to understand and correctly enter the information sought by these databases.

**SECTION 4. Reporting of unidentified persons and human remains.** The bureau of criminal investigation shall provide information to local law enforcement agencies about best practices for handling death scene investigations. The bureau of criminal investigation shall identify any publications or training opportunities that may be available to local law enforcement agencies or law enforcement officers concerning the handling of death scene investigations.

**SECTION 5. Unidentified person or human remains identification responsibilities.**

1. If the official with custody of the human remains is not a coroner or medical examiner, the official promptly shall transfer the unidentified remains to the coroner or medical examiner to examine human remains for the purpose of identification of the human remains.
2. A coroner or medical examiner or any other person may not dispose of or engage in actions that will materially affect the unidentified human remains before the coroner or medical examiner:
  - a. Obtains samples suitable for DNA identification and archiving;
  - b. Obtains photographs of the unidentified person or human remains; and
  - c. Exhausts all other appropriate steps for identification.

**SECTION 6. Attorney general to develop missing person procedural policy.** To provide guidance to law enforcement agencies in the state, the attorney general shall develop a procedures manual, consistent with this Act, relating to the investigation of missing person cases. Upon request, the attorney general shall distribute the manual to law enforcement agencies."

Renumber accordingly

2009 HOUSE APPROPRIATIONS

HB 1040

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1040

House Appropriations Committee  
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 2/6/09

Recorder Job Number: 8923

Committee Clerk Signature

*Lonja Vaegeli*

Minutes:

Chairman Delzer opened the hearing on House Bill 1040.

Representative DeKrey gave a brief overview of the bill.

**Representative DeKrey:** The bill before you came out of the Judicial Process Committee during the interim. The bill is pretty straight forward on what it does. Take an instance where you have got a college kid in Minot and a college kid in Fargo and they are friends. So the kid in Minot decides to go to Fargo and party for the weekend with his friend in Fargo. Come about Tuesday or Wednesday the school calls his parents and wants to know where he is because they have not seen him. The problem is who do they make the report to because Fargo police are saying that it is Minot's problem because they never saw the kid. They do not have any proof he was in Fargo. Minot is saying he left Minot so it is not their problem. What the bill seeks to rectify is a situation that when somebody comes in to make a missing persons report, whichever jurisdiction they bring it to and give it to they would be required by law to take that report. Then they would start the investigation to find out between them which law agency would be better more to handle the report and do the investigation. What the problem is now,



is the actual investigation on the missing person never even gets started because you have already got the two agencies that don't want to use any of their budgets to find the person because they don't think the person was in their jurisdiction in the first place. That is what the premise of the bill was. When we heard the bill in committee I don't know what the problem was. The fiscal note that we saw or didn't see, showed that it really had no fiscal impact on the state what so ever because it was going to be locals jurisdiction's problem and what we heard from the locals was that it was so rare in North Dakota that this kind of thing happened anyway, that they really were not all that concerned about a fiscal impact. Now we have a new fiscal note and the bill was passed out of our committee and I think it was passed out on the floor before this fiscal note came out.

**Chairman Delzer:** It would not have been voted on on the floor.

**Representative DeKrey:** Kathy Roll is here and I will let her explain the fiscal note.

**Chairman Delzer:** I understand Representative Meyer was also the chair of Judicial Process during the interim. Currently isn't missing persons, isn't there some time frames on them?

**Representative DeKrey:** It depends on the jurisdiction and what their policy is. That was some of the testimony that we had is in some jurisdictions if they are small enough, like if I go missing in Kidder County, they are probably going to start looking for me right way because they know me pretty well in Kidder County. If you go missing in say Minot and I don't what Minot city's policy is but it may be 24 hours it may be 48 hours if you are an adult and you have been missing. It is different for kids. If it is a kid that is missing that is under 18, different rules apply. And if they can prove it was across state lines that this happened then the FBI might even become involved. That was the problem that there were so many different policies out there and departments handle it so many different ways that nobody is really sure when somebody comes to them with a missing persons report, unless they can absolutely say

without a doubt it was in their jurisdiction that it is going to trigger an investigation and get things moving.

**Chairman Delzer:** The way I read this, and maybe I am wrong, but the way I read this they would be required even if somebody reported somebody missing for an hour.

**Representative DeKrey:** Correct.

**Representative Meyer:** The bill, within twenty four hours, you have to make that designation.

**Chairman Delzer:** That is not what the bill says.

**Representative Meyer:** On the bottom of page one and the top of page two. Within 24 hours after receiving the request from the initial law enforcement agency, you have to decide who's jurisdiction that is going to be.

**Chairman Delzer:** That is the jurisdiction. The way I read it they have to start treating that as they have to put all of their resources into play as soon as it is reported. It says a short period of time or a long period of time that they cannot refuse to accept the report.

**Representative Meyer:** It is within twenty four hours, when you get a report.

**Chairman Delzer:** That is the intent is to be within 24 hours to start looking

**Representative Meyer:** You have to decide whose jurisdiction it is going to be. Because that is what is happening now, you know if your college student for example has gone missing and you do this report, within 24 hours you need to know which jurisdiction will be handling this.

**Chairman Delzer:** Anything further Representative DeKrey?

**Representative DeKrey:** Not on the bill. Looking at this closer and I think most of it has to do with DNA testing and laboratory testing that would have to be done.

Kathy Roll, Attorney General's Office, explained the fiscal note.

**Kathy Roll:** The fiscal note that was done in February had removed a system that was going to be required because based on the original bill there were a number of things that needed to be tracked on a system that was not currently available. That would have required us to develop a state system to do that. Once those requirements were dropped, that decreased the fiscal note by about \$300,000. The remainder of the fiscal note is for a forensic scientist to analyze the DNA samples and also in the bill it requires that the person who enters in the medical and dental information need to have expertise in those areas. That is what the fiscal note includes. It also includes monies to train law enforcement on handling death scene investigations and develop a procedures manual.

**Chairman Delzer:** Do you have a breakdown on how you came up with the \$318,000?

**Kathy Roll:** I will find that.

**Chairman Delzer:** According to Representative DeKrey the Judicial Committee did not have access to the original fiscal note, when was it prepared?

**Kathy Roll:** The original fiscal note was prepared December 31<sup>st</sup>. The breakdown for that \$318,000 is \$180,000 for the crime lab person, \$138,000 for the administrative assistant and the death scent training for BCI.

**Chairman Delzer:** So you are talking about two new positions.

**Kathy Roll:** That is correct.

**Representative Meyer:** On this, part of this I guess with the death scene training when we are going into missing persons, our testimony during the interim was that we just would need the DNA samples to be forwarded to the people who had actually gone missing like in North Dakota it was relayed to us maybe from 16-25. At that time it was not indicated that there would be any kind of increase of FTEs or anything else and that that could certainly be handled by our crime lab now. The only thing that we were looking at was that the Attorney

General would have to develop a procedures manual if the local law enforcement didn't choose to. They can develop their own manual.

**Kathy Roll:** I am not disagreeing with you. What the bill says is maybe not the same as what you understand. It does require us to prioritize those samples that we start with those right away. One of the main functions of the bill is to find missing persons as soon as possible. That is the goal. In order to do that and with the number of changes in how soon that will be handled and that kind of thing, we are seeing a significant increase in the workload. Because there is more of an avenue now to report people who are missing and to have the investigation started.

**Representative Meyer:** It was just the testimony that we would receive that would involve 16-25 people which really would not require three more people to handle.

**Kathy Roll:** There are only two people but I understand what you are saying. Was our office involved in that?

**Representative Meyer:** To the best of my knowledge. We were not even told there was a fiscal note on this until last Friday is the first time I saw it. We could have missed it but when we testified there was no fiscal note on it at that time, the second week of January.

**Chairman Delzer:** The fiscal must have been there because Representative DeKrey said they kicked this bill out early in the session and it was caught, we didn't vote on it on the floor that I can see so it was caught to come to appropriations fairly early.

**Representative Meyer:** It could be.

**Chairman Delzer:** Section four and five of the bill seems to add considerably to the fiscal note. I don't see that that has anything to do with finding missing persons any quicker. It has to do with dealing with after they are found in an undesirable situation. I am not sure that that does any good as far as finding the missing persons.

**Representative Meyer:** I agree with you. One of the problems was why that got tied into section four and section five is if there is a missing person and they are found deceased.

**Chairman Delzer:** I understand that. At that time, I guess Mr. Trenbeath if you are here, do we have cases where this bill will make that stuff handled any better?

**Tom Trenbeath, Deputy Attorney General:** I walked in the door and immediately realized I made a mistake. I really have no definitive knowledge on the subject matter and anything I would say would be speculation and really not worth your listening to.

**Representative Dosch:** When Representative DeKrey was in here it sounded like this was just supposed to be a jurisdictional issue, if I am in Bismarck and I go missing and there is no jurisdictional issue, the system is already in place to handle that missing person complaint. It seems to me that this bill, I don't know how it was presented and what this bill was asking for; it kind of seems like two different things. There shouldn't be any more work at the Attorney General's office. It is just a matter of determining, OK if you go missing here you report here, and if you go missing there you report there. It is that simple. Everything else is in place. We are not doing anything new on how we handle missing persons other than determining who takes the case. I am not sure why we have this big fiscal note or maybe perhaps the bill itself is not quite written properly.

**Chairman Delzer:** I kind of think it is not written properly but I see the fiscal note coming from four and five because it requires them a couple of things that they do not have. Especially the reporting. The DNA testing I do not know that that is any different.

