

2009 HOUSE JUDICIARY

HCR 3023

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3023

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9211

Committee Clerk Signature



Minutes:

Ch. DeKrey: We will open the hearing on HCR 3023.

Aaron Birst, ND Association of Counties, ND States Attorney Association: Support. We need to make adjustments in the grading of offenses as they are related to the dollar amounts for each crime. The price of goods has increased substantially since it was last changed in 1973, and so what would have been a misdemeanor before, would now be a felony.

Chairman DeKrey: Thank you. Further testimony in support.

Tom Erhardt, Program Manager, ND DOCR: Support (attachment).

Rep. Delmore: The average day in prison costs \$30,000/yr. Do you have a breakdown by different facilities for the average day, because many of these are not full years in prison. Any information on that. I think this is a good idea.

Tom Erhardt: I don't have the exact figures with me but \$30,000/yr is the average, it works out to an average of \$83.33/day.

Rep. Wolf: You talked in your testimony a couple of times about the number of people that would be impacted by the outcome of this study. When I read the study, I'm not seeing what the outcomes you are looking for in your testimony. Apparently you have something in mind that you would like to see happen from this study, and I am not seeing it.

Tom Erhardt: A person was sent to prison for stealing a vacuum that was over \$500. That same \$500 is not the same as it was in 1973. If the thresholds are raised for inflation, that might eliminate some of the people from going to prison.

Rep. Wolf: You said you found 555 property offenses that would be impacted by the outcome of the study. There isn't anything in your testimony to detail what outcome you are looking for. What were the parameters that you used to get these 555 property offenses, and 650 for other offenses.

Tom Erhardt: I looked at all the property offenses for 2008 that were sentenced to the DOCR that in my mind could be affected by the study.

Rep. Boehning: How do we compare to other states, MN, SD, MT in terms of the dollar levels for these offenses.

Tom Erhardt: I'm not sure, I didn't look at other states.

Rep. Boehning: You talked about the inmate that had stolen the vacuum cleaner, did he have previous offenses as well on his record.

Tom Erhardt: That individual did have a criminal history of thefts. The vacuum cleaner was over \$500, and so it could have resulted in that individual being sentenced to DOCR in and of itself, even if the individual didn't have a criminal history.

Rep. Koppelman: What is the impact of someone who is not a hardened criminal being put in with hardened criminals at DOCR.

Tom Erhardt: We do a risk assessment on each individual coming into the DOCR system. We put the lower risk offenders in their own area. They are a little more successful in rehabilitation. I don't have information with me on the rates of recidivism.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HCR 3023.

Rep. Kretschmar: I move a Do Pass.

Rep. Delmore: Second.

13 YES 0 NO 0 ABSENT DO PASS/CONSENT CALENDAR CARRIER: Rep. Vig

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

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3023

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. Kretschmar Seconded By Rep. Delmore

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) 13 No 0

Absent 0

Floor Carrier: Rep. Vig

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

Consent Calendar

REPORT OF STANDING COMMITTEE

HCR 3023: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3023 was placed on the Tenth order on the calendar.

2009 SENATE JUDICIARY

HCR 3023

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3023

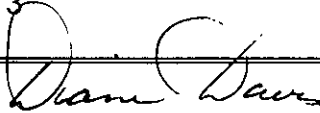
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10673

Committee Clerk Signature



Minutes: Senator Nething, Chairman

Study for criminal offenses for which monetary amount triggers the grading of the offense.

Representative Chris Griffin – District 19 – Introduces the resolution – This resolution would provide for the study of the monetary values currently used in the criminal code. He states there has not been a change to the value since 1973.

Senator Nething – Questions the term used for the study, must or shall.

Rep. Griffin – He would like Legislative Council to consider the study but it is not mandatory.

Ladd Erickson – Mclean County State's Attorney – Urges support for this. He says sometimes bills come in that change the consistency or the logical flow, also there is the time value of money. He mentions all the other areas that have dollar amounts that create a different grade and you create felonies at these grades. He said it doing it in the interim would be better, it takes time to adjust these values. Going through the interim process he would hope to come out with a bill that logically fits with what dollar amounts are.

Tom Erhardt – Program Manager with the Dept. of Corrections & Rehabilitation – See written testimony.

Senator Nething - Asks if they considered parole and the impact that makes.

Erhardt – Replies, they were counted in the incarcerated number, but yes it has a great impact.

If the monetary values were adjusted for inflation, that person may not have been incarcerated in the first place because it may not have risen to a felony level. This study could impact and answer a lot of questions.

