

2011 HOUSE JUDICIARY

HB 1269

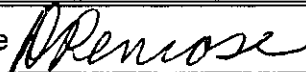
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1269
January 25, 2011
13391

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1269. We're not going to close the hearing on this bill, because there are some people coming in to testify on it that couldn't be here today, so we'll just recess it and will schedule it later when they can come in.

Rep. Karen Karls: Sponsor, support (see attached 1). I'm not an expert on this, Mr. Goens will be available to answer really technical questions.

Chairman DeKrey: Thank you. Further testimony in support of HB 1269.

Tom Trenbeath, Chief Deputy Attorney General: We do appear in neutral status on this bill. Having said that, we see it as a workable situation, should the committee act favorably on it. If the committee were to do such a thing, we do have a couple of amendments that we'd like to see considered on the bill (see attached 2). They are pretty rudimentary and I'll just walk through them. On page 2, line 18, we use the term mentally ill. The AG would prefer that we use the term "person requiring treatment" which under that chapter is defined as inclusive of a mentally ill person as well as one that is chemically dependent. We think that is a better term to use in this instance. Secondly, on page 5, line 3, just to get the mechanics working on the reporting situation between the court and the BCI, there would have to be an agreed upon electronic format to make that work. This just inserts the language that it would be in a format and medium specified by the Bureau after consultation with the state court administrator. Let me just say that those consultations have already begun. They will result in some sort of fiscal note that has yet to be fully determined because of information we need to get from the federal government yet as to how much would be provided. Thirdly, the final change we would like to see is a retroactive application for the rehabilitation portion of the bill back to December 31, 2007. That gives us the opportunity to get reciprocity with MN immediately rather than waiting for three years down the road for that to occur. Those are the amendments that the AG would like to see incorporated into the bill, should the committee decide to act favorably on it.

Rep. Hogan: Do you have any estimate of how many individuals might be covered under this act based on the history of people requiring mental treatment.

Tom Trenbeath: I don't. I have some people in the room from the State Hospital who might be able to answer that question.

Chairman DeKrey: Thank you. Further testimony in support.

Alex Schweitzer, Superintendent of ND State Hospital: Neutral (see attached 3). I am here representing the Hospital and the Dept of Human Services regarding this bill. We also are here neutral to the bill. I am offering some amendments. If you look at page 3, line 25, we would like to remove the term "public" because these kinds of request would probably come to any treatment facility that provides services for people with mental illness. People with mental illness are committed to private facilities as well as public. One page 4, line 13, remove "mental health and substance abuse services division of the department of", this is probably not the person that should receive these requests. The requests should probably come to the Director of the treatment facility, whether it's the State Hospital, in that case it would come to my attention; or in a private facility, whoever directs that facility should receive the request. On page 4, line 14 remove "Human Services"; with "treatment facility that treated the individual pursuant to the court order". Again, the court order will identify the individual treatment facility, whether public or private. Page 4, line 15, move "mental health and" and replace it on page 4, line 16 replace "substance abuse services division" with "treatment facility that treated the individual pursuant to the court order". This is clarifying information that will help the individual's when they are seeking this information. So it's not major changes to the bill, but just to clarify that it should be the individual treatment facility that receives the request and that the requests would come to the director of that facility.

Rep. Hogan: My question regarding how many individuals might be covered under this bill.

Alex Schweitzer: In the case of these types of requests, they do happen but not very often. I can say, over the years that I've been there for the past 15 years or so, a couple of times, there aren't a lot of requests for this particular information.

Rep. Hogan: Do you anticipate that with this passage of this law, there may be more systematic review of whether a person who's been committed because of a psychiatric or substance abuse situation should be carrying firearms.

Alex Schweitzer: It probably will; but I think the bill builds enough protections for individuals' and patients' rights. We should be able to deal with it. It asks for information, in terms of non-clinical identifying information which, presently under law, we can provide that information anyway if there is a crime that's been committed, no matter whom the individual is. I don't think it will create any major problems. It just kinds of pulls together the things that we're doing right now.

Rep. Onstad: I'm trying to understand the bill. If in a situation a person was in violation of possession of firearms in some manner, and then it was determined that there was a mental disability in that particular case, then it further outlines that they would basically not be responsible for some of their actions, is that what is intended because of that mental disability.

Alex Schweitzer: I'm not sure how that ties together, but we certainly do at the Hospital evaluations for criminal responsibility. So if there are individuals that we feel are not responsible there would probably be a recommendation that that individual does not possess a firearm. That's part of the whole evaluation process.

Chairman DeKrey: Thank you. Further testimony in support of HB 1269. Testimony in opposition to HB 1269. We will recess the hearing.

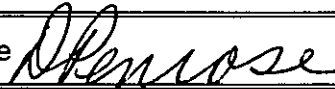
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1269
February 9, 2011
14285

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will continue the hearing on HB 1269.

Darrin Goens, NRA-ILA ND State Liaison: Support (see attached 1).

Rep. Klemin: There is a rather large fiscal note attached to this bill, \$287,000 in the 2011-13 biennium, and another \$118,000 in the following biennium. The grant program that you are referring to, would that be the kind of program that could take care of the fiscal effects of this bill.

Darrin Goens: That is very much the intent of this. When Congress passed this, they didn't want it to be an unfunded mandate, so any improvements that the State made in automation or transmission of their mental health records, to reimburse so that some of those expenses were offset. I did notice on the web list the states that had been given grant monies; that they did list the things that they actually did do from improving their fingerprints to all sorts of things. A lot of it was automation. In some of the states, like IL, NY, NJ, some of them received \$7-8 million dollars. I also did note that Congress did appropriate in the last fiscal year \$20 million dollars and only \$17 million was used. So it probably would behoove states to get on it early, because a lot of states haven't become compliant, yet, it may be easier to get some of these grant monies.

Rep. Klemin: I'm wondering about a possible amendment to this bill. The fiscal note is huge, obviously; what would be your opinion if we put in a provision into this bill that says that the provisions of this act would become effective upon certification by the Attorney General, to the Legislative Management, that grant funds have been made available to ND for this act.