**Representative Meyer:** Representative Dosch is 100% correct. In section five we have to do this anyway. It is done anyway. If you have a dead body out there you just don't go throw it away.

**Chairman Delzer:** If it is done already why do we need to put it into coded and have to answer to the fiscal note on it. I guess unless we have real strong feelings on this bill I think we should probably allow Representative Meyer and maybe Representative Dosch if they want to visit about it, the opportunity to see if they want to amend it before Monday otherwise I don't think I can support it the way it is.

**Representative Meyer:** I don't think anyone could. I do believe Representative Dosch has hit the nail on the head. The whole object of this was that within 24 hours someone has to decide whose jurisdiction this is going to be in.

**Chairman Delzer:** Why don't, Representative Meyer if you want we can hold this until Monday if you could get with the Attorney General's Office.

**Representative Meyer:** Could I ask Kathy, if we amended four and five it should have no fiscal note other than a procedure manual that shouldn't be very expensive correct?

**Kathy Roll:** If you notice in section three number four. It requires that there be a person with medical and dental experience to be entering into the federal and state databases. That is where that part of that comes from.

**Chairman Delzer:** Representative Meyer, if you get a chance, get together with Kathy and if Representative Dosch wants get with you and see if you can get it where it works right. Otherwise I think it will have a hard time.

**Representative Meyer:** I agree.

Chairman Delzer closed the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1040

House Appropriations Committee  
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 2/10/09

Recorder Job Number: 9067 starting at 7:25

Committee Clerk Signature *Tonya Voegels*

Minutes:

Discussion of amendments on 1040

Representative Meyer explained amendment 90122.0401.

**Chairman Delzer:** I don't see this working right though. You want to remove lines 13?

**Representative Meyer:** On page three. I am sorry. Page three lines 13 through 21 and that will remove the training for death scenes and it will remove the FTE that they needed for the dental and medical records.

**Chairman Delzer:** Have you had any discussion on this with the people who wrote the fiscal note?

**Representative Meyer:** I have not. I just visited with Vonette about it and she said that basically takes out on the fiscal note that would take out the BCI person that has the specific expertise in medical and dental and it also takes out the best practices for handling death scene investigations. The only thing in here that would cost anything would be the Attorney General has to provide guidance to law enforcement agencies in the state to develop a procedures manual. If they have their own manual they don't have to have one made for them from the Attorney General's Office.

**Chairman Delzer:** You say they have got one currently?

**Representative Meyer:** Many of the local jurisdictions do like the Bismarck Police Department, the Minot, Grand Forks, if they have a manual they are good to go. If they don't the Attorney General has to provide them with a manual and basically that is just this bill. That is what the manual would have to be.

**Chairman Delzer:** Section four says that BCI shall provide the information. If you want the local ones to use theirs should that say may provide? Otherwise I see it that they have to use the one that BCI puts out.

**Representative Meyer:** That is all removed according to the amendment.

**Chairman Delzer:** OK. That is removed. Then you still have section five in the bill.

**Representative Meyer:** Vonnete's comment to that was that when you have a deceased person, the procedure is in place, they have to go to the coroner now. You don't just throw them away. They have to go to the coroner and that should not in any way affect the fiscal note.

**Chairman Delzer:** What does it need to be in there for? If they have to go to the coroner already that is what you are doing there isn't it.

**Representative Dosch:** That is kind of how I read it too. I am not sure why we would need section five in there either. That has to be part of the policy right now anyway.

**Chairman Delzer:** I guess I would accept your amendment but I would prefer you took section five out. I think that is all currently covered.

**Representative Glassheim:** I don't know if it is elsewhere in code. It may just be general operating procedures but this spells it out. I don't know that it imposes any new duties than what is happening but it does at least spell it out and makes it clear to everybody how the procedure is.



**Representative Dosch:** The purpose of this bill was just to establish jurisdiction of who is handling the initial case on this so I guess I would like to see section five taken out as well.

**Chairman Delzer:** One of the problems with putting it in code as far as I can see is when you put it in code and I don't know maybe it is in code already, but when you put it in code that also gives somebody the ability to try to bring action against somebody who does not follow this explicitly. I don't know that they are covered somewhere else.

**Representative Meyer:** Your coroner and your medical examiner are covered in other sections of the code. What this does in section five is tell them that they have to take a sample and then they have to also take a photograph so that in the case where someone turns up, so that there is some record and it goes back to the model act where if the coroner does this currently. In the cases of some of these missing persons this is requiring them to keep a DNA sample and keep a photograph of it. It just spells that out in order to tag back to anyone that has gone missing.

**Chairman Delzer:** Let's do it this way. You have the one set of amendments here, let's move those if somebody wants to make a motion on the next one, we will move those. Then we will see if there are any others that someone wants to move and then we will move forward from there.

**A motion was made by Representative Meyer, seconded by Representative Dosch to adopt amendment 90122.0401 to House Bill 1040. The amendment was adopted by voice vote.**

**Chairman Delzer:** Any further amendments? Representative Dosch did you want to try to do something with that section?

**Representative Dosch:** As I am reading that a little closer, section five, it says if the official with the custody of the human remains is not a coroner or medical examiner. Maybe that is the difference there. Since we are changing the jurisdiction of these cases, who must except that first report, if that official is not a coroner or medical examiner, it is telling them that these are the things that you need to do.

**Chairman Delzer:** Section two also tells the coroner or medical examiner what to do.

**Representative Glassheim:** Or any other person.

**Representative Meyer:** Right

**Chairman Delzer:** No it can't be any other person.

**Representative Meyer:** Yes it is. That is on line 27.

**Chairman Delzer:** How is any other person going to know that?

**Representative Kaldor:** Basically what we are trying to get at with that language is that if something occurs where there are human remains, nobody should destroy them or remove them or mishandle them.

**Chairman Delzer:** What are the penalties if somebody does who has no clue what they are doing?

**Representative Meyer:** There are no penalties.

**Chairman Delzer:** So we are passing another law with no penalties?

**Representative Meyer:** Basically this is model legislation that they have put in other states to start the information process if you will so that people start realizing the importance of this.

**Representative Kaldor:** I am just guessing that there is law on what one individual can do with another deceased body. And penalties as well.

**Representative Meyer:** That is true because you can't like have a human skull on your fireplace or something.

**Chairman Delzer:** Are there any further amendments?

**Representative Dosch:** Being new to appropriations I just have a question. Do we now need to get a new fiscal note on this? What if they don't lower the fiscal note or lower it by what we think?

**Chairman Delzer:** I think, and Becky you can maybe explain how this works when it is amended, there is a request for another fiscal note that goes in. We will not have the fiscal note before this hits the floor. The other house if this passes will have the new fiscal note. I am sure in our discussion we will say that we expect the fiscal note should come out zero if it does not that will be an issue for us when it comes back from the other chamber. We can't wait.

**A motion was made by Representative Meyer, seconded by Representative Glassheim for a DO PASS AS AMENDED recommendation for House Bill 1040 to the House Appropriations Full Committee. The vote was 5 yeas, 3 nays and 0 absent and not voting. The carrier will be Representative Meyer.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9280

Committee Clerk Signature

*Shirley Branning*

Minutes:

**Chm. Svedjan** took up HB 1040.

**Rep. Meyer** distributed amendment .0401 (Attachment A) and moved a Do Pass.

**Rep. Kempenich:** Second.

**Svedjan:** So you don't know the fiscal impact?

**Rep. Meyer:** It would not be significant, but it could be very minimally.

**Rep. Klein:** Does this delete the FTE requirement also?

**Rep. Meyer:** I believe it does.

**Rep. Delzer:** Kathy Roll with the Attorney General's office was present when we discussed this, she thought it would take care of the fiscal note and that is the attempt of the amendment. It didn't have much support the way it was. We can't tell for sure until they get a chance to do a new fiscal note. The fiscal note should be nil or very very small.

**Chairman Svedjan:** On the motion to adopt amendment 0401 to HB 1040, a voice vote is taken and carried.

**Rep. Meyer:** Move to Do Pass as amended.

**Rep. Dosch:** Second.

Page 2

House Appropriations Committee

Bill/Resolution No. 1040

Hearing Date: February 11, 2009

**Vote Taken: Yes 20, No 3, Absent 2. Motion carries. Carrier: Rep. Meier.**

90122.0401  
Title.0500

Prepared by the Legislative Council staff for  
Representative S. Meyer  
February 9, 2009

VR  
2/13/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1040

Page 3, remove lines 13 through 21

Renumber accordingly

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1040**

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90122.0401

Action Taken Adopt Amendment

☒ Voice Vote

☐ Roll Call Vote

Motion Made By Representative Meyer: Seconded By Representative Dosch:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Glassheim		
Vice Chairman Thoreson			Representative Meyer		
Representative Kempenich			Representative Kaldor		
Representative Berg					
Representative Dosch					

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

Absent \_\_\_\_\_

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

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

**Amendment Adopted**

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1040**

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90122.0401

Action Taken Do Pass as Amended

☐ Voice Vote

☒ Roll Call Vote

Motion Made By Representative Meyer: Seconded By Representative Glassheim:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		x	Representative Glassheim	X	
Vice Chairman Thoreson	X		Representative Meyer	X	
Representative Kempenich		X	Representative Kaldor	x	
Representative Berg		X			
Representative Dosch	x				

Total (Yes) 5 No 3

Absent 0

Floor Assignment Representative Meyer:

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



Date: 2/11/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1040

**Full House Appropriations Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number 90122.0401

Action Taken Adopt amendment .0401

Motion Made By S. Meyer Seconded By Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

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

Absent \_\_\_\_\_

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

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

*Voices Vote - Carries*

Date: 2/11/09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1040

**Full House Appropriations Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number 90122.0401

Action Taken Do Pass as Amended

Motion Made By Meyer Seconded By Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer		✓	Rep. Glassheim	✓	
Rep. Thoreson		✓	Rep. Kaldor	✓	
Rep. Berg		✓	Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew		✓	Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 20 No 3

Absent 2

Floor Assignment Rep. Meyer

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

**REPORT OF STANDING COMMITTEE**

HB 1040, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1040 was placed on the Sixth order on the calendar.

