

2009 HOUSE JUDICIARY

HB 1238

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1238

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/21/09

Recorder Job Number: 7400

Committee Clerk Signature

DeKrey

Minutes:

Chairman DeKrey: We will open the hearing on HB 1238.

Rep. Jon Nelson: Sponsor, support (attachment).

Rep. Klemin: I have a question on the amendments. Looking at page 1, subsection 3, out-of-state inmates may not be permitted to leave the premises of the correctional facility to comply with a court order to receive medical care.

Rep. Jon Nelson: That was my goal, "except" should be added to that amendment, that they can be transported to medical facilities. The section 2 is the list of the requests that DOCR had. There were two other concerns that they had which are not included in this amendment package, but I'm sure they will be mentioned.

Rep. Griffin: On subsection 5 of the amendment, where it talks about out-of-state inmates if they commit a crime while incarcerated. Please explain why the language, if they were sentenced it would make them go back to their original state, to serve the remainder of the sentence and then may be subject to prison time in our state. It seems like a lot of transportation costs.

Rep. Jon Nelson: As I understand this, and maybe somebody from DOCR would be better able to clarify that, I thought it was confusing as well. My understanding is if we contract with

another state, and that inmate commits an offense while he is here, and he either pleads guilty or is convicted, then the inmate would be shipped back to the original state. That's my understanding of that. I think that's the intent of it. It may not be right, but that's how it's written.

Rep. Griffin: After they serve their sentence for what they were convicted on.

Rep. Jon Nelson: My understanding that the inmate pleads out or is convicted, that is when they would immediately go back to their original state.

Rep. Kretschmar: What is the capacity of the Rugby facility? If you were full, how many inmates could you handle?

Rep. Jon Nelson: We're a 122 bed facility. We have 25+ treatment beds, and we are constructed in the concept of a pod, so we have individual cell blocks for segregation, but we have a total of 122 beds.

Chairman DeKrey: Thank you. Further testimony in support of HB 1238.

**Elaine Little, Administrator of North Central Correctional & Rehabilitation Center,
Rugby, ND:** Support (attached).

Chairman DeKrey: Could you make the facility work with just out-of-state inmates. Are there enough out there that you could do that.

Elaine Little: We've never thought of doing that. I don't know if there are based on the criteria that we use. Some of the prisons would require a larger amount of beds than we have.

Rep. Delmore: I realize that this is permissive language, but one of the things in the bill I want to know more about. How many grade 1 jails do we have and what are the standards to be a grade 1 jail.

Elaine Little: I believe there are 13 or 14 grade 1 jails. We have to meet standards for ND, some of those standards are that we have to have a written classification system, of who is

housed according to custody level, we have high standards to meet, serve one or two hot meals, outdoor recreation, both inside and outside recreation, we can house up to one year.

Rep. Griffin: In regard to the question I asked earlier, in subsection 5 of the amendment, can you explain the reasons for that.

Elaine Little: My understanding of that is that if an out-of-state inmate commits a crime, pleads guilty or convicted of the crime, they would immediately be sent back to the sentencing state. Then this provides that if the out-of-state inmate has time to serve in ND, he would be brought back to serve that time through DOCR. We would have to reimburse the DOCR for the time the inmate serves in ND. That was put in there to protect the DOCR; so that they aren't incurring costs of housing out-of-state inmates because of something that they did commit while they were here. It does state in the contract with another state, in view of this amendment, that if the inmate commits a crime in the state, and was convicted, not only do they get sent back immediately but they would also serve the ND DOCR's sentence in their state.

Chairman DeKrey: Why do you have to seek permission from the state of North Dakota, to run a jail in Rugby? Why can't Rugby run its own jail the way it wants to?

Elaine Little: The state of ND certifies all the grade 1 jails so we can continue to get our certification. They are also charged with inspecting the jails. Outside of that, actually the local jails are run locally on their own.

Rep. Koppelman: Would ND law be able to impose a requirement on an inmate.

Elaine Little: I don't believe so, the DOCR in that state right now the DOCR has the ability to take inmates and they do that under the Interstate Compact basis. That would be the DOCR and if they would be willing to accept that condition.

Rep. Klemin: Would this be something put into the contract with the other state that they would have to agree to in order for them to be able to do this.

Elaine Little: That's correct. In the event that they would not accept that contract provision, then this section would prevail; if the inmate ended up serving the time in the DOCR, our facility would have to reimburse the DOCR for their stay.

Rep. Klemin: The other state knows that up front.

Elaine Little: That's right.

Chairman DeKrey: Thank you. Further testimony in support.

Jim Halpert, Rugby City Council: Support, I approve this bill. It is good for our community; it is good for our economic structure in north central ND.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Hofstad: Sponsor, support. This is good for our rural areas.

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

Leann Bertsch, Director, DOCR: Opposed (attached).

Chairman DeKrey: I remember a time in ND when we took out-of-state inmates as fast as we could get them, because our prison wasn't full and we were looking for the income. But now I'm wondering why we filled our jail, and we have a jail in the state that DOCR doesn't want to do business with, but they want to keep them from doing business with other people. I think we're missing the point here. We are told to think globally in the state, look at the budget as a whole, and how we put all of these pieces together and DOCR is in for quite a facility upgrade. If we have a brand new facility sitting up in Rugby, I think we should be looking at that as part of the solution, and when I know for a fact that we used to take out-of-state inmates all the time. We used to take the pretty violent federal inmates. We only backed off of that after you had some very bad instances in our own prison. But I guess I know a little too much history of

our corrections here, to just buy off on the fact that we shouldn't deal with another jail in the state.