Darrin Goens: I certainly don't think our association would have a problem with it; we are concerned about the portion with the rights rehabilitation. We're trying to help out the state to try and make this an easy fit. I would, however, suggest that the AG's office, or whoever is going to be working on this issue, in terms of amendments deals with the BATFE directly because we, as the NRA, have been

trying to, as closely as possible, mirror their exact language so that there are no compliance issues when the states apply for grants, that they're not refused. The only thing that I can see with the suggestion you made, that if it's contingent, the BATFE may not view that as compliant because there is a contingency clause in it. So I'm not saying that's the case, but I'm saying that it is a possibility and my basic suggestion would be to have the AG's office contact the federal agency directly to see if the law is compliant.

Rep. Klemin: Well it's like saying we have to put our money in up front and maybe get something back later. In other cases, we have done this, where we have taken care of some things and made contingencies dependent upon the receipt of federal funds. I can think of a number of other areas where that's already been done. I'm not sure whether it would work in this area or not. I can see the contingency being one way to get rid of the fiscal note.

Rep. Delmore: Can you tell me about the provision in here, if I'm reading it correctly and I may not be; where our state courts seem to be in charge of interpreting federal law. I guess my concern with that is I don't think the feds feel very bound to what our interpretation is anyway. It just seems like on page 3, there are a number of places where we are asking our state courts to make those determinations. Can you tell me why that part is in the bill.

Darrin Goens: On page 3.

Rep. Delmore: On page 3, and I think there is another portion as well that it just kind of carries through that our state courts are interpreting federal law; what the federal statute really says, I'm wondering why that is in there. I don't think the feds are bound by it anyway, is that court finding going to be significant.

Darrin Goens: I'm not following your question.

Chairman DeKrey: On line 18 and 19 on page 3.

Darrin Goens: I'm there, I just don't understand the question.

Rep. Delmore: Why are we having state courts interpret federal law.

Darrin Goens: I do not understand what part they are being required to interpret for federal law.

Rep. Delmore: This will make a finding as to whether the provisions of federal law are subject in the court, that a person has a result of mental disease, the person is mentally deficient and so on. The reference in there, if I'm reading it correctly, is federal law not state law.

Darrin Goens: I think what it's getting at is this section of US Code references the things that are disqualifiers and obviously the state court, in order to adjudicate somebody as mentally defective, has to reference the US Code to see what those things are.

Rep. Delmore: So they will make that interpretation, whether the feds feel bound by it or not, because it is federal law not our interpretation.

Darrin Goens: In terms of firearms possession, basically especially when you are talking about purchasing a firearm, it's all federal law and the states are all compliant with it, and it's all federally mandated.

Rep. Delmore: How many states have adopted this one.

Darrin Goens: This issue, I'm not sure. I have no idea.

Rep. Delmore: Can you find out on both of these. I think it would be helpful and I think it was very confusing with the railroads in particular that they didn't seem to be familiar with the 15 states that have passed the other law, which would have affected them as well.

Darrin Goens: That question I can answer. That's on another bill.

Rep. Onstad: Do you really want to allow someone to carry a pistol if they have a history of a medical condition, mental illness.

Darrin Goens: We don't want someone to carry a pistol if they have a mental disorder. That's also like saying someone who maybe went to drug and alcohol counseling twenty or thirty years ago, and now they are 55 years old and want to go hunting. Should we continue to ban firearms possession. Clearly there are a small number of people that fit exemptions, but to broadly say that we're advocating for people that have mental health issues to have a gun is absolutely erroneous. We would never support that. That's why there is an adjudication process and a due process where the courts would say that the person is fine. They are adjudicated as not mentally defective.

Rep. Onstad: An earlier bill disallowed a person who had a DUI from having a class 2 license and it could have been 10 years ago, if that was enacted. Yet, this situation after somebody clears you of this, they're now allowed. It doesn't seem to be fair to the person that had a DUI, probably went through rehabilitation and the whole thing, yet he's not allowed to have that class 2 weapon, the concealed weapon carrier, but a person in this condition, after 7 years and probably clear that, does that seem fair.

Darrin Goens: I guess my answer to that, we're ultimately trying to make sure that the process is fair. We're creating this due process so that people get their day in

court, to prove that they are eligible for gun ownership. If there are other things in the law that are unfair, I understand that, and maybe those are things we need to fix. But the ultimate aim of this is to be very fair and to create a legal process for making it fair.

Rep. Hogan: It's my understanding that the court would need to make a specific ruling that someone couldn't carry arms; if you were committed for treatment you wouldn't necessarily lose your right to bear arms, it would have to be a distinct action of the court.

Darrin Goens: Yes, there has to be a ruling that the court has adjudicated you to be mentally defective and then that information is transmitted into the NICS database. If you're in a college class and you think a kid is a little bit eccentric, and you report him, no. There has to be a court adjudication for you to be disqualified under the mental health prohibitor.

Rep. Hogan: But everyone who has a mental health commitment would go into the NICS database.

Darrin Goens: Yes, I believe I looked up that exact point, and actually prior to any of this happening, a mental health prohibitor was actually a lifetime prohibition previous to this. This debate, and I would like to remind the committee, was extensively done in Congress after Virginia Tech and this was part of the discussion.

Rep. Hogan: So you're currently saying that everyone who has been committed can no longer get a license.

Darrin Goens: Yes, currently if you have been committed, you are prohibited. That's why they want to make states compliant with this, so that there is a process that, down the road, you can have your rights restored if you're adjudicated mentally healthy.

Chairman DeKrey: Thank you. We've held the hearing previously on HB 1269, and you were the only testifier that I was notified about.

Mike Mullens, Assistant Attorney General's Office: We are neutral (see attached 2). We also have a proposed amendment (see attached 3).

Rep. Koppelman: The language in the bill now, it looks like a quote. Is that a quote of a specific section of code, the term that you are trying to replace, and if so, is that consistent.

Mike Mullens: The term we are trying to replace traces all the way back to the Dakota Territory codes, it talked about feeble-minded people and other archaic terms. We're trying to introduce a more current terminology.

Rep. Koppelman: I'm not here to argue the political correctness of the matter, I'm wondering since it's in quotation marks in the bill if that is the terminology that's used in the section of code that it cites, and if so, are we being inconsistent if we change that, or do we need to change it in both places if we change it.

Mike Mullens: We are shifting the reference to what we think is a more appropriate term to use, that's more widely used in other sections of the century code. There's no need to change that section in chapter 25-01-01. That terminology is kind of a dangling definition. It is not operative anymore in any significant parts of the NDCC.