Page 3, remove lines 13 through 21

Renumber accordingly

2009 SENATE JUDICIARY

HB 1040

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1040

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10052

Committee Clerk Signature



Minutes:

**Senator Nething** opens the hearing on HB 1040, an act to provide for a procedure for missing person investigations.

**Representative Shirley Myer** introduces the bill (see attached testimony #1).

**Senator Lyson** is there any reason to keep section 5 in the bill?

**Representative Shirley Myer** the law enforcement agencies had indicated to our interim committee that they did not want to have to be in the position of developing their own policy and procedural manual. Some of them already have one and it is ok for them to follow it. Some of the smaller law enforcement agencies that do not have this, we felt the Attorney General could develop a manual for them to follow.

**Senator Lyson** if the Attorney General develops a good procedural policy, there is no need for this bill.

Representative Myer I don't know.

**Senator Fiebiger** it looks like section 1 talks about how this process has to be done and puts it into terms of what the law enforcement agencies must do as opposed to the Attorney General providing some guidance, could that be part of the difference?

**Representative Myer** That would be the intent of the language. We are just trying to get it so there is a policy in place and that defines it.

**Representative Nancy Johnson** I would like to address Senator Lyson's question first. This is where we direct, in a sense, the Attorney General to put a policy together that would be used state wide. At this point there is nothing directing him to do that. I am here to testify in favor of the bill (see attached testimony #2).

**Senator Nething** I thought this was a fairly complete bill as to what the procedure would be. Are you thinking that there is more that needs to be added to the procedures?

Representative Johnson in the original bill it talked about what needed to be collected. We heard testimony in the House hearing about this changing like technology and we would have to change the law every time. The question was raised if we could do that in a policy where the Attorney General can put together the things that need to be capped.

**Senator Lyson** if we took the words "on request" out of section 5 and develop a good policy procedure wouldn't that take care of the bill?

**Representative Johnson** I am not sure.

**Vonnet Richter**, Legislative Council, I don't have a lot to add to the two previous speakers have said. I have copy of the Interim Committee report that will help give you a better background.

**Senator Nething** When you drafted the bill how did you reconcile sections 1 and 2 with section 5?

**Vonnet Richter** section 5 was not part of the original bill; it was put on in the House. The original bill included a lot of details and timelines.

**Janelle Moos**, North Dakota Abused Women's Services, testified in favor of the bill (see attached testimony #3). We experienced this about 4 years ago in North Dakota Century Code

under chapter 14. There was a section of it that required all law enforcement agencies to have a law enforcement domestic policy. It was just a broad statement that every agency was required to have. We worked with the Attorney General's Office as well as a multi disciplinary committee to create a very comprehensive policy and procedural manual that all law enforcement could adpt. We were aware of many agencies that had a domestic violence policy and they brought them to the table. We used them to create the model policy.

**Senator Nething** closed the hearing on HB 1040.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1040

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10671

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Relates to missing persons

Discussion

**Senator Lyson** said each county will have their own policies in place. In a smaller area you may know your people and would know if it fits a missing person.

**Senator Olafson** mentions that a difference in policies in itself creates a problem. He thinks it is problem when everyone has their own policies.

**Senator Fiebiger** doesn't think section 5 was in the original bill.

**Senator Lyson** states he doesn't like the wording.

The committee discusses amending out section 5 and bringing it to a conference committee.

**Senator Nething** says he thinks they are trying to bring uniformity to the process.

**Senator Lyson** says this stems from a case in SW ND, they did everything right but public opinion thought there should be more.

**Senator Nething** thinks an action like this would bring more conclusion.

**Senator Nelson** moves the amendment

**Senator Fiebiger** seconds



Verbal vote – all yes

**Senator Schneider** moves do pass as amended

**Senator Olafson** seconds

Vote- 5 yes – 1 no

**Senator Fiebiger** will carry

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

Page 3, remove lines 24 through 28

Renumber accordingly

Date: 3/11/09  
Roll Call Vote #: 1  
HB 1040

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

amendment

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Nelson Seconded By Sen. Fiebigger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	/		Sen. Tom Fiebigger	/	
Sen. Curtis Olafson – V. Chair.	/		Sen. Carolyn Nelson	/	
Sen. Stanley W. Lyson	/		Sen. Mac Schneider	/	

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Verbal. yes

Date: 5/11/2011  
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 1040  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen. Schneider Seconded By Sen. Nelson

[illegible]

Total (Yes) 5 (N) 1

Absent \_\_\_\_\_

Floor Assignment Sen. Diebig

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

REPORT OF STANDING COMMITTEE (410)  
March 11, 2009 4:20 p.m.

Module No: SR-44-4631  
Carrier: Flebiger  
Insert LC: 90122.0501 Title: .0600

**REPORT OF STANDING COMMITTEE**

**HB 1040, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Reengrossed HB 1040 was placed on the Sixth order on the calendar.**

Page 3, remove lines 24 through 28

Renumber accordingly

2009 SENATE APPROPRIATIONS

HB 1040

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1040

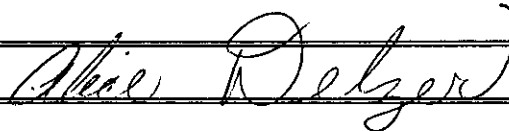
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-18-09

Recorder Job Number: 11176

Committee Clerk Signature



Minutes:

**Chairman Holmberg:** Opened the hearing on HB 1040, all members present.

**Shirley Meyer:** Representative District 36 introduced and testified in favor of HB 1040. (See written testimony #1)

**V. Chair Bowman:** I find it interesting that law enforcement which look at missing persons have been doing for years and years, don't they have policies for this right now? What does this do that they currently are not doing?

**Shirley Meyer:** We need someone to take jurisdiction. If you have a child that attends "X school" and this child doesn't call, so you call all the friends and no one can find this child. You then call "X school" and they say that they are on spring break, and then you would have to call down there. What happens then is no one agency will take the jurisdiction. The college won't take responsibility, Padre Island doesn't think they should be responsible, and its' the same thing, you call your local law enforcement. The boy from Trenton, biggest problem is to get someone in law enforcement to claim the jurisdiction and take it. This defines who has to take it.

**Vonnetee Richter:** Legal Staff for Legislative Counsel introduced and testified in support of HB 1040. (See written testimony #2)

**Senator Warner:** Did you discuss the ramifications between county and state. What we are doing here forcing them to do?

**Vonnetee Richter:** The primary cost would be at state level at BCI. To the county, requirement of taking reports, those are responsibilities that are already there, it is just requiring the local agency they have to talk to this person, take the info, it is a starting point for the family when they don't know where they are.

**Senator Warner:** What are the requirements if the missing person is an adult?

**Vonnetee Richter:** It provides that they can refuse to accept that (14.12) there was some discussion that there are people who really want to disappear. And we had test from PD and Sheriff, we will make an attempt to make contact, they will inform the family is safe and not investigate any farther.

Subcommittee on AG budget and will look at HB 1040.

Chairman Holmberg: Closed the hearing on HB 1040.



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

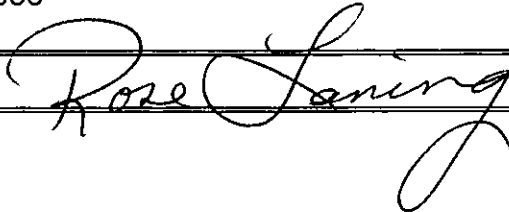
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11636

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened discussion on HB 1040.

**Senator Mathern** moved Do Pass on HB 1040.

**Senator Kilzer** seconded.

**Senator Mathern** said the bill came through the interim committee.

**Senator Christmann:** Is this working that poorly now? I'm looking at subsection three of section three that local law enforcement agencies will immediately enter all the collected information. I would assume they do enter all the information that they think is practical and relevant. Now they'll have to enter information that leads to a dead end, but it's information. It seems to me like we're micro-managing law enforcement just to get rid of any surplus we may have perceived.

**Senator Mathern:** What I recall from testimony is that this clarifies who must enter information.

**Senator Robinson:** Rep. Meyer from Dickinson testified at length on this. She stated some examples where people were missing and authorities would say, "That's not our jurisdiction." If you're prone Burleigh County and you're missing in Cass, would you work on it. If you're missing in Burleigh, it would make a difference.

Chairman Holmberg: Does this preclude that if Senator Robinson wants to legally disappear, that he won't be able to now? There will always be police after him?

Senator Warner: I had that exact question, but it was about Senator Fischer. The response that I got is that quite often it's a battered woman that simply wants to disappear. When the police investigate and find her, she makes a determination that she doesn't want to be found and they report back that she's safe, but they won't tell you where she is.