Leann Bertsch: If that is the direction that you want to go in, I just hope that you build in restrictions. There has been experience within the DOCR of taking out-of-state inmates through the Interstate Compact that has happened. I think you need to distinguish between a jail and a prison. A prison is much different than a jail; even a grade one jail is meant to hold people for shorter periods of time. The average stay is days and weeks in a jail. What other states have experienced when they started importing prisoners, those who have been sentenced to a significant period of time into a jail, not into a prison. There are not enough things to occupy their time. There is incentive. Now they are out-of-state, away from their families, away from connections that they may have had in their communities, probably not having visits with their loved ones, so don't you think that there will be an incentive to get sent back to their home state. Now there's a disruption in that facility, that now the contracting facility will send you back. There have been instances in past history, when some county facilities did bring out-of-state inmates (would have been federal prisoners from DC). We had some jail administrators who experienced how bad that was. I'm not saying that you shouldn't look into doing this, but if you're going to go down this path I think you need to build some adequate safeguards. By jails wanting to do this for their financial reward, that they need to bear the financial risk. I don't believe that you all of a sudden want to see inmates at North Dakota corrections system, in the whole entire corrections system and parole and probation system. Now you're dealing with a whole different type of inmates that we have never experienced. If we start bringing in inmates in from CA, and they are sitting up in Pierce County, ND and they aren't known; I think you need to consider those options. Our state has done a lot of things, particularly since Dru Sjoden, because of the restraint on sex offenders

and violent offenders. I would hate to see this state, for financial gain for one facility that is struggling to take one step forward and now move two steps back. I'm concerned about the impact of family members that may come into the community because they now have their sex offending or violent loved ones serving a period of time in ND and have the impact on social services in those communities. We know that even where correctional facilities are, our prison facilities are, that family members do relocate to those communities and they need to be prepared for that. I'm not saying that this shouldn't be considered, I think it should be considered with our eyes wide open for the ramifications that importing out-of-state inmates. Inmates that have been sentenced to serve a significant period of time into a jail facility, wasn't meant to house long-term inmates.

Rep. Koppelman: Has Bismarck experienced a problem with an influx of families of prisoners in the state penitentiary.

Leann Bertsch: A good example of the impact; you may remember that Teen Challenge located to Mandan a couple of years ago. There was an impact on the Morton County Social Services because now we have offenders and family members now seeking food stamps, etc. Now that is a larger area. If you are looking at the facilities in rural areas, the impact might be more significant.

Rep. Koppelman: That really wasn't my question. You said that in an area where violent offenders, long-term state-sentenced prisoners are housed, that their families tend to locate there and that causes problems for the community. Our state penitentiary is in Bismarck, ND. Is there a problem in Bismarck, ND as a result of offenders who are housed here, whether that be from people from ND or people who moved in?

Leann Bertsch: I will tell you as a result of the penitentiary being here, that once they're released, we do have the highest amount of sex offenders in Bismarck than anywhere else in

the state. As a result of where we know offenders are relocating here, we have a number of staff here to deal with that. We have parole and probation, our transitional facilities are here. To answer your question, yes, there is a direct impact on that.

Rep. Koppelman: Each case is different. Are there any studies that say an inmate will usually stay where they are incarcerated when they are released?

Leann Bertsch: Each case is a little bit different; but they still need a place to live. If you get out, and you made the transition, and you're going to look at jobs because that's one of the tools for success. They may not want to go back to where they lived before, if in a rural setting where there might not be job opportunities, support services such as alcoholic treatment, etc. Those are the dynamics that you deal with when dealing with offenders.

Rep. Koppelman: Has there ever been consideration of housing prisoners from the state penitentiary in a county jail, such as a grade one facility.

Leann Bertsch: We have done that forever. We do it where it makes sense. It happens sometimes when we are overcrowded. Right now we have over 70 inmates scattered throughout the county jails. Even if we receive a new penitentiary, we still will use the county jails because they have a purpose for those are transitioning out. For example, if we have an inmate who came from Devils Lakes, we're going to send him back, probably on the last end so that they can perhaps get work release and reconnect with individuals in their home community once they arrive.

Rep. Koppelman: In other words you don't have a problem with a penitentiary prisoner being housed in one of these jails as long as you decide who they are.

Leann Bertsch: If the person is there for the right reasons, for short periods of time at the tail end. Judges have an expectation when they send someone to the DOCR. We also have some short sentence offenders, and why do they send them to the DOCR vs. sending them to

a county jail, even though the time period in a grade 1 jail is allowed. There are expectations that a comprehensive program will reduce their risk to reoffend when they are released; they will be prepared to go out and not commit more crime and to keep the public safety in ND intact. If we go down the path of just wanting to warehouse people in county jails to help their revenue, you'll be driving up the crime rate. You might as well not call us the Department of Corrections and Rehabilitation; you probably can just call us the Department of Warehousing of Lost Souls and the Incarcerated. Because that's the direction we will be going.

Rep. Koppelman: I toured the prison over the years and we all know about the improvements that are being discussed in various ways to arrive at them. I've also spent the night in the Cass County Jail. Before they opened the jail, they invited local public officials, etc. to come and eat and spend the night there. Do you consider the state penitentiary, in its current state, more secure than those county jails?

Leann Bertsch: Absolutely. In a county jail you are talking about a short period of time. Now if you're dealing with someone with a life sentence or a two or three year period, absolutely they are more secure at the state pen; because you can't accept that person to sit there for two or three years in their little cell, and not experience problems. For short periods of time that you're going to hold a violent offender, you might be able to hold them in a county jail, but is that the way you want to do business. In the state penitentiary, they have long periods of time. You can't keep attacks against other inmates down, if you don't provide the opportunities, recreation, work release, work opportunities, education treatment and all these other things that a prison does for that particular inmate, that differs from what is available in a regional or county jail facility.

Rep. Delmore: I think we are making an assumption that the only inmate any of these places would take would be the worst of the worst. I think there are restrictions in the amendments

that solve that. I guess I would be interested in having you look at the amendment and see what else you think should be added to the list. I think that they address many of the allegations you've made today. What else do you think we need? Also do you do the inspections of these facilities across the state?