Senator Nething – States, it should have a regular review, it is hard to believe it hasn't been looked at in that period of time. It's long overdue.

Close the hearing on HCR 3023

Senator Nelson moves a do pass

Senator Schneider seconds

Vote – 6-0

Senator Nething will carry

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

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES ACE 3023
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	<input checked="" type="checkbox"/>		Sen. Tom Fiebiger	<input checked="" type="checkbox"/>	
Sen. Curtis Olafson – V. Chair.	<input checked="" type="checkbox"/>		Sen. Carolyn Nelson	<input checked="" type="checkbox"/>	
Sen. Stanley W. Lyson	<input checked="" type="checkbox"/>		Sen. Mac Schneider	<input checked="" type="checkbox"/>	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen Nething

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2009 11:24 a.m.

Module No: SR-44-4551
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3023: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3023 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

HCR 3023

HOUSE JUDICIARY COMMITTEE
Representative Duane DeKrey, Chairman
February 11, 2009

North Dakota Department of Corrections and Rehabilitation
Thomas E. Erhardt, Program Manager

*Same
given to
Senate*

Presenting testimony concerning House Concurrent Resolution 3023

Chairman DeKrey and members of the committee I am Tom Erhardt, Program Manager with the Department of Corrections and Rehabilitation and am here to testify in support of House Concurrent Resolution 3023.

The North Dakota Department of Corrections and Rehabilitation supports the passing of House Concurrent Resolution 3023 and further study by the Legislative Council. A study of the monetary threshold attached to the offense level may affect the number of offenders incarcerated at and supervised by the Department.

I conducted a very informal look at how this resolution could affect the adult offenders sentenced to the Department. The data I will present is a quick estimate of the number of court sentences to the Department for incarceration or supervised probation for property and theft offenses that could be affected by this study. These offenses include theft of property and associated crimes; forgery; writing non-sufficient funds checks; writing checks without an account; criminal mischief; and embezzlement.

In calendar year 2008, I found five hundred fifty-five property offenses for which persons were incarcerated that would be impacted by the outcome this study. If you attach the average cost of incarceration for an inmate as approximately \$30,000 per year, even affecting some of these sentences by adjusting the monetary level may save North Dakota substantial resources in incarceration costs without compromising public safety or the ability to recover restitution for the victim.

In calendar year 2008, approximately six hundred and fifty-four offenses for which persons were sentenced to supervised probation may be affected by this study. Of these sentences that were at the felony level, approximately two hundred nineteen included an order for restitution. Ninety-four of those felony convictions had restitution amounts ordered that were one thousand dollars or less. North Dakota Century Code 12.1-32-07 mandates that a court sentencing a defendant to probation for a felony must place the defendant on supervised probation with the Department. A thorough study of the monetary levels that constitutes felonious conduct may affect the number of offenders placed on supervised probation. It could also reduce the number of property offenses that qualify as a felony, thus giving courts more sentencing options.

For juvenile offenders who have been committed to the legal custody of the Division of Juvenile Services, twenty seven percent of the calendar year 2008 admissions to a DJS caseload met the definition of property offender. This number is slightly different than I reported for adult offenders, as this is the actual number of offenders, not offenses. Of the qualifying juveniles that met the definition of property offender, twenty-five percent of those were felony level offenders, and seventy-five percent were misdemeanor level offenders.

In closing, I've put together the direct impacts this resolution may have on the Department, but there are other far-reaching ramifications. A felony conviction can impact a person's ability to gain employment, secure housing, to obtain professional licensure, and qualify for other public services. Because of the lasting effects of a felony conviction, we support this resolution to study the basis for attaching monetary thresholds to offense levels due to inflationary adjustments. We also recommend that regular review of this issue take place to make sure the crime is appropriately correlated to the misdemeanor or felony offense level due to ongoing inflationary factors.

Thank you for your time and I can answer any questions you may have.

ND Department of Corrections and Rehabilitation
Fiscal Year 2008 Average Cost Per Day Per Inmate- DOCR Facilities