**A Roll Call vote was taken. Yea: 12    Nay: 2    Absent: 0**

**The bill goes back to the Judiciary Committee and Senator Fiebiger will carry the bill.**

Chairman Holmberg closed the hearing.

Date: 4-2-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1040

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Mathern Seconded By Kilzer

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Warner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Christmann	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Senator Robinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Krebsbach	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Krauter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Bowman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Senator Lindaas	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Kilzer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Mathern	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Grindberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Seymour	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Wardner	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Chairman Holmberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total Yes 12 No 2

Absent 0

Floor Assignment judiciary Senator Fischer

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

**REPORT OF STANDING COMMITTEE**

**HB 1040, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).** Reengrossed HB 1040, as amended, was placed on the Fourteenth order on the calendar.

2009 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1040

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 11999

Committee Clerk Signature

*Penrose*

Minutes:

**Rep. Kretschmar:** We will call the conference committee on HB 1040 to order.

**Attendance:** All members are present.

**Rep. Kretschmar:** Would the Senate please explain your amendments.

**Sen. Fiebiger:** We took out the requirement that the AG develop a procedural policy in Section 6, because the policy would be developed independently of that. We felt that it wasn't necessary in light of what was in the Bill itself.

**Rep. Delmore:** The author was Rep. Nancy Johnson. It went to an Interim Committee. Rep. Johnson wanted two items in the Bill; the first thing she wanted was to state very clearly who was in charge and to get the ball rolling and secondly that every department had a policy. I guess that's the main reason it was a big consideration in the House to have that policy so that no matter how big or small you were, the provisions were there. There are departments with policies, and we determined that if we could have one person develop these policies. It would be very easy to model it after Bismarck's policy, etc. We need every law enforcement agency to have a copy of the parameters and to know what they are.

**Sen. Fiebiger:** I think the thought process was that there may be other law enforcement agencies that are smaller, and one size did not fit all. We felt that as a result of this, that the

policy developed might not fit all departments. There was a concern that if we require the AG to develop a procedures manual, he would be forcing a one size fits all policy and that wasn't necessarily needed. I think the bill already sets out who is in charge of taking a report for the missing person.

**Rep. Kretschmar:** My recollection from the House Judiciary discussion was that some of the larger departments do have policies. We felt that there should be a default structure for the departments that didn't have any policy. That was the reason for putting the section about the AG in the bill. That way the AG would set up procedures to be used by departments that don't have an existing policy in place already. If the department has their own policy, they would be fine.

**Sen. Nothing:** Maybe we should say, along the lines of, for those departments that don't have a policy, to provide guidance the AG shall provide procedures. I agree that we should have something there and that might be a way to work around that difference.

**Rep. Delmore:** It never was our intent for that to replace a policy that somebody had in place. If the police department has developed their own policies, and several of them could develop them quickly, it would serve as a basis for the policy.

**Rep. Hatlestad:** If I interpret section 6, it says to provide guidance. In my estimation, to provide guidance is to give you an idea, here is the template, modify it as you wish, but that there will be something to work from. So if the big 4 already have a policy, then they can take a look and may not need to make any changes whatsoever. This is merely a suggestion.

**Sen. Nothing:** But if you read that whole sentence, it says that the AG shall develop a procedures manual, which seems to me to render a one size fits all. We don't say that you can vary from it, maybe you could. Maybe we could if we wanted to say that.

**Sen. Lyson:** We have other things in the law that says that each department shall develop a policy and file that policy with the Attorney General. That puts the burden back on the department, which may have their own policy. If they don't have one, they have to get one made up. That would seem to be the easiest solution.

**Rep. Hatlestad:** I think that's what this one says. The AG is going to develop a template and this will serve as guidance. They can work from it as they wish.

**Sen. Nothing:** A policy manual and a template to me are two different things.

**Rep. Kretschmar:** Sen. Nothing, I think your suggestion on the wording sounds pretty good.

**Sen. Nothing:** I was thinking that on section 6, at the end of line 2, "for those departments that do not have a policy, the attorney general shall develop a procedures manual consistent with this Act, relating to the investigation of missing person cases. Upon request, the attorney general shall distribute the manual to law enforcement agencies." We may need to take that out, because I don't know if we need "upon request". My thought was that those who have policies, this section would not apply to them. For those that don't, they should have a policy manual distributed to them. The intern could prepare that.

**Rep. Hatlestad:** If I read into it what you're saying, I get the impression then, that because the AG shall develop and give you the manual, that's it, it is a one size fits all. Is my interpretation wrong?

**Sen. Nelson:** A manual will be a one size fits all, except for the departments that have their own policy in place.

**Rep. Hatlestad:** I think we want to get away from that and if I read the whole sentence, I get the impression that the AG can give you guidance and from that guidance you develop a policy.



**Sen. Lyson:** There is a difference between policy and procedures. Procedures are down the line and this is exactly what you do. I think that policy develops how you put the procedures into place and how you do them. The policy has to be flexible enough so that each department can utilize it. The AG develops the policy and the departments will develop the procedures that put the policy into place.

**Sen. Fiebiger:** With section 6, if a department doesn't have a policy in place, are they required to use the AG's policy if this goes into place, what happens if they don't. As a parent, I want to know why you aren't doing anything. I'm wondering if what we have here is enough to give people what they to do and then they can craft their own policy; are the cities that already have policies in place, each policy is going to differ a little, should everyone follow the same policies. This looks like it is advisory, to use for guidance but what happens if they don't follow it. What about the smaller communities that don't have a policy in place, are they in limbo, or are they going to say that they need to get the AG's policy. What is the policy doesn't fit all. If it doesn't fit their communities in terms of what they need. If they don't follow that procedure, then what happens? I don't know want to make this more complicated than it has to be. I think we're trying to get to the same place.

**Rep. Kretschmar:** There may be a small department that has no policy, and if the situation arises, they may not know what to do. It was the House's idea to have the AG set up basic procedures for them to follow if they didn't have any in place.

**Sen. Fiebiger:** I guess I was just thinking that the bill sets out what they need to do.

**Rep. Delmore:** It's in here, but I think policy and procedures are something that needs to be written us, they aren't going to go back to the code and see how this is written, I don't think.

Unless there is a directive that says we need to have a procedure in place, should this happen, it won't happen. In North Dakota, we've chosen to bury our heads in the sand and think it's not

going to happen here; from small children to adults in the last year, it has happened and it's not just in major cities. I guess I think we want law enforcement to be able to, as soon as they can, go through and put it in place.

**Rep. Kretschmar:** Do you think some kind of sentence in that AG paragraph allowing departments to use these guidelines as they see fit.

**Sen. Lyson:** I'm looking at this from my perspective as a law enforcement officer. If they don't follow the steps, are they going to be held liable? I would say that over 50% of law enforcement agencies have policy manuals already in place for missing persons. Every time we go to school, we learn different procedures each time dealing with missing persons.

**Sen. Nething:** Did you sit on the Judicial Process Committee.

**Rep. Kretschmar:** Yes.

**Sen. Nething:** Did they bring situations where missing person cases are not being handled properly.

**Rep. Kretschmar:** There was a situation where one department tried to pass it off onto the other department. The missing person was reported missing in Dickinson, but he had been in Grand Forks. Dickinson police thought that the Grand Forks police should do it.

**Sen. Nething:** How would this deal with that situation, how would it have solved the problem.

**Rep. Kretschmar:** Wherever the person is reported missing, that police department would take over and follow the statute.

**Sen. Nething:** So in Dickinson, for example, if that is where it occurred, where the report was filed. Then they would have to initiate it and then could they move it to Grand Forks.

**Rep. Kretschmar:** I'm sure that they would cooperate together.

**Rep. Delmore:** I'm sure that BCI would be involved.

**Sen. Fiebiger:** In Section 1 that is covered.

**Sen. Nething:** How would section 6 solve that problem?

**Rep. Kretschmar:** You're talking about the AG.

**Sen. Nething:** Yes.

**Rep. Kretschmar:** Well there may be some guidelines as to what to do in a situation like that.

**Sen. Nething:** We already have it in code. Is it your thought that if you have it in Code that doesn't mean that the people are going to read it, or have a policy.

**Sen. Lyson:** I think what we have down here is already in code. Why do we have to put it in a procedure or policy? It's already in this law what you have to do. The policy should be to read this section of the law and put into place a procedure to file missing person reports. You have a file which contains the missing person reports; you fill one out and put out an APB.

**Rep. Hatlestad:** I guess if I were in your situation, in a small facility, and I suddenly had a missing person, I would like a checklist to say, okay, you have to do this, this, this and this.

**Sen. Lyson:** You've already got that in the missing person file.

**Rep. Hatlestad:** Well, yes and no. It's kind of like cliff notes. I don't want to read the whole book; I just want the condensed version. You do this x number of things first and then...

**Sen. Lyson:** You've already got that in the missing person file.

**Sen. Fiebiger:** If we had something along the lines of the AG to assist in developing missing person procedure policy and then just have it read, upon request the AG will assist law enforcement agencies in preparing this procedure policy. That makes him available to help them with this, as opposed to just saying that there is one manual that everyone has to follow. This isn't going to happen a lot, but it does happen. This way it places the burden on the individual agencies to go to the AG to help them do this. That could be an option. I don't know if it solves the question you have, but it does put the burden on the local people to say, we'll try and get help on this.

**Sen. Lyson:** When someone comes in to report a missing person, the sheriff/law enforcement ask questions and try to get the ball rolling. They talk to family members, friends, etc. and get the ball rolling, and the bulletin has usually gotten out to other law enforcement agencies. The problem is not there. The problem is what's happening now. There's no way to do this consistently across the state. If you're in Fargo you do it one way, in Medora, you do it another way. You just don't search in the same way. I don't know that it's really a problem; I don't know the answer to that.