Leann Bertsch: Yes we're charged with regulating the grade 1 jails, and our jail inspector is here today. We do inspect the jails. I appreciate the amendments, because now we can discuss them. We think they need to go a little bit further and put further restrictions on the types of inmates so that we're clear on what we do; because if we're not clear and we don't have the same restrictions that other states have, then we're going to become the dumping ground for other states. We will become the default state for the worst inmates. There is a pecking order of what states will accept inmates. We need to make sure that our restrictions are set high enough to protect our public safety.

Rep. Delmore: You keep referring to other states, but it seems to me that there are a lot of inmates out there to go around. With the right procedure in place, I don't see why we can't let some of our facilities, which really are in as good a shape or better than the state pen. I think the Grand Forks facility do offer treatment and those things that can't just be gotten here. I'm interested in your reasons why you don't think that we should allow this to happen in that building, a grade one jail.

Leann Bertsch: The correction system in ND has to be able to hold offenders in ND. We don't want to grow our inmate population. We shouldn't do business by locking up people. If we want to change the correction system in ND we have to look at the whole correction system. I think the amendments and the one in particular that when they've served their sentence, if they commit a crime in ND they should be prosecuted here in ND. We just need to be careful on who is let into ND. We don't want to put a long term inmate into a short term

facility like the grade one jail. You're going to risk riots, assault, violence. I think if you put tight enough restrictions on this, you may be able to head some of that off. ND, and a lot of states around us, have all been proactive, in terms of safety and I would hate to be in the situation where we're now being reactive to that event.

Rep. Boehning: You said that they might move in to a community. Then you said later that they're not going to move to a rural area, they're going to stay in an urban area.

Leann Bertsch: I'm talking about the family members moving to that area to follow the inmate. When I'm talking about individuals being in Bismarck, that's the end date for transitioning out. That varies. If they have family in a rural setting, they will probably go back to that family. If they don't have family support, the family may have already relocated here, and that is part I am explaining here.

Rep. Boehning: I guess I don't see what is wrong with a guy trying to get away from a situation back home where they lived before and had gotten in trouble. Maybe this will be a good transition.

Leann Bertsch: That may be, but there is still a risk.

Rep. Zaiser: I see that you are mainly concerned with the nature of the prisoners.

Leann Bertsch: Right.

Rep. Griffin: How long a time period does a typical contract last for an out-of-state inmate?

Leann Bertsch: The law does not require us to know how long a typical contract is for. A grade one jail can house an individual for up to a year. I don't know if their intentions are to take inmates for that length of time or not.

Rep. Griffin: So they wouldn't be able to house anything over a one year period of time.

Leann Bertsch: Right now, a grade 1 jail can house individuals for up to one year. We don't have any control over the contract; in certain situations, on a case by case basis, a jail

administrator can request a variance on that length of time, with a good reason for the variance.

Rep. Wolf: Why do we house inmates out of North Dakota, if we have room at some of the county jails?

Leann Bertsch: That's a good question. I was not in charge at that time. In fact, that was under Elaine Little's administration where they pushed a bunch of repeat offenders out of state. I made a decision, when I took over, to bring all of the inmates back into state and I did that, probably within six months after office in the DOCR, because I believe that our inmates should be in-state where they have the opportunity to keep those family connections and keep the money in the state and we do utilize the county jails. That's where all of our overflow inmates are, are in the county jails; hopefully in the community where they were sentenced so they can re-establish ties with their family. I appreciate that question.

Chairman DeKrey: Thank you.

Ryan Bernstein, Legal Counsel, Governor's Office: We did help draft these amendments, and feel that there is still a need for more amendments. We want to make sure that there is a limit on the type of offenders. We don't want the extreme violent offender, gang related offender, and the sexual offenders. We would like to still put a couple of more parameters on this bill, to make sure that everyone's concerns are addressed. Also, in line 21, the state might want to assume jurisdiction.

Chairman DeKrey: We'll allow you and Rep. Nelson, DOCR to see if you can't come to some final agreement where everybody can accept what comes out of here.

Rep. Delmore: Who helped you to draft these amendments? Do you have a list of the other things that you want them to put in?

Ryan Bernstein: The things that I am concerned about the type of inmates that are accepted into the state. I would prefer not to have sexual offenders come into the state, aggravated assault (we'll work with that) and gang affiliations. Those are the three big offenses that I have a concern with, especially the sexual offenders.

Rep. Delmore: We need to be careful in looking at all of our options, too. Of course, everybody wants the model prisoner, but that doesn't always happen.

Rep. Koppelman: When you talk about eliminating the language that says, "that the state does not assume jurisdiction", I need a little follow-up on that. Anybody can commit a crime in the state that has criminal consequences doesn't it.

Ryan Bernstein: Yes, but usually we don't have any status, which expressly allows us to assume jurisdiction over them.

Rep. Koppelman: When it says they are under the jurisdiction as a prisoner, an inmate of the ND DOCR which also implies that you can move them around or do whatever supervisory, correctional process.

Ryan Bernstein: I think that's a good point. The reason that it may need to be worked on, may not be the jurisdiction, but it's before that, the state may not assume jurisdiction.

Chairman DeKrey: Thank you. Further testimony.

Dick Johnson, Administrator, Lake Region Law Enforcement Center, Devils Lake:

Neutral. There are a lot of things going on in the correctional field. A lot of us contract with the state and federal agencies to bring their inmates to our centers. It's a changing world. It's a moving target. The contracts are always changing; new ones are coming out. The new administration coming in now, that could change, we are all concerned about that. We get used a lot by the Federal Bureau of Prisons, the Marshall service, etc. This gives us an

opportunity to ensure to a certain degree our futures and what we're doing. We want the opportunity to search for inmates.

Chairman DeKrey: Thank you. Further testimony on HB 1238. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1238

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/9/09

Recorder Job Number: 9011

Committee Clerk Signature

Delmore

Minutes:

Chairman DeKrey: We will take a look at HB 1238. What are the committee's wishes.