Prisons Division

6/30/08 BTD Expenditures (500-20-00-00-00; NDS49118B_2009B)	39,404,698	
Fiscal Year 2008 PD Expenditures (Before Adjustments and Allocations)		39,404,698
Adjustments and Allocations:		
Less:		
Capital Payments	(1,868,385)	
Contract Housing Payments	(4,994,809)	
DWCRC Pharmacy	(134,830)	
DWCRC Medical (MMIS Payments)	(168,069)	
JRCC Food Service - NDSH / TRCC Direct and Allocated Costs	(974,593)	
YCC Pharmacy Cost - June 08 Not Applied Back	(3,937)	
YCC Medical Cost - Allocated	(30,379)	
DOCR Central Office - Nonallocated Costs	(1,146,368)	(9,321,371)
Add:		
Depreciation	1,068,536	
DOCR Central Office - Allocated Costs	1,081,906	2,150,442
Total Fiscal Year 2008 PD Expenditures (After Adjustments and Allocations)		32,233,769 A
Fiscal Year 2008 Average Daily Population - Male - DOCR Facilities		
North Dakota State Penitentiary	507	
Missouri River Correctional Center	408	
Missouri River Correctional Center	142	
Total Fiscal Year 2008 Average Daily Population - Male - DOCR Facilities		1,057 B
Fiscal Year 2008 Average Cost Per Day	\$ 83.30	(A / B / 366)

ND Department of Corrections and Rehabilitation						
Fiscal Year 2008 Average Cost Per Day Per Inmate - DOCR Facilities						
	Cost Per Day / Per Inmate - Fiscal Year 2008					
	NDSP	JRCC	MRCC	Total		
Division Administration	5.44	4.46	4.17	4.89		1,890,660
Plant Services	12.04	10.84	6.61	10.84		4,196,389
Food Services	5.49	7.34	6.91	6.40		2,474,589
Medical Services	15.02	12.03	9.24	13.08		5,062,680
Treatment Services	7.27	3.96	3.28	5.45		2,110,739
Education	1.66	1.07	4.02	1.70		688,912
Security	38.39	38.40	26.63	36.80		14,238,983
Work Programs	1.05	0.92	0.19	0.88		341,672
Training	0.36	0.70	0.14	0.46		177,339
Central Office Allocation	3.01	2.81	1.99	2.80		1,081,906
Total	89.62	82.51	83.09	83.30		
	% of Cost Per Day - Fiscal Year 2008					
	NDSP	JRCC	MRCC	Total		
Division Administration	6%	6%	7%	6%		
Plant Services	13%	13%	10%	13%		
Food Services	6%	9%	11%	8%		
Medical Services	17%	15%	15%	16%		
Treatment Services	8%	5%	5%	7%		
Education	2%	1%	6%	2%		
Security	43%	47%	42%	44%		
Work Programs	1%	1%	0%	1%		
Training	0%	1%	0%	1%		
Central Office Allocation	3%	3%	3%	3%		
Total	100%	100%	100%	100%		

ND Department of Corrections and Rehabilitation
Fiscal Year 2008 Average Cost Per Day Per Inmate- NDSP

NDSP	
6/30/08 BTD Expenditures (500-20-10-00-00; NDS4911BB_2007B)	17,603,733
Fiscal Year 2008 NDSP Expenditures (Before Adjustments and Allocations)	<u>17,603,733</u>
Adjustments and Allocations:	
Less:	
Capital Payments - NDSP	(1,187,358)
DWCRC Pharmacy	(134,830)
YCC Pharmacy Cost - June 08 Not Applied Back	(3,937)
YCC Medical Cost - Allocated	(30,379)
DOCR Central Office - NDSP - Nonallocated Costs	(596,292)
DOCR Medical Services - NDSP - Nonallocated Costs	<u>(1,008,989)</u> (2,961,785)
Add:	
Depreciation	567,304
DOCR Central Office - NDSP - Allocated Costs	557,877
DOCR Medical Services - NDSP - Allocated Costs	<u>851,987</u> 1,977,169
Total Fiscal Year 2008 NDSP Expenditures (After Adjustments and Allocations)	<u>16,619,117</u>
Fiscal Year 2008 Average Daily Population - Male - NDSP	<u>507</u>
Fiscal Year 2008 Average Cost Per Day Per Inmate - NDSP	<u>\$ 89.62</u>

ND Department of Corrections and Rehabilitation				
Fiscal Year 2008 Average Cost Per Day Per Inmate- NDSP				
				Per Day
NDSP Division Administration	1,008,940	1,008,940		5.44
NDSP Plant Services	2,852,207			
NDSP Capital Payments	(1,187,358)			
NDSP Depreciation	567,304	2,232,153		12.04
NDSP Food Services	1,018,296	1,018,296		5.49
NDSP Medical	3,110,757			
DWCRC Pharmacy	(134,830)			
YCC Pharmacy Cost - June 08 Not Applied Back	(3,937)			
YCC Medical Cost - Allocated	(30,379)			
Medical Allocation	(157,002)	2,784,608		15.02
NDSP Treatment	1,348,692	1,348,692		7.27
NDSP Education	289,319	289,319		1.56
NDSP Security	7,119,470	7,119,470		38.39
NDSP Work	193,913	193,913		1.05
NDSP Training	65,848	65,848		0.36
NDSP - Central Office	596,292			
Dept Admin Allocation	(38,414)	557,877		3.01