**Rep. Kretschmar:** Do you have a problem with Sen. Fiebiger's suggestion.

**Sen. Lyson:** I certainly don't have a problem with that section.

**Rep. Delmore:** Could we see a draft of the amendment you are talking about. I will also talk to Rep. Johnson again and see what is going on. I think we can come to some sort of agreement with another meeting.

**Rep. Kretschmar:** So we're all okay with the other portions of the bill then.

**Sen. Nething:** I think so. I think it's just section 6. I'm not sure that we disagree with it; we just don't know how to make it work.

**Rep. Kretschmar:** We will recess and meet again.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

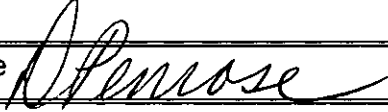
House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/22/09

Recorder Job Number: 12121

Committee Clerk Signature



Minutes:

**Rep. Kretschmar:** We will call the conference committee on HB 1040 to order.

**Attendance:** All members are present.

**Rep. Kretschmar:** We shall begin. Does anyone have amendments or motions?

**Sen. Lyson:** I move that the Senate recede from its amendments.

**Sen. Nething:** Second.

**Rep. Kretschmar:** Discussion.

**Sen. Lyson:** I talked with the AG's office and also law enforcement, and they are more than happy with the second engrossment, number .0500. That is the bill that the House sent over to the Senate.

**Rep. Kretschmar:** We will take a roll call vote on the motion for the Senate to recede from its amendments.

**6 YES 0 NO 0 ABSENT**

**MOTION CARRIED**

**Rep. Kretschmar:** Further motions on HB 1040.

**Rep. Delmore:** I move that we remove the words "upon request" in section 5, page 3, line 27.

**Rep. Hatlestad:** Second.

**Rep. Kretschmar:** Discussion.

**Rep. Delmore:** The point of this bill is to have law enforcement agencies on the same page. I think to do that, they need a copy of that policy to make one standard policy for their agency.

**Rep. Kretschmar:** Roll call vote on the motion to amend the bill.

**6 YES 0 NO 0 ABSENT                      MOTION CARRIED**

**Rep. Kretschmar:** We are adjourned and committee is dissolved.

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1040 (, as (re)engrossed):

Date: 4/20/09

Your Conference Committee HJUD

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
Sen. Nething			Rep. Kretschmar		
Sen. Lyson			Rep. Hatlestad		
Sen. Fiebigen			Rep. Delmore		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

OTE COUNT    YES    NO    ABSENT

Revised 4/1/05

*all present.  
No action Taken.*

# 1

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1040 (, as (re)engrossed):

Date: 4/22/09

Your Conference Committee HJUD

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
Sen. Nething	✓		Rep. Kretschmar	✓	
Sen. Lyson	✓		Rep. Hatlestad	✓	
Sen. Friebgen	✓		Rep. Delmore	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1325 - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the  
Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4/22/09

CARRIER: \_\_\_\_\_

LC NO. _____	of amendment _____
LC NO. _____	of engrossment _____
Emergency clause added or deleted _____	
Statement of purpose of amendment _____	

MOTION MADE BY: Sen Lyson

SECONDED BY: Sen Nething

VOTE COUNT 6 YES — NO — ABSENT



VK  
4/22/09

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1040

That the Senate recede from its amendments as printed on page 1325 of the House Journal and page 738 of the Senate Journal and that Reengrossed House Bill No. 1040 be amended as follows:

Page 3, line 27, replace "Upon request, the" with "The"

Renumber accordingly

# REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

 Bill Number 1040 (, as (re)engrossed):

 Date: 4/22/09

 Your Conference Committee HJVD

For the Senate:

For the House:

	YES / NO			YES / NO	
<u>Sen. Nothing</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Rep Kretschmar</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Sen Lipson</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Rep Hatlestad</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Sen Fiediger</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Rep Delmore</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

☒ , adopt ~~(further)~~ amendments as follows, and place 1040 on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

 ((Re)Engrossed) 1040 was placed on the Seventh order of business on the calendar.

 DATE: 4/22/09

 CARRIER: Rep. Kretschmar

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

 MOTION MADE BY: Rep. Delmore

 SECONDED BY: Rep. Hatlestad

 VOTE COUNT 6 YES — NO — ABSENT

**REPORT OF CONFERENCE COMMITTEE**

**HB 1040, as reengrossed:** Your conference committee (Sens. Nething, Lyson, Fiebiger and Reps. Kretschmar, Hatlestad, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1325, adopt amendments as follows, and place HB 1040 on the Seventh order:

That the Senate recede from its amendments as printed on page 1325 of the House Journal and page 738 of the Senate Journal and that Reengrossed House Bill No. 1040 be amended as follows:

Page 3, line 27, replace "Upon request, the" with "The"

Renumber accordingly

Reengrossed HB 1040 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1040

**EXCERPT FROM LEGISLATIVE COUNCIL FINAL REPORT  
JUDICIAL PROCESS COMMITTEE  
HOUSE BILL NO. 1040**

*Same  
given to  
Senate  
Judiciary*

**MISSING PERSONS STUDY**

House Concurrent Resolution No. 3056 directed the Legislative Council to conduct a study of the search for and identification of missing persons. Legislative history indicates that those in support of this resolution testified that often missing person investigations grow cold due to an inability of different jurisdictions to share resources and information when conducting investigations and identifying remains. The legislative history also indicated that a cohesive law among the states and cooperation with the federal government are needed to find missing persons and identify remains of unknown individuals.

**Background**

**North Dakota Law Enforcement**

The search for and the identification of missing persons often involves cooperation and the sharing of information among federal, state, and local law enforcement agencies. The chief components of local law enforcement in North Dakota are city police departments and county sheriffs' offices. At the state level, law enforcement includes the North Dakota Highway Patrol, game wardens, park rangers, and various divisions within the office of Attorney General, including the Bureau of Criminal Investigation.

The North Dakota Highway Patrol enforces state law relating to the protection and use of the highways in the state and the operation of motor and other vehicles on North Dakota highways. In addition, under North Dakota Century Code § 39-03-09, the Highway Patrol is required to exercise general police powers over all violations of law committed on state property.

The statutory duties of the Bureau of Criminal Investigation, which was established in 1965 as a division of the Attorney General's office, include the assisting of federal, state, and local law enforcement entities in the establishment and maintenance of a complete system of criminal investigation, serving as the state central repository for the collection, maintenance, and dissemination of criminal history record information; aiding in establishing a system for apprehension of criminals and detection of crime; on request, assisting and cooperating in investigation, apprehension, arrest, detention, and conviction of alleged felons, as well as other duties.

## **North Dakota Law and Programs Regarding Missing Persons**

### **North Dakota Century Code**

North Dakota Century Code § 54-23.2-04.1 provides that State Radio has certain duties with respect to lost or runaway children and missing persons. This section requires State Radio to "[e]stablish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or runaway children and missing persons."

In addition, NDCC § 54-23.2-04.2 provides for school enrollment procedures to aid in the identification and location of missing children. This section provides that if a child's parent, guardian, or legal custodian does not present certain proof identity within 40 days of enrollment or if the school does not receive the school records of the child within 60 days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction is required to notify the missing person information program provide for in Section 54-23.2-04.1 and a local law enforcement authority that proof of identity has not been presented for the child.

### **Amber Alert System**

On August 30, 2002, Governor John Hoeven signed Executive Order 2002-06, which directed the North Dakota Highway Patrol, in cooperation with the Division of Emergency Management, State Radio and other state agencies, to implement a statewide Amber Alert system by January 1, 2003. Amber stands for America's Missing: Broadcast Emergency Response.

The Amber Alert system exists in every state. The Amber Alert involves a system of news bulletins that broadcast information about a missing child over the airwaves and on highway alert signs to encourage the public to help law enforcement locate a kidnapped child. According to missing person experts, the first hours following a child abduction are considered to be critical in terms of response.

According to the United States Department of Justice, Amber Alerts have helped bring home more than 200 abducted children nationwide. In 2004, the federal Protect Act was passed to provide funding to help coordinate the 50 state Amber plans.

### **Testimony and Committee Considerations**

According to the sponsor of the resolution that called for a study of the search for and identification of missing persons, there is not any national legislation nor any nationwide procedures in place for the sharing of information about the search for and identification of missing persons. North Dakota law does not provide for a procedure for law enforcement to

follow when dealing with missing person cases. In 2005 the United States Department of Justice established a task force to study ways to improve the use of federal DNA data bases. With the help of the task force, the National Institute of Justice, the research division of the United States Department of Justice, developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. During the course of this study, the committee focused much of its attention on the model legislation and whether the model legislation would be helpful to North Dakota law enforcement in handling missing person cases. The committee received testimony from an expert on the model legislation and several law enforcement officials.

#### **Model Missing Person Legislation**

During the course of its study, the committee received information regarding the model missing person legislation and its development. According to a report from the National Institute of Justice, at any given time, there are as many as 100,000 active missing person cases in the United States. Due in part to sheer volume, missing persons and unidentified human remains cases are a tremendous challenge to state and local law enforcement agencies. More than 40,000 sets of human remains that cannot be identified through conventional means are held in the evidence rooms of medical examiners throughout the country. About 6,000 of these cases have been entered into the FBI's National Crime Information Center database.