Rep. Delmore: I move the amendments 90464.0102.

Rep. Dahl: Second.

Rep. Jon Nelson: Explained the amendments.

Further discussion ensued.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Wolf

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1238

Page 1, line 1, after "to" insert "create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to"

Page 1, line 19, overstrike "A" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, a"

Page 1, line 21, replace "Before a correctional facility may accept an inmate from" with "The state may not assume jurisdiction or custody of an out-of-state inmate brought into the state as a result of a contract between the governing body of a correctional facility and another state or a county or city of another state."

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 4

Page 2, after line 15, insert:

"**SECTION 2.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Contracts for out-of-state inmates - Requirements. The governing authority of a correctional facility which contracts with another state or a county or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an inmate from another state, the governing authority of the correctional facility shall approve and sign the contract that authorizes the housing of the inmate.
2. Before accepting an inmate from another state, the administrator of the correctional facility shall review the inmate's file. The administrator may not accept:
 - a. Any inmate with an escape history from a penal institution; or
 - b. Any inmate with a history of institutional violence, including any violence against staff or other inmates.
3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility to comply with a court order or to receive medical care.
4. The correctional facility may not house out-of-state inmates in the same ^{except} cellblock with inmates of the department of corrections and rehabilitation.
5. The governing body of the correctional facility may not accept an out-of-state inmate unless the out-of-state jurisdiction agrees that, if the out-of-state inmate commits a criminal offense while confined in the correctional facility in this state, is convicted of or pleads guilty to that offense, and is sentenced to a term of confinement for that offense, the

out-of-state jurisdiction shall return the inmate to the out-of-state jurisdiction for completion of the time remaining under the out-of-state sentence for which the inmate was confined in this state before starting service of the term of confinement imposed for the offense committed while confined in this state. If the out-of-state inmate is confined in a facility operated by the department of corrections and rehabilitation for the offense committed while confined in this state in the contracting correctional facility, the correctional facility that housed the out-of-state inmate shall reimburse the department of corrections and rehabilitation at the per diem cost of confinement for the duration of the incarceration.

6. If a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate housed in a contracting correctional facility, the correctional facility shall reimburse the political subdivision for the costs incurred.
7. Upon the release, discharge, or placement on probation or parole of the out-of-state inmate, the out-of-state jurisdiction shall transport the out-of-state inmate back to the other state's respective legal authority. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota."

Renumber accordingly

VR
2/10/09
1063

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1238

Page 1, line 1, after "to" insert "create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to"

Page 1, line 19, overstrike "A" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, a"

Page 1, line 21, remove "Before a correctional facility may accept an inmate from"

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 4

Page 2, after line 15, insert:

"SECTION 2. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Contracts for out-of-state inmates - Requirements. A correctional facility that contracts with another state or a county or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.
2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:
 - a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state;
 - b. Any inmate with a history of institutional violence, including violence against staff or other inmates;
 - c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device;
 - d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the state warden in advance of the placement. The state of North Dakota and any officer

2 of 3

or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection;

- e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim; or
- f. Any inmate who has a documented affiliation as a member of a criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.
- 3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.
- 4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.
- 5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney requests the inmate be returned to this state for prosecution, the correctional facility is responsible for the cost of returning the inmate to this state for prosecution. If an out-of-state inmate is convicted and sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.
- 6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.
- 7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.
- 8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate before the expiration date of the out-of-state inmate's imprisonment.
- 9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota; "sending state" means another state and includes a city or county of another state; and "correctional facility" means a facility subject to this chapter.

10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section."

Renumber accordingly

Date: 2/9/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1238

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. Walf

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) 12 No —

Absent 1

Floor Carrier: Rep. Walf

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

REPORT OF STANDING COMMITTEE

HB 1238: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1238 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to"

Page 1, line 19, overstrike "A" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, a"

Page 1, line 21, remove "Before a correctional facility may accept an inmate from"

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 4

Page 2, after line 15, insert:

"SECTION 2. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Contracts for out-of-state inmates - Requirements. A correctional facility that contracts with another state or a county or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.
2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:
 - a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state;
 - b. Any inmate with a history of institutional violence, including violence against staff or other inmates;
 - c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device;
 - d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the state warden in

advance of the placement. The state of North Dakota and any officer or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection;

- e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim; or
- f. Any inmate who has a documented affiliation as a member of a criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.
- 3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.
- 4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.
- 5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney requests the inmate be returned to this state for prosecution, the correctional facility is responsible for the cost of returning the inmate to this state for prosecution. If an out-of-state inmate is convicted and sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.
- 6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.
- 7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.
- 8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate before the expiration date of the out-of-state inmate's imprisonment.

9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota; "sending state" means another state and includes a city or county of another state; and "correctional facility" means a facility subject to this chapter.
10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section."

Renumber accordingly

2009 SENATE JUDICIARY

HB 1238

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1238

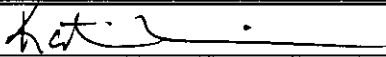
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10054

Committee Clerk Signature



Minutes:

Senator Nething opens the hearing on HB 1238, relating to the housing of out-of-state inmates by correctional facilities.

Representative Jon Nelson introduces the bill (see attached testimony #1). I have some amendments I would like you to take into consideration (see attachment #2).

Senator Ryan Taylor, I support this bill. We have built a facility in rugby based on the best information they had and have had some problems with cash flow. I think the bill lines out a way they can maybe find some other opportunities to make the facility succeed. As the community of Rugby has gone through the building of this facility there have been some struggles. One thing a wide majority of the community would say is that they want the facility to succeed. This bill impacts more than just Rugby. There are some concerns from DOCR and some folks in the community, but there are a number of safe guards put in place that makes this a very valuable bill for just about anyone you would run across.