Rep. Koppelman: Does the section referenced, 25-01.2-01, is that what we're referring to here.

Mike Mullens: That is the definition of developmental disability in the NDCC.

Rep. Koppelman: As I look at 25-01-01, which is referenced in the bill, under definition subsection 3 says "mentally deficient person". That is specifically what the bill says. I'm not opposed to more politically correct language if that's what you want to achieve, but if we're citing a particular section of code, should we not cite what it says in that section of code, or change that section to more appropriate language in your opinion.

Mike Mullens: Let me try to explain it in this way. We are changing the reference from the term "mentally deficient" in section 25-01-01 and we're replacing that reference with the definition of "developmental disability" in section 25-01.2-01 which is the section which defines the term developmental disability. We think that's a more appropriate reference.

Rep. Klemin: Why wouldn't both references be correct, the mentally deficient person is still defined in code that has not been repealed or superseded, as far as I can see.

Mike Mullens: Our preference is to use a more modern definition and even that definition may be changed under other legislation that is pending in the 62nd legislative session. A number of individuals and organizations find the term "mentally deficient" to be an inappropriate term.

Rep. Klemin: I don't see anybody here saying we should repeal that chapter there where it's currently still part of the existing law.

Mike Mullens: That's correct. We're not changing or repealing that; however, I looked through that section and did a search through the whole Century Code and I characterize that as a dangling definition. If you look in that chapter where they define that term, it doesn't have any follow up to it.

Rep. Klemin: If we did include it, the way it is here, and added in the ones that you are referring to, and later on this old one was repealed someday, then it automatically goes away out of this bill too, doesn't it.

Mike Mullens: That would be correct, yes.

Rep. Koppelman: You said there was another bill apparently pending in the session that would change that language, that this bill references in Code. If that happens, my understanding of the work of the chief code reviser at Legislative Council, is that he would make an appropriate adjustment from the language perspective. Isn't that true.

Mike Mullens: I need to revise that. There's a bill that uses a term "intellectual disability" which covers both of these definitions that we're referring to here. But that bill doesn't amend section 25-01-01. It amends a lot of sections dealing in the educational code and in other parts of the Century Code. They didn't pick it up here.

Rep. Koppelman: If the AG's office doesn't like that language, why didn't you submit a bill to change it.

Mike Mullens: To be honest with you, the issue arose when we were presented with HB 1269.

Rep. Delmore: Part of this bill has three years stipulated, and then they say "or successfully petition". Are you aware of how often that three years is not a sufficient time, that there's an emergency where somebody needs access to a gun in between.

Mike Mullens: Could you repeat the last part of the question. I understand about the three years...

Rep. Delmore: On page 2, the provision is the limitation does not apply to a person who's not suffered from a disability for three years or has successfully petitioned the court. Are you aware of cases in which less than three years, there was a need for this. It seems like three years are fairly logical to me. I don't know how it was reached in statute but are you aware of problems with that.

Mike Mullens: I'm not aware of any problems with that, part of the problem, in terms of how the law has been applied, is that under current law, there is a ban on the possession of firearms, if a person has been convicted of a felony or a person has been civilly committed for the treatment of mental illness. Some of the other provisions of this bill, would establish a mechanism in which there would be reports from the district courts to the Bureau of Criminal Investigation and the names would be entered into a registry. Currently that doesn't happen, so we really don't have any tracking of how this works under existing law.

Chairman DeKrey: Thank you.

Sen. Stan Lyson: Support. Thank you for letting me come up and I am one of the people that most of you never thought would be standing here on this bill. I can tell you from my experiences going way back in law enforcement that there are times when we have to make some changes. For somebody who has been a drug user or alcoholic and been put into treatment for those problems, and not being able to get a firearm is really something that I think we should look at and try to change. I think that the bill, in front of you, with the amendments here in section 4, really gives you an idea of what may work in something like this. It's not giving it to everybody, it's giving it to the people that have completed their treatments. I believe there are a lot of people out there that have gone straight since they had treatment; but they can't go hunting with their families. They can't do a lot of things. We want them to go straight but we don't want them to have the freedom that we have. I think this is an acceptable bill and I would certainly hope the members of the committee would look at this and say this is part of recovery and continued recovery. Without something like this, when the families to out and go hunting and can't take the person with them is more of a burden than it is a help. I think that with a bill like this, you can see that they have to step through a lot of different hoops before they get through it.

Chairman DeKrey: Thank you.

Sen. Larry Robinson: Support (see attached amendment 4). Thank you for letting me testify today. Section 4. Amendment to chapter 62.1-02 of Code relates to restoration of the right to bear firearms. I won't read the entire document, it is self-explanatory. In item 1, a person who is prohibited from possessing a firearm due to the conviction of a felony under t his sub-section may petition the district court in the district where the person resides for restoration of firearm rights. The district court may restore the right of a person to possess a firearm if it determines, by clear and convincing evidence that all of the following provisions have been followed to the letter a) the person has paid all fines imposed for the violation; b) has served all terms of jail time that was part of it; c) has successfully completed all conditions of probation; and d) the person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons. Sen. Lyson referenced the hoops that would be necessary to jump through. We have worked with a number of individuals agencies to craft this, not to make it easy but to provide an option in select situations with select individuals who made mistakes, they've paid their dues, they have been squeaky clean, followed all their directives to the letter, completed probation requirements and rehabilitation. This package to me would provide very valuable therapy. If you think of the individual who is in a situation, and because of choices, has lost his ability to hunt with family, at the time their probation ends, they have five years before their rights are eligible to be restored. We need to keep in mind that in almost every case, when that period commences that individual has already not been hunting for several years. They might find themselves in the situation where it's been six, seven, eight years without hunting privileges. Then at the end of probation, the current law says five more years. This amendment would

allow the court, maybe two years into that term of five years, or what have you, to consider restoring the rights of any individual to use firearms and hunt with family in our state. I am very close to this situation. I know several individuals involved in this, like Sen. Lyson who had a career in this area. There are a number of folks across the state that could take advantage of this. We feel it could be good therapy to bring them back out into the field with their families. This would only be considered if their record has been impeccable.