The National Institute of Justice reports that efforts to solve missing person cases are further hindered because many cities and counties continue to bury unidentified remains without attempting to collect DNA samples. According to the National Institute of Justice, many labs may not be equipped to perform DNA analysis of human remains, especially when the samples are old or degraded. The National Institute of Justice report noted that compounding this problem is the fact that many of the country's 17,000 law enforcement agencies do not have access to or are unaware of their own state's missing person clearinghouse or the four federal databases—the National Crime Information Center (NCIC); Combined DNA Index System for Missing Persons (CODISmp); Integrated Automated Fingerprint Identification System (IAFIS); and the Violent Criminal Apprehension Program (ViCAP).

In 2005, the United States Department of Justice established a task force of representatives from local, state and federal law enforcement, forensic medicine and victim advocacy organizations to study ways to improve the use of federal DNA databases. With the assistance of the task force, the National Institute of Justice developed model state legislation that it

intended to provide guidance to states on the entire process surrounding missing persons. The model legislation:

- Requires all law enforcement agencies to accept any report of a missing person and to share it within the state and region.
- Requires law enforcement officers to notify the family about how the case will be handled.
- Suggests ways to improve the collection of information about missing persons and prioritizes high-risk cases.
- Ensures prompt dissemination of critical information to other law enforcement agencies and the public that can improve the likelihood of a safe return.
- Lays out an approach for collecting data that can later be used to help identify human remains.
- Suggests ways to improve death scene investigations and ensure the delivery of human remains to the proper examining entity.
- Ensures the timely reporting of identifying information to national databases. DNA samples must be taken within 30 days and uploaded to all relevant national, state and local DNA missing person databases.

The committee received testimony from a representative of the California Attorney General's Missing Persons DNA Program regarding California's missing person law. According to the testimony, California passed its missing person legislation in 1989. The model missing person legislation under consideration by the committee was based primarily on California's law. It was noted that many of the concerns about California's missing person legislation have not materialized. One of these concerns was that in some domestic violence situations an individual may appear to be missing when they actually do not wish to be found. It was noted that in these cases law enforcement may confirm that the person is safe but do not reveal the person's location. It was also noted that concerns about jurisdiction of a missing person case have been addressed and have not been a problem.

California law provides that a risk assessment is to be done immediately upon receiving the missing person report. When law enforcement takes the report, an assessment is done. The assessment may vary depending on the individual who is missing. It was noted that the amount of time and resources that law enforcement expends on a case depends on the situation. In California the Attorney General's office is the central state agency for missing person cases. For interstate cases, the local law enforcement agency usually works with the Federal Bureau of Investigation and law enforcement in the other state.



The testimony indicated that there are as many as 15 other states that have passed similar missing person legislation. Most of the states that have passed missing person legislation have used at least portions of the model Act. The states have modified the legislation to meet each state's needs. The legislation has led to an increase in those states in the number of bodies identified. Most states do not mandate that coroners report unidentified remains to a central repository. The testimony indicated that the University of North Texas has received funding from the National Institute of Justice to process DNA samples free of charge for law enforcement from all states. California funds its missing person DNA program from the fee charged for the issuance of copies of death certificates. Federal law provides that the DNA analysis may be used only for the purpose of identifying or locating missing persons and any other use is prohibited. It was noted that because it is not possible to obtain DNA from cremated remains, California law provides that a body of an unidentified person may not be cremated until the jawbone is removed and retained. According to the testimony, California's missing person DNA program has been very successful. It was emphasized that every unidentified person deserves to be identified and the remains returned to the family.

The committee also received testimony from local law enforcement agencies regarding the adaptability of the procedures in the model legislation by law enforcement agencies in the state. The testimony stressed the importance of law enforcement to investigate legitimate reports of missing persons when evidence or other information exists to show the person is not simply delayed or otherwise voluntarily missing and to do everything possible to locate missing persons. The role DNA plays in the investigation of missing person cases and the identification of unidentified persons was emphasized. The testimony expressed opposition to the adoption of the model missing person legislation in its current form and emphasized that it is not advisable to codify extensive procedures. It was noted that procedures often need to be updated and having a procedure in law which cannot be revised until the next legislative session could create significant issues for law enforcement.

According to the testimony, law enforcement agencies often receive calls from concerned friends or relatives who want to report someone missing if the person has failed to come home on time from work, an appointment, or a social gathering. Basic information is gathered in these situations, but supervisors are given discretion in how these calls are handled in the initial stages. It was noted that the model legislation does not allow for any discretion in the handling of missing person reports; the model legislation states that a law enforcement agency may not refuse to accept a missing person report for any reason. According to the testimony, for those cases in which the law enforcement agency has no jurisdictional link to the missing person, the

procedures set out in the model legislation would be impractical and unworkable. It was noted, however, that the model legislation contains excellent procedural guidelines that should generally be followed. It was suggested that a better approach would be to statutorily require law enforcement agencies to have a written policy concerning missing person reports with the model legislation used a model policy for departments to use as a guide in developing those policies.

The committee also received testimony from a law enforcement official who supported the adoption of the model legislation in North Dakota. The testimony indicated that the model legislation would be good for the state and would be easy to adopt. The testimony, however, recommended that language should be added to identify the party that is responsible to follow up on the missing person report. It was also suggested that once taken, the legislation should permit the missing person report to be forwarded to the law enforcement agency that would have proper jurisdiction.

In response to the testimony and information regarding the model missing person legislation, the committee considered a bill draft that would establish a procedure for the location and identification of missing persons. The bill draft was based upon model missing person legislation that has been adopted in a number of other states. The bill draft provides that a report of a missing person may be made to any law enforcement agency in the state; allows the law enforcement agency to refer the missing person report to a more appropriate law enforcement agency when appropriate; sets forth the information to be gathered regarding the missing person; provides for the entry of certain information regarding the missing person into state and national databases; and establishes a procedure for the identification and preservation of unidentified human remains.

In response to concerns from several committee members regarding the referral of missing person cases to other law enforcement agencies, the bill draft was amended to remove the requirement that the missing person report may not be referred to another law enforcement agency if the person is a high-risk missing person. The bill draft was also amended to provide that, upon referral of a missing person case to another jurisdiction, that jurisdiction must accept or decline the responsibility for the referred case within 24 hours after receiving the request from the initial law enforcement agency.

### **Recommendation**

The committee recommended House Bill No. 1040 that establishes a procedure for the locating and identifying missing persons. The bill, which is based upon model missing person legislation, establishes a uniform procedure for law enforcement to follow for locating missing persons and identifying and preserving unidentified human remains.

Testimony on HB 1040  
House Judiciary Committee  
January 12, 2009

Chair DeKrey and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services (NDCAWS) in support of HB 1040.

HB 1040 is the first attempt the State of North Dakota has made to establish a procedure for missing person investigations. It is important that we pursue the codification of such a procedure in order to promote consistent and effective investigations and also in order to provide families enmeshed in the nightmare of having a loved one vanish with information they need to engage effectively in the investigative process and deal appropriately with the uncertainties inherent in these situations.

Fortunately, we have relatively few homicides in North Dakota. Even fewer are the sad termination of an investigation into a missing person report. However, the very fact that these cases are rare reinforces the need for clearly identified procedures for handling them. Very few law enforcement agencies and virtually no family has had to deal with more than once with such cases. So it stands to reason that North Dakota, like many other states, would develop guidelines.

This is the third session in which this issue has been raised. Two sessions ago, moving and disturbing testimony was given by two families describing their anguish in trying to locate missing family members. Since then, Representative Nancy Johnson has diligently pursued national protocols and explored ways to implement them in North Dakota. We have appreciated her involvement of victim advocates in this process.

From the standpoint of adult victims of domestic violence, we are well aware of victims who "disappear" into shelters within the state or to other states. Filing a missing persons report can be an effective tool in the hands of an abuser for tracking down the victim who seeks to escape. However, we believe that the language in Section 2, subsection 1 (p.3, lines 29-31) intends to protect victims who choose to go missing: Sharing information will happen "to the extent that the law enforcement agency determines the disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance."

We have not seen a fiscal note on this bill, and it can be anticipated that law enforcement agencies may be concerned they don't have the resources to implement these guidelines. We believe those resources should be provided, and that their lack should not be a barrier to developing and implementing these important procedures.

Thank you.

**Testimony**  
**House Bill 1040 – Procedure for Missing Person Investigation**  
**House Judiciary Committee, Representative Duane DeKrey – Chair**  
**January 12, 2009**

Representative DeKrey and House Judiciary Committee members my name is Jim Jacobson, Director of the ND Protection and Advocacy Project's (P&A) Protective Services Unit. I am here to testify in support of House Bill 1040.

One of the ND Protection and Advocacy's priority responsibilities, authorized by both State and Federal Law, is to provide protective services to vulnerable adults. In this role our agency has received reports of missing adults who, because of their disability, are identified as high risk. House Bill 1040 provides for procedures that are responsive to the identified or potential increased risk for certain individuals. The ND Protection and Advocacy Project has had positive experiences with specific law enforcement agencies that have initiated similar procedures. P&A believes making these procedures mandatory throughout the State will help ensure appropriate and individualized responses to all missing person reports.

P&A would respectfully suggest that the Committee consider one amendment. P&A recommends that the Committee consider replacing "The person missing is mentally impaired;" found at Section 3, subsection 1.(g)(1), page 5, with "The person is a vulnerable adult as defined at NDCC 50-25.2-01(17)."