ND Department of Corrections and Rehabilitation
Fiscal Year 2008 Average Cost Per Day Per Inmate- JRCC

JRCC	
6/30/08 BTD Expenditures (500-20-15-00-00; NDS4911BB_2007B)	13,557,935
Fiscal Year 2007 JRCC Expenditures (Before Adjustments and Allocations)	<u>13,557,935</u>
Adjustments and Allocations:	
Less:	
Capital Payments - JRCC	(655,116)
ND State Hospital Food Service	(974,593)
DOCR Central Office - JRCC - Nonallocated Costs	(380,396)
DOCR Medical Services - JRCC - Nonallocated Costs	<u>(765,580)</u> (2,775,685)
Add:	
Depreciation	442,154
DOCR Central Office - JRCC - Allocated Costs	420,295
DOCR Medical Services - JRCC - Allocated Costs	<u>686,663</u> 1,549,112
Total Fiscal Year 2007 JRCC Expenditures (After Adjustments and Allocations)	<u>12,331,362</u>
Fiscal Year 2007 Average Daily Population - Male - JRCC	<u>408</u>
Fiscal Year 2007 Average Cost Per Day - JRCC	<u>\$ 82.51</u>

ND Department of Corrections and Rehabilitation				
Fiscal Year 2008 Average Cost Per Day Per Inmate- JRCC				
			Per Day	
JRCC Division Administration	664,689	664,689	4.45	
JRCC Plant Services	1,833,085			
JRCC Capital Payments	(655,116)			
JRCC Depreciation	442,154	1,620,124	10.84	
JRCC Food Services	2,071,136			
JRCC Food Service - NDSH/ TRCC Direct and Allocated Costs	(974,593)	1,096,543	7.34	
JRCC Medical	1,876,237			
Medical Allocation	(78,917)	1,797,320	12.03	
JRCC Treatment	591,288	591,288	3.96	
JRCC Education	160,552	160,552	1.07	
JRCC Security	5,738,627	5,738,627	38.40	
JRCC Work	137,731	137,731	0.92	
JRCC Training	104,193	104,193	0.70	
JRCC - Central Office	380,396			
Dept Admin Allocation	39,899	420,295	2.81	

ND Department of Corrections and Rehabilitation
Fiscal Year 2008 Average Cost Per Day Per Inmate- MRCC

MRCC		
6/30/08 BTD Expenditures (500-20-20-00-00; NDS4911BB_2007B)	3,080,152	
Fiscal Year 2007 MRCC Expenditures (Before Adjustments and Allocations)		3,080,152
Adjustments and Allocations:		
Less:		
Capital Payments - MRCC	(25,911)	
DOCR Central Office - MRCC - Nonallocated Costs	(169,680)	
DOCR Medical Services - MRCC - Nonallocated Costs	(3,192)	(198,784)
Add:		
Depreciation	59,077	
DOCR Central Office - MRCC - Allocated Costs	103,734	
DOCR Medical Services - MRCC - Allocated Costs	239,111	401,922
Total Fiscal Year 2007 MRCC Expenditures (After Adjustments and Allocations)		3,283,291
Fiscal Year 2007 Average Daily Population - Male - MRCC		142
Fiscal Year 2007 Average Cost Per Day - MRCC		\$ 63.09

ND Department of Corrections and Rehabilitation				
Fiscal Year 2008 Average Cost Per Day Per Inmate- MRCC				
MRCC Division Administration	216,932	216,932	4.17	0.17
MRCC Plant Services	310,946			
MRCC Capital Payments	(25,911)			
MRCC Depreciation	59,077	344,112	6.61	0.28
MRCC Food Services	359,750	359,750	6.91	0.29
MRCC Medical Services	244,833			
Medical Allocation	235,919	480,751	9.24	0.38
MRCC Treatment Services	170,758	170,758	3.28	0.14
MRCC Education Services	209,041	209,041	4.02	0.17
MRCC Security	1,380,886	1,380,886	26.53	1.11
MRCC Work	10,028	10,028	0.19	0.01
MRCC Training	7,298	7,298	0.14	0.01
MRCC - Central Office	169,680			
Dept Admin Allocation	(65,946)	103,734	1.99	0.08