Rep. Delmore: You used a lot of generalities. I'd like to know specifically who we're giving these guns back to, and does that include the domestic violence provision that is already pretty clear in statute, both federal and state, of what the provisions for that are. Who are the people that we're trying to enable to give the gun back to. It's pretty confusing for me without the reference, I don't have that section of Code specifically spelled out, but under what circumstances would they be allowed these rights again. I think there is a reason that most of the time we take those rights away.

Sen. Robinson: I apologize that if I have been overly general in my explanation of this proposed amendment. I had contact with a number of individuals that could classify in one category. I can speak to one situation that is very close to my family. I have a son that made some mistakes. He's an ardent outdoorsman. He hunted ducks and is one of those individuals at this time of year is out in the snow up to his waist looking for deer sheds. He has an 8 year old son and they are outdoorsmen to the letter. Our son made some poor choices years back, went through an entire treatment cycle. The reference to a felony is a bit confusing. He doesn't have a felony on his record. He had a court imposition, he completed all of his requirements, completed treatment successfully, he's working, and the father of two young sons, his track record has been impeccable. He's made mistakes, paid his dues and he has come back far and above what we'd ever hoped and prayed for. That's one example. I know of another individual who has a felony; he made a mistake of being involved with gaming activities. He had to give up his guns, and he gave up hunting. He's done so for a number of years. I believe this individual has four years left in his probationary period. I don't see that we're taking a risk in this at all. I see this as the steps they jump through that have been listed here as pretty darn tough. I am only suggesting in only in those cases where we have a perfect record can they attempt to regain their right to bear arms.

Rep. Delmore: Is it your intent to include domestic violence as well.

Sen. Robinson: That was not my intent. I worked with many in law enforcement in crafting this bill. I have, in that process, that experience, had renewed faith that this would work in selected cases.

Rep. Klemin: I was looking at the statute that prohibits people from possessing firearms for certain period of time after they have been released from incarceration, parole or probation. It looks like there are three different categories: 1) is a ten year

provision for certain kinds of felonies; 2) is a five year provision for certain other kinds of felonies or class A misdemeanors; and 3) deal with mentally ill and mentally deficient persons and that's three years. So what you have in this amendment then is subsection 1b of that five year provision and you're not trying to do anything about the ten year provision or the mentally ill provision in this amendment. This, as I understand this amendment, then this would override the five year prohibition.

Sen. Robinson: The understanding that I worked with these folks and the AG's office in crafting this. We want to keep it very narrow and provide an option to the court. As I interpret this, I'm not saying that we'd wait five years or that could happen. From what I've gathered, my interpretation that a portion thereof, could be waived. Could they waive all five years, I don't know how likely that would be. I think there needs to be a track record demonstrated during the period of probation. We talked about the hoops that they would jump through.

Rep. Klemin: Why are we putting this in here for a court to supersede this, what seems to be a pretty clear provision in the statute now that says you can't do it until five years is over.

Sen. Robinson: In visiting, not just this year but over the past few years, I've been in contact with a number of folks who have said that this is very problematic. As Sen. Lyson, a former law enforcement official, underscored this himself. It is not working to the extent that we would like it to work. The fact that we can provide as a part of this ongoing rehabilitation, quality time with family, quality time in the field, is very powerful in terms of the overall therapy. We see this as complementing and providing a powerful option. In some cases that we have a situation where hunting is big for that family. I can think of one individual who I referenced earlier, that family literally, when there's a hunting season open, they are hunting, the whole family. This individual has had to give that up for five years; he has a perfect track record, he's done everything he's been asked to do. The thought was here, if there is a way that makes sense, that is within reason, we should explore that in a serious way.

Rep. Klemin: I don't anything in the amendment where it says the court can change the five years to less than that amount. It looks like it's all or nothing. Is that what you intended.

Sen. Robinson: Well it would be subject to the application and the petitioning of the individual before the court. For example, in the case of one individual who is two years into the process. If he would petition and if this bill were law, the court could say we'll waive the last three years, or the last two. Maybe there needs to be clarification on that. It's going to depend on the date of the petition before the court by the individual who is trying to get his hunting rights restored.

Chairman DeKrey: Thank you. During earlier testimony it was asked how many class 1 and class 2 permits are out there. There are 761 class 1 and close to 14,000 class 2 permits.

Dallas Carlson, Director, Bureau of Criminal Investigation: I just wanted to answer the question on the grant money that was available. ND currently isn't one of the states that meets the criteria to apply for that grant money. There are 8 states that do. In order to even apply for the grant, and we don't know that there would be grant funds available in 2011 yet; but in order to apply we would have to meet certain criteria to make the application. In order to meet that criteria, we would need the fiscal note on the bill. We would need personnel, 1 FTE, and there are some IT costs involved.

Rep. Delmore: Don't you think there is a need for those reports to go on to the federal government, to the FBI, as we're making a better database for those people who shouldn't have access to weapons. Is there a reason we aren't doing this now.

Dallas Carlson: I guess at the current time, we are following the laws and guidelines as they are set up now.

Rep. Delmore: We are doing what we have to do.

Dallas Carlson: We're doing what we have to do.

Chairman DeKrey: Thank you. We will close the hearing on HB 1269. We're handing out an amendment that says that the AG has to do it within his existing budget if we pass this bill.

Rep. Klemin: After we finished earlier today, I went and talked to Tom Trenbeath about the possibility of putting on a contingent effective date. The question was whether we could put a contingent effective date on this bill, to say that it wouldn't become effective until such time as the state received grant funds and there have been grant funds that are available, there is nothing that has been stated yet for this year. He indicated to me that, someone else in his department had indicated that the grant funds could not be used for the purposes set out in the fiscal note, which basically was to set up the program. It was his understanding that the grant funds could only be used to run the program after it was all set up. Well then, he sent an email to Rep. Porter, which contained some information on the grants, which I then went to the Bureau of Justice Statistics, which is actually running this program. I looked it up and I'm thinking that the information that he got isn't entirely accurate. The grants that were made last year, a number of states got grants to set up this program, to develop the electronic systems. That was what some of the money was used for. Then there's a question and answer section FAQ about the program. I looked over pretty quickly. What are the authorized purposes for use of grant funds under the act. The law provides that grants to states may only be used to 1) create electronic systems. That is what is going on in this fiscal note. They are going to be creating the electronic system. Also for state court systems, they are part of this program as well. The funds can be used to carry out assessments of the state courts to see what capabilities are there to automate and transmit arrest and

conviction records, implement policy systems, etc. So I'm thinking that maybe we should also have on here an amendment that does provide for a contingent effective date based on the receipt of these grant funds, just to cover the likely situation that that might be the situation.