Chair DeKrey and members of the House Judiciary Committee thank you for the opportunity to testify on HB 1040 and I would be happy to attempt to answer any questions you may have.

## **Testimony of North Dakota Peace Officers Association Opposing HB 1040**

**January 12, 2009**

Good morning Chairman and members of the Committee. My name is John Olson; I am here representing the North Dakota Peace Officers Association in opposition to HB 1040 as currently written.

HB 1040 mandates a procedure for missing person investigations. The North Dakota Peace Officers Association opposes this measure as currently written because it provides an enormous burden on the agency to whom the report is filed or referred.

I want to first note that the proposed missing persons procedure requires that the law enforcement agency gather a substantial amount of information. There are particular information requirements that are not easily obtained by law enforcement, such as a social security number. It is not required that the person filing the report give this information and in the event they refuse, the agency is in violation of the proposed law for failure to obtain all of the required information.

The North Dakota Peace Officers Association believes that this measure puts a substantial burden on the agency. Smaller agencies may not have sufficient resources to comply with all of the requirements imposed.

This measure also does not include a specific time frame. If a missing person is found an hour after they are reported missing, the agency is still required to complete the specified procedure.

This factor provides a great deal of work for the agency that is unnecessary.

The North Dakota Peace Officers Association believes an alternative would be that every agency adopt a policy for missing persons. However, the North Dakota Peace Officers Association does not believe that such a policy should be mandated by law.

I respectfully request that you vote a DO NOT PASS on this bill as currently written. Thank you for your consideration.

For further information, contact:

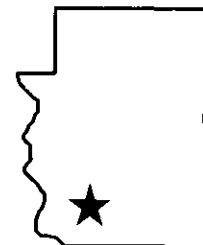
John M. Olson  
Lobbyist No. 142  
North Dakota Peace Officers Association  
(701) 222-3485



514 E. Thayer  
P.O. BOX 1416  
BISMARCK, ND 58502-1416

## **BURLEIGH COUNTY SHERIFF'S DEPT.**

*PAT HEINERT, SHERIFF*



TELEPHONE 701-222-6651  
FAX 701-221-6899

TO: HOUSE JUDICIARY COMMITTEE  
DATE: January 12, 2009  
FROM: Pat Heinert, Sheriff, Burleigh County  
RE: HB 1040 Missing Persons

Good Morning Mr. Chairman and Representatives of the House Judiciary Committee. I am Pat Heinert, Sheriff of Burleigh County.

I am here to oppose this bill.

Burleigh County does not oppose the theory behind this bill in that we need to investigate all missing person reports and make sure that all avenues of follow-up on these reports has been completed to the best of our ability.

Burleigh County opposes this bill because we do not believe that policy and procedure need to be written into State law. We feel that policy and procedure is better utilized in our department policy manuals.

We would suggest that an amendment be filed to have the ND Attorney General write a model policy on missing person reports and that State law requires each law enforcement agency adopt a missing person policy.

Thanks You.



PROPOSED AMENDMENT TO HOUSE BILL 1040

Page 4, L 4, after "a." insert "Voluntary"

Page 6, L 25, replace ", the" with "and", and remove ", and the combined"

Page 6, L 26, remove "DNA index system"

Page 8, L 13, remove "The coroner or medical examiner or other person designated by the bureau of"

Page 8, remove Line 14

Page 8, Line 15, remove "of biological samples" and replace "if" with "If"

Page 8, Line 16, after "days" insert ", the remaining samples shall be forwarded to the state crime laboratory for analysis. The the coroner, medical examiner, or state crime laboratory may seek additional support from other persons to identify the remains, including mitochondrial or nuclear DNA testing"

Page 8, Line 17, remove "The coroner or medical examiner or other person designated by the bureau of"

Page 8, remove Lines 18 through 21.

Page 8, Line 22, remove "7."

Page 8, Line 25, replace "8." with "7."

Renumber accordingly

**Bismarck Police Department****Missing Persons (Adults) Procedure****A. Responsibilities.****1. Shift Commander.**

- a. The Shift Commander shall conduct an initial risk assessment by obtaining as much information as possible from the initial reporting party or from the initial responding officer concerning the circumstances surrounding the missing adult.

A person is considered missing when his or her whereabouts is unknown and knowledgeable persons regard the disappearance as unusual or uncharacteristic. There is no requirement for a certain time period to elapse prior to someone being considered as missing.

- b. Depending on the risk assessment, the Shift Commander will ensure an initial radio and/or MDC message is broadcast to alert other officers about the circumstances of the person's disappearance.

If the information received indicates the probability of foul play or a crime in progress, as in the case of abduction, Dispatch shall be requested to broadcast all available suspect, vehicle, direction of travel information, and any other available pertinent information.

- c. The Shift Commander shall also be responsible to consider a media release in accordance with Section D.

**2. Responding officer(s) and Supervisor.**

- a. The responding officer(s) and supervisor shall complete a more in-depth assessment of the risk to the missing person by evaluating all of the information provided by the reporting person as well as any physical evidence that may be present. An investigator shall be contacted to assist in evidence collection at the scene of any suspected crime as necessary.
- b. Upon completion of the risk assessment, the officer, in consultation with a supervisor, shall determine the appropriate level of response to the complaint.
- c. The supervisor shall ensure that all necessary immediate action is taken and shall contact the Investigations Section as necessary for assistance.

- c. All reports of missing persons will be assigned to the Investigations Section for follow-up investigation.

### 3. Assigned Investigator

The assigned investigator is responsible to ensure that all necessary advisories have been sent concerning the missing person. The investigator is also responsible to ensure a complete investigation is completed as soon as possible. The investigator shall establish and maintain communication with the reporting person and other interested persons as required.

### B. Completion of reports.

1. An initial report must be completed in all cases involving reported missing adults. The initial report shall include the following information:
  - a) Complete physical description to include any unique physical identifiers and date of birth;
  - b) Social security number and/or drivers license number;
  - c) Description of clothing if known;
  - d) Description and license number of any vehicle involved;
  - e) Listing and description of any specific property and credit cards to include numbers if known that may be in the possession of the person; and,
  - f) Description of the circumstances as to why the person is being reported as missing and any other information pertinent to the incident.

The report shall be submitted as soon as possible to the shift commander.

2. The following categories of adult missing persons shall be immediately entered into NCIC (there is no time requirement for a person to be missing prior to entry into NCIC and for determination that the person is a "missing person"):
  - a. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting that person or others to personal and immediate danger.
  - b. A person of any age who is missing under circumstances indicating that the disappearance was not voluntary.
  - c. A person of any age who is missing under circumstances indicating that person's physical safety may be in danger.
  - d. A person of any age who is missing after a catastrophe.

In the event the missing adult does not meet the requirements for entry

into NCIC the report shall be document the circumstances.

3. Immediate notifications shall be made with appropriate jurisdictions to notify them of the missing person and request assistance in locating the missing person as necessary. Notifications may be made via telephone, teletype, MDC message or any combination of these. A copy of any teletypes sent shall be attached to the incident report. In the event phone calls are made to other jurisdictions, the calls shall be documented in a supplement to the incident report.
4. A summary of the information concerning the missing person will be provided at shift briefings in order to notify other officers of the information concerning the missing person. The summary shall contain a description of the person and a brief description of the circumstances surrounding his/her disappearance.
5. All missing persons reports will be assigned to the Investigations Section for followup investigation. The assigned investigator is responsible for investigating all available leads and shall periodically check with the reporting person to determine if there is new information to follow-up. The investigator shall also ensure that additional personal identifying information is entered into NCIC as appropriate. This investigator shall also inform the reporting party of the status of the investigation.

C. Locating and/or Return of Missing Persons.

1. In the event of a located missing person, the assigned investigator shall verify that the located person is, in fact the reported missing person.
2. Upon verifying that the missing person has been located, the assigned investigator shall ensure that the NCIC entry and any teletype messages are canceled.
3. The investigator shall interview the missing adult as necessary to evaluate the circumstances surrounding the missing person's disappearance and the potential for any criminal charges or further police intervention.
4. The investigator shall notify the initial reporting person(s) of the well-being of the missing adult. **IF** the located person permits the disclosure of his/her whereabouts and contact information, the reporting person(s) may be informed of this information at this time. **All communications with the reporting party should be done by the investigator.**

#### D. Media Release

Consideration shall be given to releasing the information concerning a missing person to the media in the following situations:

1. Suspected crime involved or suspicious circumstances;
2. The missing person may be unable to safeguard or look out for him-or herself, regardless of age; or
3. The missing person may be considered at risk for suicide;
4. The missing person may be missing as a result of an accident ( while boating or swimming, for example);
5. The missing person is suffers from a psychological disorder which may endanger him- or herself or others; or,
6. The missing person suffers from a physical or mental incapacity that may be life threatening if the person is not under the proper care or in possession of appropriate medication.

In these situations, the Shift Commander or assigned Investigator shall coordinate the release of information to the media. The department's PIO shall be contacted to do the release if time allows.