Elaine Little, Administrator of the North Central Correctional and Rehabilitation Center, testified in favor to the bill (see attached testimony #3).

Senator Schneider What states do you see the NCCRC taking prisoners from?

Elaine Little the state we were working with last year was Wyoming. There is still the possibility that they may still have inmates for us depending on the passage of this bill.

Senator Schneider if the NCCRC ultimately does reach capacity would there be any form of priority amongst which types of inmates you would take?

Elaine Little yes, That issue has been discussed by our board of directors. We are committed to always save beds for all the counties and cities with which we have contracts. We would still give preference to North Dakota Department of Correction inmates' on the treatment side and also accommodate them on the jail side to the greatest extent possible. We believe we would have room for all the local inmates that wish to be housed at the NCCRC as well as accept inmates from Wyoming to fill it up.

Senator Fiebiger Are you comfortable even with all these conditions that there will be enough out-of-state inmates to make it worthwhile?

Elaine Little to be honest I don't know. We are hopeful that we are able to work around the conditions.

Ryan Berstein, Governor's Legal Council, We do support this and the effort of the local correctional facilities to determine whether or not it is in their best interest and in the best interest of the local communities to accept out-of-state prisoners. We got together with other law enforcement agencies to come up with this bill to alleviate some of the safety concerns. On page three line 6 deals with what I just said. It was our desire to have that read the Department of Correction and Rehabilitation instead of the State Warden.

Senator Nething closed the hearing on HB 1238.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1238

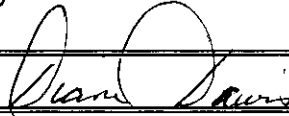
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/18/09

Recorder Job Number: 11189

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the amendments that were brought in. They decide to combine the two amendments.

Senator Lyson moves Rep. Nelson amendments

Senator Schneider seconds

Verbal vote all yes

Senator Nelson moves the Bernstein amendment

Senator Lyson seconds

Verbal vote all yes

Senator Nelson moves do pass as amended

Senator Schneider seconds

Vote – 6-0

Senator Nelson will carry

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1238

Page 1, line 20, remove "Subject to the requirements of section 2 of this Act, a" and overstrike "county or city" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, the governing body of a correctional facility"

Page 1, line 21, after "a" insert "regional correctional center," and after "county" insert an underscored comma

Page 2, line 1, remove the overstrike over "~~The~~", replace "A county or city" with "governing body of a correctional facility", after the second "a" insert "regional correctional center,", and after "county" insert an underscored comma

Page 2, line 4, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 7, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 9, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 14, replace "A" with "The governing body of a"

Page 2, line 15, after "a" insert "regional correctional center," and after "county" insert an underscored comma

Page 4, line 22, replace "or" with an underscored comma and after "county" insert ", or regional correctional center"

Renumber accordingly

Date: 3/18
Roll Call Vote #: 1

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

1238

Senate JUDICIARY

Committee

☐ Check here for Conference Committee

Nelson Amendment

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Lyson Seconded By Sen Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	/		Sen. Tom Fiebiger	/	
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 all yes

3/18

$$Z$$

1238

Committee

Beck's Amendment

☐ **Amended**

Sien Lyson

[illegible]

(N)

Verbal yes

Date: 3/18
Roll Call Vote #: 3
1238

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
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 Nelson Seconded By Sen Schneider

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

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Nelson

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

REPORT OF STANDING COMMITTEE

HB 1238, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1238 was placed on the Sixth order on the calendar.

Page 1, line 20, remove "Subject to the requirements of section 2 of this Act, a" and overstrike "county or city" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, the governing body of a correctional facility"

Page 1, line 21, after "a" insert "regional correctional center," and after "county" insert an underscored comma

Page 2, line 1, remove the overstrike over "~~The~~", replace "A county or city" with "governing body of a correctional facility", after the second "a" insert "regional correctional center," and after "county" insert an underscored comma

Page 2, line 4, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 7, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 9, overstrike "A city or county" and insert immediately thereafter "The governing body of a correctional facility"

Page 2, line 14, replace "A" with "The governing body of a"

Page 2, line 15, after "a" insert "regional correctional center," and after "county" insert an underscored comma

Page 3, line 7, replace "state warden" with "department of corrections and rehabilitation"

Page 4, line 22, replace "or" with an underscored comma and after "county" insert ", or regional correctional center"

Renumber accordingly

2009 TESTIMONY

HB 1238

TESTIMONY FOR HB 1238

REP. JON NELSON

Chairman DeKrey, and members of the House Judiciary Committee, my name is Jon Nelson and I serve District 7 in the ND House of Representatives. I am here today to introduce HB 1238 and support its passage.

In addition to my legislative service, I also serve on the board of directors for the North Central Correctional and Rehabilitation Center (NCCRC) in Rugby. Elaine Little, the NCCRC administrator is here today to testify in support of the bill, as well as other Grade 1 facility administrators across the state.

Simply put, HB 1238 would allow Grade 1 facilities to house out of state inmates upon completion of contract agreements with the facility. Previous Department of Corrections and Rehabilitation (DOCR) administrations have viewed the current law as permissive, but current DOCR administration views it as restrictive. That is why we are asking for this clarification in state law. In fact, several Grade 1 facilities in the state have housed out of state inmates in the past without any incident.

This change in law is critical for the economic survival of NCCRC and will also help to stabilize inmate populations in all other Grade 1 facilities that choose to utilize this opportunity.

Although the safety concerns of the community, staff, as well as other inmates has been a major priority in the drafting of this bill, concerns expressed by the DOCR will be offered as well with the proposed amendment that I am distributing to you at this time.

The proposed amendment would offer additional safeguards and limit liability for the DOCR, beginning in Section 2 of the proposed amendments. In addition to the original safeguards, facilities contracting with other state institutions would be required to deny approval to any inmate who has an escape history from another

penal institution, or has a history of institutional violence, including violence against other inmates.