Rep. Koppelman: If we adopt your amendment that was just passed out. Nothing in that would prevent them from applying for a grant. I would prefer that to say we're not going to give you any money, and if they want to go and apply for the grant, fine.

Rep. Klemin: What could be done here, is we could use this language and combine it with some other language that this law would become effective when the AG certifies to LC that grant funds, under this act, have been received to create the systems and so forth, just like it says in here. Then we could use this and say, until such time, the AG shall implement...

Rep. Koppelman: I understand we could do that, but I'm not so sure if it's the best idea if adopt your amendment, which says that we're not going to give them any money to do this, but that they can do it, then they're faced with two choices, either they do it within their budget or they go off and get a grant and then implement it then. I don't think we want to disallow them from doing it if they don't get the grant.

Chairman DeKrey: We need to adopt this amendment today, because we've already missed the Appropriation's deadline by one day.

Rep. Koppelman: I move the DeKrey Amendment (see attached 5).

Rep. Maragos: Second the motion.

Chairman DeKrey: Then we can keep the bill in committee though and come back and fix it on Monday with the Klemin Amendment.

Rep. Klemin: There are two or three other amendments that we need to look at as well.

Chairman DeKrey: I need to speak to one of those.

Rep. Koppelman: Your amendment would take the fiscal note off and buy more time because it doesn't have to be re-referred.

Chairman DeKrey: We will take a voice vote on the DeKrey amendment. Motion carried. The DeKrey amendment is on the bill. I did some checking on this too, but although I am very sympathetic to Sen. Robinson, the language that he has provided us with would put us in violation of federal law. I don't think we are going to consider that amendment. That's why we killed it the last time.

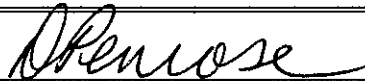
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1269
February 14, 2011
14515

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1269.

Rep. Klemin: I have had further discussion with the AG's office and they say that the grants can't be used to set up the program, they can use it to operate it afterwards. The amendment I was thinking about won't work.

Chairman DeKrey: So the bill is pretty unhealthy.

Rep. Klemin: We still have some other amendments. Trenbeath came in with an amendment when we had the hearing on January 25, 2011. Schweitzer from the State Hospital came in with an amendment related to some of the terminology. Mike Mullen, came in with an amendment related to some of the politically correct terminology. Then Sen. Robinson had an amendment.

Chairman DeKrey: We took care of Sen. Robinson's concern down in Natural Resources, so that is taken care of.

Rep. Delmore: With Sen. Robinson's amendment, that would put us in violation of federal law and there's no reason for his amendment.

Rep. Klemin: We've still got the other three amendments. I move the Schweitzer amendment.

Rep. Hogan: Second the motion.

Chairman DeKrey: We will take a voice vote. Motion carried.

Rep. Klemin: I move the Trenbeath AG's amendment.

Rep. Koppelman: Second the motion.

Chairman DeKrey: We will take a voice vote on the AG amendment with the retroactive application.

Rep. Delmore: What was the reason for the retroactive application.

Chairman DeKrey: Question was answered about retroactive application by clerk (it was so that we would be in step with MN). We will take a voice vote. Motion carried. The next amendment is the one requested by Mike Mullens, from the AG's department.

Rep. Koppelman: I was just saying that we really shouldn't adopt the other amendment brought in by Mike Mullen. It was a valiant effort at political correctness. It does cite a different section of Code, which I really don't think applies. My suggestion is if there is a desire to have politically correct language in Code, we should do that through a different bill or a technical clean up somewhere else. I don't think it fits with this bill. With that in mind, I move a Do Pass as amended, with a re-referral to Appropriations.

Rep. Klemin: Second the motion.

Chairman DeKrey: Rep. Beadle, there comes a time in life when you go, what are they going to do? Take away my birthday. Further discussion on the bill. The clerk will call the roll on a Do Pass as Amended with a re-referral to Appropriations.

11 YES 2 NO 1 ABSENT

DO PASS AS AMENDED WITH A RE-REFERRAL TO APPROPRIATIONS

CARRIER: Rep. Kingsbury

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1269
February 17, 2011
14704

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1269. We are bringing the bill back to committee to put on an additional amendment. I took the bill down to the Appropriations Committee this morning and explained it to them. The AG's office is not happy because we removed the fiscal note from the bill. The Appropriations Committee thinks that there may be money in the AG's budget to implement that. They would like the bill back with a "may" in it instead of "shall". That way, they feel they'll be in a better negotiating position with the AG's office and everybody will be happy.

Rep. Delmore: I move the DeKrey Amendment .02001.

Rep. Boehning: Second the motion.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before as further amended. What are the committee's wishes.

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

Rep. Kingsbury: Second the motion.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kingsbury

FISCAL NOTE

Requested by Legislative Council
03/30/2011

Amendment to: Reengrossed
HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$585,859	\$181,634	
Appropriations				\$585,859	\$181,634	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill requires North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons.

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

If a court determines an individual has been involuntarily committed for mental illness or chemical dependency treatment at any facility, the individual's information is reported by the court to the Office of Attorney General's Bureau of Criminal Investigation (BCI) Division, which then reports such information to the FBI's National Instant Criminal Background Check System (NICS) to prevent the individual from obtaining a concealed weapon license. The bill also contains a "relief provision" (subsection 3 of section 3), required if the state is eligible for certain federal grants, to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored.

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

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

This revision appears to move the state closer to reciprocity with other states that do not recognize reciprocity with North Dakota, which would likely result in an increase in concealed weapon license applications. Currently, state residents who want reciprocity with states that do not have reciprocity North Dakota will purchase other states' concealed weapon permits or licenses. As a result of the uncertainty as to when a concealed weapon license would be renewed and when North Dakota residents would purchase their licenses in North Dakota if this bill passes, the revenue impact of this bill is indeterminable.