**Risk Assessment questions for missing person incidents should include:**

- ☐ Is there any information to indicate that the person may be the victim of foul play?
- ☐ Does the person have a history of being the victim of domestic violence or some other form of abuse?
- ☐ Is there a history of the person being a victim of custodial interference and/or a custody dispute?
- ☐ What activity was the person engaged in when last seen?
- ☐ Has the person undergone recent emotional trauma, such as the death of a loved one, an arrest, marital or financial difficulties?
- ☐ Has the individual recently experienced difficulties at work or school?
- ☐ Has the individual recently experienced difficulties with a particular person?
- ☐ Who was the last known person to see or speak to the individual?
- ☐ What is the potential for and mode of the person's mobility? (i.e.; car, bus, train, plane, bicycle, on foot)
- ☐ What is the person's access to and familiarity with weapons? Are any missing?
- ☐ Does the person have a history of disappearance?
- ☐ Does the person have a history of suicidal attempts or tendencies?
- ☐ Does the person have a serious physical or mental illness or any serious condition requiring frequent medication or treatment?
- ☐ Is the person missing under circumstances inconsistent with their normal behavior?
- ☐ Did the person leave a note or make any form of communication indicating their intentions or whereabouts?
- ☐ Does the complainant or anyone they know have knowledge of the missing persons whereabouts?
- ☐ Is there money missing? Does anyone have a financial gain, such as insurance policy benefits?
- ☐ Are any of the person's personal belongings missing?
- ☐ Does the person have a criminal history?
- ☐ Is the person on probation, parole or possibly incarcerated?
- ☐ Is the person hospitalized?
- ☐ Who is the person's doctor and dentist in the event these records are needed for NCIC entry?
- ☐ Who should be contacted in the event of an emergency concerning the investigation into the missing person (next of kin)?

## **GENERAL INFORMATION**

### **Automated Notification System**

The Bismarck Police Department uses the Dialogic Automated Notification System (Reverse 911). This system is designed to alert as many people as possible through the use of telephone land lines in the quickest manner possible. This rapid notification speeds up the contact process replacing other, more traditional means of broadcasting information. This system can be activated through the Combined Communications Center.

### **Amber Alert Plan**

The Bismarck Police Department is responsible for the investigation of all types of crime. One of the most serious of these crimes is child abduction. When a child is abducted the Police Department must try to resolve the situation as quickly as possible. For this reason the Bismarck Police Department uses the **AMBER ALERT PLAN**.

North Dakota's plan involves a coordinated effort by State agencies, ND Broadcasters and state, county and city law enforcement to evaluate, activate and disseminate a statewide AMBER Alert. See Emergency Operations Manual for criteria. Additional information may be obtained through the State Amber Alert website at <http://www.nd.gov/amber/>

### **A Child Is Missing Program**

Since 2005, the Bismarck Police Department has participated in the "A Child Is Missing" (ACIM) program. This national program provides law enforcement with a first responder program. ACIM's rapid response telephone system alerts residents in a targeted area about a missing child, elderly person (suffering from Alzheimers's), college student or mentally challenged or disabled individuals.

It works like this: A commander calls "A Child Is Missing" (operating 24/7 – 365 days) if criteria are met, providing pertinent information about the missing person, including description, clothes worn, and time/place last seen.

An ACIM technician records an individual alert message which is phoned out to the area where the child was last seen. ACIM can place up to 1,000 calls in 60 seconds. Call

recipients are asked to call police with any information they have about the missing person.

ACIM contact numbers:

Phone: 954-763-1288

Fax: 954-763-4569



**BISMARCK POLICE DEPARTMENT**  
**MISSING PERSON (ADULT) INFORMATION**  
**AUTHORIZATION TO PUBLICIZE**

Name:

Last: \_\_\_\_\_ First: \_\_\_\_\_ Middle: \_\_\_\_\_  
\_\_\_\_ Male \_\_\_\_ Female Race: \_\_\_\_\_ DOB: \_\_\_\_\_ POB: \_\_\_\_\_  
SS# \_\_\_\_\_ DL# \_\_\_\_\_

**Enclose at least one photograph (taken within the last 6 months, head and shoulders only if available, name and date taken marked on the back) of the missing adult.**

The undersigned guardian/spouse/relative/other (circle appropriate relationship) hereby requests that general information pertinent to the disappearance of the above named individual be deemed appropriate for release by the Bismarck Police Department for investigation of said disappearance. This information may be published and/or circulated by any method subscribed to by the Bismarck Police Department including the use of photographs. I understand this information will be made available to the public, media, other law enforcement agencies, and/or organizations involved with missing persons. I understand and agree that any or all information supplied by me shall be truthful and I agree to hold harmless any agency or department using, transmitting, or distributing this information for errors or omissions occasioned by information I may supply.

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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Attachment 1  
HB 1040

## Testimony on HB 1040

Senate Judiciary Committee

Senator David Nething, Chairman

Same  
given to  
Senate  
Appr ops  
committee

HB 1040 is a bill to create a procedure for missing persons investigations. Currently ND law doesn't provide for a procedure for law enforcement to follow when dealing with missing person cases.

In 2005, the National Institute of Justice developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. The interim Judicial Process committee studied this issue and HB 1040 is a result of their studies.

Section One of the bill requires all law enforcement agencies to accept any report of a missing person and share it within the state and region.

Section two of the bill requires law enforcement officers to notify the family about how the case will be handled.

Section Three provides for the prompt determination of a high-risk missing person and directs the law enforcement agency to notify the Bureau of criminal investigation. The responding local law enforcement agency is required to immediately enter all collected information relating to the missing person case in state and federal databases.

Section Four requires the coroner or medical examiner to obtain samples of DNA, take photographs, and look at all appropriate steps for identification before disposing of the unidentified human remains.

Section Five requires the Attorney general to develop a missing person procedural policy to provide guidance to law enforcement agencies in the state.

HB 1040 is showing a fiscal note of \$177,742. This is a reduction from the original fiscal note of \$ 318,467. We had amended out several sections of this bill dealing with dental records and death scene investigations to lower the costs of implementing this program.

The remaining expenditures include salaries and operating for one forensic scientist to analyze missing persons evidence.

Testimony on HB 1040  
Senate Judiciary Committee  
March 3, 2009  
Representative Nancy Johnson

*Attachment 2*  
*AR/08/0*

Good morning Chairman Nething and members of the Senate Judiciary Committee. My name is Nancy Johnson, Representative from District #37, Dickinson.

As you know, this bill came through the Judicial Process Interim Committee. I'd like to thank those members for their work on HB 1040.

Since the committee finished its work in September, we've learned of the discovery of 3-yr old Caylee Anthony's remains in Florida. She was still missing last September. The young girl from Minot, Raechelle Smith is still missing. Adam Walsh's case has been closed. The authorities feel the perpetrator has died in prison. The authorities have taken responsibility for some mismanagement of the case and evidence. Two young people from South Dakota went missing in February and were found frozen last week. And right now Tom Sattler is missing. And as we all know, unfortunately, the list goes on.

HB 1040 is designed to have a uniform system throughout the state to address missing persons and human remains, one that can also tie in with the same data kept by law enforcement around our nation.

A key component of the bill is the requirement that the first law enforcement agency that receives a missing person report has the responsibility to act on it or, if there is a more appropriate agency, to formally pass that responsibility to them.

Since its submission, this bill has seen some amendments, primarily with the listings of information that law enforcement should take. I have read the amended bill and am comfortable with leaving the specifics of the information law enforcement is required to gather in the hands of the Attorney General's office and its manual creation. Prior to submitting HB 1040 I had read the Bismarck Police Department's policy and found it to be very good and similar to what was in the original bill.

One concern I do have is on page four-line 5; that the manual must be requested. Would all law enforcement groups in the state be on the same

page? If not, we are back to the old system again where different information may be requested and retained.

This legislation is not intended to tie the hands of law enforcement or to make it overly cumbersome. Its intent is to help individuals and their families answer the inevitable questions that arise when someone goes missing. If it is able to help one family – it is worth it.

I ask for your support of HB 1040.

Thank you and I will respond to any questions you may have.

Attachment 4  
1040

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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Testimony on HB 1040  
Senate Judiciary Committee  
March 3, 2009

Chair Nething and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services (NDCAWS) in support of HB 1040.

HB 1040 is the first attempt the State of North Dakota has made to establish a procedure for missing person investigations. It is important that we pursue the codification of such a procedure in order to promote consistent and effective investigations and also in order to provide families enmeshed in the nightmare of having a loved one vanish with information they need to engage effectively in the investigative process and deal appropriately with the uncertainties inherent in these situations.

Fortunately, we have relatively few homicides in North Dakota. Even fewer are the sad termination of an investigation into a missing person report. However, the very fact that these cases are rare reinforces the need for clearly identified procedures for handling them. Very few law enforcement agencies and virtually no family has had to deal with more than once with such cases. So it stands to reason that North Dakota, like many other states, would develop guidelines.

This is the third session in which this issue has been raised. Two sessions ago, moving and disturbing testimony was given by two families describing their anguish in trying to locate missing family members. Since then, Representative Nancy Johnson has diligently pursued national protocols and explored ways to implement them in North Dakota. We have appreciated her involvement of victim advocates in this process.

From the standpoint of adult victims of domestic violence, we are well aware of victims who "disappear" into shelters within the state or to other states. Filing a missing persons report can be an effective tool in the hands of an abuser for tracking down the victim who seeks to escape. However, we believe that the language in Section 2, subsection 1 (p.3, lines 29-31) intends to protect victims who choose to go missing: Sharing information will happen "to the extent that the law enforcement agency determines the disclosure would not adversely affect the agency's ability to locate or protect the missing person or to apprehend or prosecute any person criminally involved in the disappearance."

We are aware of the amendments that were adopted by the House and we believe they will provide law enforcement with the ability to smoothly adopt and implement these procedures and therefore ask for your favorable consideration of this bill.

Thank you.