Additionally, out of state inmates would not be permitted to leave the premises of the facility except to comply with a court order or for medical care. The out of state inmate would also not be allowed to be housed in the same cell block as inmates from the DOCR.

If the out of state inmate commits an offense while at the ND facility and is convicted, or pleads guilty to the offense, that inmate will be returned to that jurisdiction where they came. If that inmate would become incarcerated at a DOCR facility in this case, the Grade 1 facility would be responsible for the cost of housing that inmate. Also, if the political subdivision experiences any cost in the prosecution of the offense, the Grade 1 facility would be responsible for the costs incurred. Also, after release, the inmate would be transported back to the respective jurisdiction that they came from.

This bill also includes an emergency clause. NCCRC has been in serious negotiations with another state and may be able to reenter into negotiations and complete a contract in the first half of 2009 which would help to stabilize the inmate numbers and allow this facility to cash flow well into the future.

Those offering testimony following me will be much more able to answer specific questions regarding the provisions and the possibilities of this legislation for Grade 1 facilities in the future.

Thank you for the opportunity to testify before you today and I sincerely hope that after your careful deliberation your committee will pass the proposed amendments and give HB 1238 a favorable recommendation which will nearly assure its passage before the full house.



Robert Wilmot, Chairman
Elaine Little, Administrator

**NORTH CENTRAL CORRECTIONAL & REHABILITATION CENTER
110 INDUSTRIAL ROAD, RUGBY, ND 58368
(701) 776-2221**

January 21, 2009

Testimony on House Bill No. 1238

Good morning Chairman DeKrey and members of the House Judiciary Committee. My name is Elaine Little. I'm the Administrator of the North Central Correctional and Rehabilitation Center (NCCRC) located in Rugby, North Dakota. I'm here today to testify in favor of House Bill No. 1238.

Under current statute Grade One jails can accept inmates from North Dakota Correctional agencies, Federal agencies, and from out-of-state cities and counties. This bill would allow Grade One jails in North Dakota to also house out-of-state "State" inmates. This bill is important to the NCCRC as well as to a number of other Grade One jails in the State.

The NCCRC was built in 2005-2006, a time when inmate populations were growing and it was expected by all involved that the facility's inmate count would be at capacity soon after opening. However the inmate populations in the State have stabilized and the NCCRC's inmate population has been far below its capacity. In fact, its inmate population has not been adequate to generate revenue sufficient to cover all operational costs. The NCCRC can house 122 inmates (32 treatment beds and 90 jail side beds).

The NCCRC has inmate housing contracts with the surrounding counties and cities, the US Marshal Service, US Parole and Probation (for Treatment beds) and the North Dakota Department of Corrections and Rehabilitation. Last summer it had the opportunity to sign a housing contract with another State; this housing contract would have filled the facility for years to come. However it was discovered that current law does not specify that jails can house out-of-state "State" inmates and as a result the contract could not be signed.

House Bill No. 1238 includes language to help prevent Grade One jails from accepting out-of-state inmates that would create serious problems for the facility. It requires that the governing body of the jail sign the housing contract. It requires that the administrator review each potential out-of-state inmate file prior to accepting them for housing. It prevents the administrator from accepting inmates that have a history of violence toward staff and/or inmates. It also requires that if an inmate is released while at the facility, the inmate must be transported back to the originating State. We believe these provisions will help assure that the contract to house out-of-state "State" inmates will be positive for the facility.

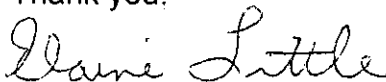
A number of the Grade One jails in North Dakota, including the NCCRC, were built with the intent of housing inmates from multiple jurisdictions and were built with the intent of providing services not typically provided by jails. These facilities are already acquainted with housing inmates of all custody levels and have the ability to provide a wide range of services. The facilities have the ability to separate various inmate custody groups and staff is well trained to deal with inmates and their issues and needs.

Why would we want "out-of-state" inmates in our facilities? The NCCRC has a very diverse inmate population already. Many of the inmates that we house for the US Marshal Service and for the ND DOCR have birth places out side of North Dakota. During the past few months reviews of the inmate population showed 18 different states and countries were given as birth places by the inmates - on days the population was reviewed, 34 to 40 percent of the inmates had an out-of- state or other country birth place. If the out-of-state population is properly screened as required by House Bill No.1238, having additional out of state inmates would not negatively impact the facility. In fact, the housing contract could be mutually beneficial to the ND Class I jail and to the other State Department of Corrections by being a positive housing alternative for a certain segment of its inmate population.

Over the years I've heard the statement that jails should not be economic development. I don't necessarily disagree with this statement, in principle. However, once the facility is built, the economic impact on a community is undeniable. A recent analysis by the Rugby Job Development Authority (with assistance from NDSU) showed that the NCCRC's yearly economic impact on the city of Rugby is \$5.1 million. The facility provides 34 jobs and has had a significant impact on local businesses, the real estate market and the school enrollments. A correctional facility can have a positive economic impact on a community while still meeting the incarceration needs of the region for which it was built.

We believe that with the precautions established in House Bill No.1238 allowing Grade One jails to accept out of state inmates gives these facilities another avenue to remain financially solvent and still meet the incarceration needs of the area counties. Some of the regional facilities, like the NCCRC, are located in rural areas. A small community, like Rugby, is somewhat limited in accessing some types of inmates, such as for transition services. This bill would provide another option to the NCCRC to increase its inmate population without negatively affecting staff, inmates or the community.

Thank you.