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

The anticipated impact of this bill on the Office of Attorney General's Bureau of Criminal Investigation Division workload would require 1.5 administrative support FTE's to manage the information from the courts and submit it to the FBI's National Instant Criminal Background Check System (NICS). The staff would enter and forward information

to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium other funds amount reflected here includes \$141,285 in salaries and wages, \$37,849 in operating expenses, and \$175,000 in information technology costs to build a data entry screen and an interface with NICS. The 2013-15 biennium amount removes the \$175,000 for information technology services.

The 2011-13 biennium other funds fiscal impact to the Judicial Branch would be \$231,725 for information technology costs which is reflected in the expenditures and appropriations amounts above. System enhancements would be necessary within the court's case management system to compile the required information and to integrate with the Office of Attorney General's electronic transmission reporting system. If the information was manually submitted to the Attorney General's office, the cost to the Judicial Branch would be minimal, however this would require more Office of Attorney General staffing and expenses.

Section 5 of the bill makes subsections 2 and 5 of section 3 (nonclinical court information reported to BCI which would report the information to the FBI for inclusion in the NICS system database) contingent on the Attorney General certifying to the Secretary of State, Office of Management and Budget, and the Legislative Council that the state has received the NICS grant and has implemented the software and system to carryout these provisions.

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

The bill includes a \$585,859 other funds appropriation to the Office of Attorney General.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/30/2011

FISCAL NOTE
Requested by Legislative Council
03/23/2011

Amendment to: Reengrossed
HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$585,859	\$181,634	
Appropriations				\$585,859	\$181,634	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill requires North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons. This bill is retroactive to cases which have arisen since December 31, 2007.

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

If a court determines an individual has been involuntarily committed for mental illness or chemical dependency treatment at any facility, the individual's information is reported by the court to the Office of Attorney General's Bureau of Criminal Investigation (BCI) Division, which then reports such information to the FBI's National Instant Criminal Background Check System (NICS) to prevent the individual from obtaining a concealed weapon license. The bill also contains a "relief provision" (subsection 3 of section 3), required if the state is eligible for certain federal grants, to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored.

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

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

This revision appears to move the state closer to reciprocity with other states that do not recognize reciprocity with North Dakota, which would likely result in an increase in concealed weapon license applications. Currently, state residents who want reciprocity with states that do not have reciprocity North Dakota will purchase other states' concealed weapon permits or licenses. As a result of the uncertainty as to when a concealed weapon license would be renewed and when North Dakota residents would purchase their licenses in North Dakota if this bill passes, the revenue impact of this bill is indeterminable.

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

The anticipated impact of this bill on the Office of Attorney General's Bureau of Criminal Investigation Division workload would require 1.5 administrative support FTE's to manage the information from the courts and submit it to

the FBI's National Instant Criminal Background Check System (NICS). The staff would enter and forward information to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium other funds amount reflected here includes \$141,285 in salaries and wages, \$37,849 in operating expenses, and \$175,000 in information technology costs to build a data entry screen and an interface with NICS. The 2013-15 biennium amount removes the \$175,000 for information technology services.

The 2011-13 biennium other funds fiscal impact to the Judicial Branch would be \$231,725 for information technology costs which is reflected in the expenditures and appropriations amounts above. System enhancements would be necessary within the court's case management system to compile the required information and to integrate with the Office of Attorney General's electronic transmission reporting system. If the information was manually submitted to the Attorney General's office, the cost to the Judicial Branch would be minimal, however this would require more Office of Attorney General staffing and expenses.

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

The expenditures and appropriations impacts of this bill on the Office of Attorney General and the Judicial Branch have not been added to either budget.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-3622	Date Prepared:	03/23/2011

FISCAL NOTE

Requested by Legislative Council
03/09/2011

REVISION

Amendment to: Reengrossed
HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$585,859		\$181,634	
Appropriations			\$585,859		\$181,634	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill requires North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons. This bill is retroactive to cases which have arisen since December 31, 2007.

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

If a court determines an individual has been involuntarily committed for mental illness or chemical dependency treatment at any facility, the individual's information is reported by the court to the Office of Attorney General's Bureau of Criminal Investigation (BCI) Division, which then reports such information to the FBI's National Instant Criminal Background Check System (NICS) to prevent the individual from obtaining a concealed weapon license. The bill also contains a "relief provision" (subsection 3 of section 3), required if the state is eligible for certain federal grants, to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored.

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

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

This revision appears to move the state closer to reciprocity with other states that do not recognize reciprocity with North Dakota, which would likely result in an increase in concealed weapon license applications. Currently, state residents who want reciprocity with states that do not have reciprocity North Dakota will purchase other states' concealed weapon permits or licenses. As a result of the uncertainty as to when a concealed weapon license would be renewed and when North Dakota residents would purchase their licenses in North Dakota if this bill passes, the revenue impact of this bill is indeterminable.

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

The anticipated impact of this bill on the Office of Attorney General's Bureau of Criminal Investigation Division

workload would require 1.5 administrative support FTE's to manage the information from the courts and submit it to the FBI's National Instant Criminal Background Check System (NICS). The staff would enter and forward information to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium general fund amount reflected here includes \$141,285 in salaries and wages, \$37,849 in operating expenses, and \$175,000 in information technology costs to build a data entry screen and an interface with NICS. The 2013-15 biennium amount removes the \$175,000 for information technology services.

The 2011-13 biennium general fund fiscal impact to the Judicial Branch would be \$231,725 for information technology costs which is reflected in the expenditures and appropriations amounts above. System enhancements would be necessary within the court's case management system to compile the required information and to integrate with the Office of Attorney General's electronic transmission reporting system. If the information was manually submitted to the Attorney General's office, the cost to the Judicial Branch would be minimal, however this would require more Office of Attorney General staffing and expenses.

The House amendments provide that the Attorney General is not required to comply with this Act unless the Attorney General begins to implement and administer the act within the limits of the Attorney General's budget.

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

The expenditures and appropriations impacts of this bill on the Office of Attorney General and the Judicial Branch have not been added to either budget.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/09/2011

FISCAL NOTE

Requested by Legislative Council
02/22/2011

Amendment to: HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$585,859	\$181,634	
Appropriations				\$585,859	\$181,634	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill requires North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons. This bill is retroactive to cases which have arisen since December 31, 2007.

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

If a court determines an individual has been involuntarily committed for mental illness or chemical dependency treatment at any facility, the individual's information is reported by the court to the Office of Attorney General's Bureau of Criminal Investigation (BCI) Division, which then reports such information to the FBI's National Instant Criminal Background Check System (NICS) to prevent the individual from obtaining a concealed weapon license. The bill also contains a "relief provision" (subsection 3 of section 3), required if the state is eligible for certain federal grants, to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored.

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

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

This revision appears to move the state closer to reciprocity with other states that do not recognize reciprocity with North Dakota, which would likely result in an increase in concealed weapon license applications. Currently, state residents who want reciprocity with states that do not have reciprocity North Dakota will purchase other states' concealed weapon permits or licenses. As a result of the uncertainty as to when a concealed weapon license would be renewed and when North Dakota residents would purchase their licenses in North Dakota if this bill passes, the revenue impact of this bill is indeterminable.

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

The anticipated impact of this bill on the Office of Attorney General's Bureau of Criminal Investigation Division workload would require 1.5 administrative support FTE's to manage the information from the courts and submit it to the FBI's National Instant Criminal Background Check System (NICS). The staff would enter and forward information

to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium other funds amount reflected here includes \$141,285 in salaries and wages, \$37,849 in operating expenses, and \$175,000 in information technology costs to build a data entry screen and an interface with NICS. The 2013-15 biennium amount removes the \$175,000 for information technology services and changes the funding source to the general fund, since this grant program is for short-term funding.

The 2011-13 biennium other funds fiscal impact to the Judicial Branch would be \$231,725 for information technology costs which is reflected in the expenditures and appropriations amounts above. System enhancements would be necessary within the court's case management system to compile the required information and to integrate with the Office of Attorney General's electronic transmission reporting system. If the information was manually submitted to the Attorney General's office, the cost to the Judicial Branch would be minimal, however this would require more Office of Attorney General staffing and expenses.

Federal funds should be available to cover both the Office of Attorney General and Judicial Branch expenses once the court program (to be developed) to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored is approved by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

The February 17, 2011 amendments provide that the Attorney General is not required to comply with this Act unless the Attorney General begins to implement and administer the act within the limits of the Attorney General's budget.

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

The expenditures and appropriations impacts of this bill on the Office of Attorney General and the Judicial Branch have not been added to either budget.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	02/22/2011

FISCAL NOTE

Requested by Legislative Council
02/16/2011

Amendment to: HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$585,859	\$181,634	
Appropriations				\$585,859	\$181,634	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill requires North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons. This bill is retroactive to cases which have arisen since December 31, 2007.

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

If a court determines an individual has been involuntarily committed for mental illness or chemical dependency treatment at any facility, the individual's information is reported by the court to the Office of Attorney General's Bureau of Criminal Investigation (BCI) Division, which then reports such information to the FBI's National Instant Criminal Background Check System (NICS) to prevent the individual from obtaining a concealed weapon license. The bill also contains a "relief provision" (subsection 3 of section 3), required if the state is eligible for certain federal grants, to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored.

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

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

This revision appears to move the state closer to reciprocity with other states that do not recognize reciprocity with North Dakota, which would likely result in an increase in concealed weapon license applications. Currently, state residents who want reciprocity with states that do not have reciprocity North Dakota will purchase other states' concealed weapon permits or licenses. As a result of the uncertainty as to when a concealed weapon license would be renewed and when North Dakota residents would purchase their licenses in North Dakota if this bill passes, the revenue impact of this bill is indeterminable.

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

The anticipated impact of this bill on the Office of Attorney General's Bureau of Criminal Investigation Division workload would require 1.5 administrative support FTE's to manage the information from the courts and submit it to the FBI's National Instant Criminal Background Check System (NICS). The staff would enter and forward information to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data.

The 2011-13 biennium other funds amount reflected here includes \$141,285 in salaries and wages, \$37,849 in operating expenses, and \$175,000 in information technology costs to build a data entry screen and an interface with NICS. The 2013-15 biennium amount removes the \$175,000 for information technology services and changes the funding source to the general fund, since this grant program is for short-term funding.

The 2011-13 biennium other funds fiscal impact to the Judicial Branch would be \$231,725 for information technology costs which is reflected in the expenditures and appropriations amounts above. System enhancements would be necessary within the court's case management system to compile the required information and to integrate with the Office of Attorney General's electronic transmission reporting system. If the information was manually submitted to the Attorney General's office, the cost to the Judicial Branch would be minimal, however this would require more Office of Attorney General staffing and expenses.

Federal funds should be available to cover both the Office of Attorney General and Judicial Branch expenses once the court program (to be developed) to allow a civilly committed individual who is no longer dangerous to have their rights to possess firearms restored is approved by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

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

The expenditures and appropriations impacts of this bill on the Office of Attorney General and the Judicial Branch have not been added to either budget.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	02/18/2011

FISCAL NOTE

Requested by Legislative Council
02/01/2011

REVISION

Bill/Resolution No.: HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$287,243		\$118,273	
Appropriations			\$287,243		\$118,273	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill permits North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons.

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

If a court finds there are mental reasons for reporting an individual's information to the Bureau of Criminal Investigation (BCI), the BCI is to report such information to the FBI's National Instant Criminal System to prevent the individual from obtaining a concealed weapon permit. The bill also contains a "relief provision" (subsection 3 of section 3) required if the state is eligible for certain federal grants, so that a person who was civilly committed but is no longer dangerous can have his or her rights to possess firearms restored.

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

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

N/A

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

The work anticipated with this bill will require one administrative support person to deal with the information to the National Instant Crime System (NICS). This position would enter and forward information to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium general fund amount reflected here includes \$92,675 in salaries and wages, \$19,568 in operating expenses, and \$175,000 in information technology costs to build a date entry screen and an interface with NICS. The 2013-15 biennium amount reflects a 10% increase in the salaries and wages and removes the \$175,000 amount.

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

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

The Executive Recommendation did not contemplate the effect of this bill in dealing with the anticipated fiscal impact on the Office of Attorney General.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	02/02/2011

FISCAL NOTE

Requested by Legislative Council
01/21/2011

Bill/Resolution No.: HB 1269

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$187,243		\$118,273	
Appropriations			\$187,243		\$118,273	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill permits North Dakota courts to disclose information regarding civil commitment proceedings to the Bureau of Criminal Investigation to verify if an individual is eligible to purchase/possess weapons.