Submitted by

Elaine Little

Administrator, NCCRC

**House Judiciary Committee
Duane DeKrey, Chairman
January 21st, 2009**

**Leann K. Bertsch, Director
Department of Corrections and Rehabilitation
Presenting Testimony Re: HB 1238**

The Department of Corrections and Rehabilitation has concerns regarding the impact that HB 1238 may have on the public safety of our state. Although the proposed amendments address some of the concerns, others are not addressed. If you decide that importing other state's criminals is beneficial to allow jails to generate extra revenue, adequate safeguards need to be in place. HB 1238 does not have sufficient restrictions on the type of inmate that may be imported from another state. At a minimum, jails should not be allowed to accept out of state inmates that have a violent or sex-related conviction, a history of violence, or gang affiliations. Other states have enacted these types of restrictions after they experienced the negative consequences of out of state inmates being imported into their states. Without similar restrictions, should you decide to open North Dakota's doors to out of state inmates, North Dakota will become the dumping ground for the dangerous inmates other states reject.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1238

Page 1, line 1, after "to" insert "create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the housing of out-of-state inmates by correctional facilities; to"

Page 1, line 19, overstrike "A" and insert immediately thereafter "Subject to the requirements of section 2 of this Act, a"

Page 1, line 21, remove "Before a correctional facility may accept an inmate from"

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 4

Page 2, after line 15, insert:

"SECTION 2. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Contracts for out-of-state inmates - Requirements. A correctional facility that contracts with another state or a county or city of another state for the confinement of lawfully committed state, county, or city inmates from the other state is subject to the following conditions:

1. Before a correctional facility may accept an out-of-state inmate, the governing body of the correctional facility shall approve and sign the contract that authorizes housing out-of-state inmates.
2. Before accepting an out-of-state inmate, the administrator of the correctional facility shall review the out-of-state inmate's file and request a nationwide criminal history background check. The administrator may not accept:
 - a. Any inmate with a history of escape or attempted escape from official detention as defined under section 12.1-08-06 or under an equivalent federal statute or statute of another state.
 - b. Any inmate with a history of institutional violence, including violence against staff or other inmates.
 - c. Any inmate who has pled guilty to, or has been convicted of, a crime of violence. For the purpose of this section, a crime of violence includes kidnapping and any violation of any state

or federal law when the inmate knowingly or intentionally inflicted, attempted to inflict, or threatened serious bodily injury, or death, or when the inmate was armed with a firearm, dangerous weapon, or destructive device.

- d. An inmate who has been convicted of aggravated assault involving substantial or serious bodily injury, and the offense is a felony under the laws of the sending state or under federal law, unless the administrator has obtained the approval of the ~~Department of corrections and rehabilitation~~ state warden in advance of the placement. The state of North Dakota and any officer or employee of the department is immune from any civil liability for damages for personal injury or property damage caused by an inmate placed in a correctional facility under this subsection.
- e. Any inmate who has pled guilty to, or has been convicted of, a sexual offense in which the victim was a child under the age of fifteen years, or the inmate compelled, or attempted to compel, the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, or if in the course of the offense, the inmate inflicted serious or substantial bodily injury on the victim.
- f. Any inmate who has a documented affiliation as a member of criminal street gang as defined under section 12.1-06.2-01 or equivalent statute of another state or under federal law.
3. Out-of-state inmates may not be permitted to leave the premises of the correctional facility except to comply with a court order or to receive medical care.
4. The correctional facility may not house out-of-state inmates in the same cells with inmates of the department of corrections and rehabilitation.
5. A contract under this section must include a requirement that if an out-of-state inmate is charged with committing a crime while in the custody of the correctional facility, the sending state shall take custody of the inmate upon the request of the correctional facility and the written consent of the state's attorney of the county where the correctional facility is located. If the sending state takes custody of the inmate and the state's attorney requests the inmate be returned to North Dakota for prosecution, the correctional facility shall be responsible for the cost of returning the inmate to North Dakota for prosecution. If an out-of-state inmate is convicted and

sentenced to the legal and physical custody of the department of corrections and rehabilitation for a crime committed while in the custody of the correctional facility, the correctional facility shall reimburse the department for its costs to confine the inmate until completion of the term of imprisonment.

6. The department of corrections and rehabilitation may not assume custody of an out-of-state inmate placed in a correctional facility in this state under a contract between the governing body of a correctional facility and a sending state except under a lawful sentence and judgment of a district court of this state and after notice to the sending state.
7. If the state or a political subdivision of this state incurs any cost in the investigation or prosecution of an offense committed by an out-of-state inmate while in the custody of a contracting correctional facility, the correctional facility shall reimburse the state or political subdivision for the costs incurred.
8. A contract under this section must include a requirement that the sending state shall notify the correctional facility of the expiration date of the out-of-state inmate's imprisonment when the sending state transfers the out-of-state inmate to the correctional facility and that the sending state shall retake the out-of-state inmate prior to the expiration date of the out-of-state inmate's imprisonment.
9. For purposes of this section, "out-of-state inmate" means an individual who is convicted of a crime in a state other than North Dakota.", "sending state" means another state and includes a city or county of another state, and "correctional facility" means a facility subject to this chapter.
10. The correctional facility shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees from and against claims for personal injury or property damage caused by an out-of-state inmate placed in a correctional facility under this section.

Renumber accordingly

TESTIMONY FOR HB 1238

REP. JON NELSON

Chairman Nething, and members of the Senate Judiciary Committee, my name is Jon Nelson and I serve District 7 in the ND House of Representatives. I am here today to introduce HB 1238 and support its passage.

In addition to my legislative service, I also serve on the board of directors for the North Central Correctional and Rehabilitation Center (NCCRC) in Rugby. Elaine Little, the NCCRC administrator is here today to testify in support of the bill, as well.

Simply put, HB 1238 would allow Grade 1 facilities to house out of state inmates upon completion of contract agreements with the facility. Although these contracts have been utilized in past years, it is unclear whether these agreements are allowed in current statute. That is why we are asking for this clarification in state law.

This change in law is critical for the economic survival of NCCRC and will also help to stabilize inmate populations in all other Grade 1 facilities that choose to utilize this proposed option.

Although the safety concerns of the community, staff, as well as other inmates has been a major priority in the drafting of this bill, concerns expressed by DOCR have been addressed in the engrossed bill that is before you today.

Section 2 of the bill sets the requirements for a facility to contract with another state. Within this section is a limitation of the type of offense that would be allowed to be accepted. Inmates with a history of escape from a correctional facility would not be allowed. Inmates with a history of institutional violence would not be allowed. Inmates with a history of a crime of violence including kidnapping, or a violent act when armed would not be allowed. Inmates convicted of aggravated assault would not be allowed. Inmates convicted of sexual offense

with a child under the age of 15 would not be allowed. Inmates with a documented affiliation as a member of a street gang would not be allowed.

Section 2 also sets out parameters for segregation between out of state inmates and those of ND DOCR inmates in the same facility. Also included are provisions to limit any liability for DOCR, requirements to send the out of state inmate back to the sending state upon release or after committing a crime while in custody.

Additionally, I am proposing an amendment that would clarify that regional facilities would also be included to contract for out of state inmates. It was my understanding that this was the case, but this amendment would make that inclusion clear.

This bill also includes an emergency clause. NCCRC has been in serious negotiations with another state and may be able to re-enter into negotiations and complete a contract in the first half of 2009 which would help stabilize the inmate numbers and allow this facility to cash flow well into the future.

Those offering testimony following me will be much more able to answer specific questions regarding the provisions and the possibilities of this legislation for Grade 1 facilities in the future.

Thank you for the opportunity to testify before you today and I sincerely hope that after your careful deliberation your committee will pass the proposed amendments and give HB 1238 a favorable recommendation.

Thank you.



Attachment 3
HB 1238
Robert Wilmot, Chairman
Elaine Little, Administrator

**NORTH CENTRAL CORRECTIONAL & REHABILITATION CENTER
110 INDUSTRIAL ROAD, RUGBY, ND 58368
(701) 776-2221**

March 3, 2009

Testimony on Engrossed House Bill No. 1238

Good morning Chairman Nething and members of the Senate Judiciary Committee. My name is Elaine Little. I'm the Administrator of the North Central Correctional and Rehabilitation Center (NCCRC) located in Rugby, North Dakota. I'm here today to testify in favor of Engrossed House Bill No. 1238.

Under current statute Grade One jails can accept inmates from North Dakota Correctional agencies, Federal agencies, and from out-of-state cities and counties. This bill would allow Grade One jails in North Dakota to also house out-of-state "State" inmates. This bill is important to the NCCRC as well as to a number of other Grade One jails in the State.

The NCCRC was built in 2005-2006, a time when inmate populations were growing and it was expected by all involved that the facility's inmate count would be at capacity soon after opening. However the inmate populations in the State have stabilized and the NCCRC's inmate population has been far below its capacity. In fact, its inmate population has not been adequate to generate revenue sufficient to cover all operational costs. The NCCRC can house 122 inmates (32 treatment beds and 90 jail side beds).

The NCCRC has inmate housing contracts with the surrounding counties and cities, the US Marshal Service, US Parole and Probation (for Treatment beds) and the North Dakota Department of Corrections and Rehabilitation. Last summer it had the opportunity to sign a housing contract with another State; this housing contract would have filled the facility for years to come. However it was discovered that current law does not specify that jails can house out-of-state "State" inmates and as a result the contract could not be signed.

Engrossed House Bill No. 1238 includes language to help prevent Grade One jails from accepting out-of-state inmates that would create serious problems for the facility. It requires that the governing body of the jail sign the housing contract. It requires that the administrator review each potential out-of-state inmate file prior to accepting them for housing. It prevents the administrator from accepting inmates that have a history of violence toward staff and/or inmates. It also requires that if an inmate is released while at the facility, the inmate must be transported back to the originating State. The House of Representatives added amendments to further restrict the types of inmates that can be accepted. We believe that all of these provisions will help assure that the contract to house out-of-state "State" inmates will be positive for the facility.

A number of the Grade One jails in North Dakota, including the NCCRC, were built with the intent of housing inmates from multiple jurisdictions and were built with the intent of providing services not typically provided by jails. These facilities are already acquainted with housing inmates of all custody levels and have the ability to provide a wide range of services. The facilities have the ability to separate various inmate custody groups and staff is well trained to deal with inmates and their issues and needs.

Why would we want "out-of-state" inmates in our facilities? The NCCRC has a very diverse inmate population already. Many of the inmates that we house for the US Marshal Service and for the ND DOCR have birth places out side of North Dakota. During the past few months reviews of the inmate population showed 18 different states and countries were given as birth places by the inmates - on days the population was reviewed, 34 to 40 percent of the inmates had an out-of- state or other country birth place. If the out-of-state population is properly screened as required by House Bill No.1238, having additional out of state inmates would not negatively impact the facility. In fact, the housing contract could be mutually beneficial to the ND Class I jail and to the other State Department of Corrections by being a positive housing alternative for a certain segment of its inmate population.

Over the years I've heard the statement that jails should not be economic development. I don't necessarily disagree with this statement, in principle. However, once the facility is built, the economic impact on a community is undeniable. A recent analysis by the Rugby Job Development Authority (with assistance from NDSU) showed that the NCCRC's yearly economic impact on the city of Rugby is \$5.1 million. The facility provides 34 jobs and has had a significant impact on local businesses, the real estate market and the school enrollments. A correctional facility can have a positive economic impact on a community while still meeting the incarceration needs of the region for which it was built.

We believe that with the precautions established in Engrossed House Bill No.1238 allowing Grade One jails to accept out of state inmates gives these facilities another avenue to remain financially solvent and still meet the incarceration needs of the area counties. Some of the regional facilities, like the NCCRC, are located in rural areas. A small community, like Rugby, is somewhat limited in accessing some types of inmates, such as for transition services. This bill would provide another option to the NCCRC to increase its inmate population without negatively affecting staff, inmates or the community.

Thank you.

Submitted by
Elaine Little
Administrator, NCCRC