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

If a court finds there are mental reasons for reporting an individual's information to the Bureau of Criminal Investigation (BCI), the BCI is to report such information to the FBI's National Instant Criminal System to prevent the individual from obtaining a concealed weapon permit. The bill also contains a "relief provision" (subsection 3 of section 3) required if the state is eligible for certain federal grants, so that a person who was civilly committed but is no longer dangerous can have his or her rights to possess firearms restored.

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

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

N/A

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

The work anticipated with this bill will require one administrative support person to deal with the information to the National Instant Crime System (NICS). This position would enter and forward information to NICS, remove information from NICS as necessary, and research problems due to incomplete/insufficient data. The 2011-13 biennium general fund amount reflected here includes \$92,675 in salaries and wages, \$19,568 in operating expenses, and \$75,000 in information technology costs to build a date entry screen and an interface with NICS. The 2013-15 biennium amount reflects a 10% increase in the salaries and wages and removes the \$75,000 amount.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The Executive Recommendation did not contemplate the effect of this bill in dealing with the anticipated fiscal impact on the Office of Attorney General.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/24/2011

YK
2/15/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 2, remove the second "and"

Page 1, line 4, after "records" insert "; to provide for application; and to provide for retroactive application"

Page 2, line 18, overstrike "mentally ill"

Page 2, line 18, after "person" insert "requiring treatment"

Page 3, line 25, remove "public"

Page 4, line 13, remove "mental health and substance abuse services division of the department of"

Page 4, line 14, replace "human services" with "treatment facility that treated the individual pursuant to court order"

Page 4, line 15, remove "mental health and"

Page 4, line 16, replace "substance abuse services division" with "treatment facility that treated the individual pursuant to court order"

Page 5, line 3, replace "which" with "in the format and medium specified by the bureau after consultation with the state court administrator. The bureau"

Page 5, after line 5, insert:

"SECTION 4. APPLICATION. The attorney general shall implement and administer this Act within the limits of the budget of the attorney general. The attorney general may not add any full-time equivalent positions to assist with the implementation or administration of this Act.

SECTION 5. RETROACTIVE APPLICATION. This Act applies retroactively to cases under chapter 25-03.1 which arise after December 31, 2007."

Renumber accordingly

Date: 2/14/11Roll Call Vote # 12011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269House JUDICIARY

Committee

☐ Check here for Conference CommitteeLegislative Council Amendment Number 11. 0466 01002 02000Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment☒ Rerefer to Appropriations ☐ ReconsiderMotion Made By Rep. Koppelman Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	✓
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		✓
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner					

Total (Yes) 11 No 2Absent 1Floor Assignment Rep. Kingsbury

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1269

Page 5, line 7, replace "The" with "Notwithstanding any other section of this Act, the"

Page 5, line 7, replace "shall" with "is not required to comply with this Act unless the attorney
general begins to"

Renumber accordingly

Date: 2/17/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Boehning Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle			Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar					
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1269: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 4, after "records" insert "; to provide for application; and to provide for retroactive application"

Page 2, line 18, overstrike "mentally ill"

Page 2, line 18, after "person" insert "requiring treatment"

Page 3, line 25, remove "public"

Page 4, line 13, remove "mental health and substance abuse services division of the department of"

Page 4, line 14, replace "human services" with "treatment facility that treated the individual pursuant to court order"

Page 4, line 15, remove "mental health and"

Page 4, line 16, replace "substance abuse services division" with "treatment facility that treated the individual pursuant to court order"

Page 5, line 3, replace ", which" with "in the format and medium specified by the bureau after consultation with the state court administrator. The bureau"

Page 5, after line 5, insert:

"SECTION 4. APPLICATION. The attorney general shall implement and administer this Act within the limits of the budget of the attorney general. The attorney general may not add any full-time equivalent positions to assist with the implementation or administration of this Act.

SECTION 5. RETROACTIVE APPLICATION. This Act applies retroactively to cases under chapter 25-03.1 which arise after December 31, 2007."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1269, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1269 was placed on the Sixth order on the calendar.

Page 5, line 7, replace "The" with "Notwithstanding any other section of this Act, the"

Page 5, line 7, replace "shall" with "is not required to comply with this Act unless the attorney general begins to"

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1269 *

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1269
2/17/11
14645

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Mental disability and firearm possession, possession of firearms in this state and confidential records; provide for application; provide for retroactive application.

Minutes:

Chairman Delzer: We have HB 1269 which was re-referred.

Representative DeKrey: HB 1269 is basically called the mental health check bill for the concealed permit holders. It's in reaction to Virginia Tech, and Gabby Gifford's ordeal. It had a sizeable fiscal note on it. I should mention that the bill did not come from the AG's office. It wasn't in the Governor's budget so we removed the money up in the Judiciary Committee because we were under the impression that it was going to be same situation that we had with the DNA testing, that we would be able to get federal grants to set up and run the program. However, after quite extensive research, the federal grants that are available are not to set up the program. If we set it up and start running it, there might be federal grants available, but the federal money is not available to set up the program to get it up and running. I just came from the AG's office; without the money in the bill, they're not interested in the bill.

Chairman Delzer: What's the status from your committee? Would you prefer us to put a Do Not Pass on this bill?

DeKrey: We thought it was good policy, but at the time we made the decision, we were under the impression that we were going to be able to use federal grants to pay for it, like we had with the DNA testing program. It was out of committee before we found out that was a definite no to the grant funds. I don't know how the committee would have acted if we had had all the information.

Chairman Delzer: I see in the last paragraph, said that the AG has to do this within his budget and he's not interested in the bill.

Rep. DeKrey: This morning I was told that he does not want that; without the money he's not interested in the bill.

Ch. Delzer: Would he want it with the word "may" in it.

Rep. DeKrey: Well, it probably would be an exercise in futility, because it was "may" he's not going to do it.

Representative Skarphol: I think changing it to "may" might put a little pressure on them to do it. We've been fairly generous to the Attorney General in the past. I think that he wouldn't struggle a great deal with us. It seems to me he has some pretty significant dollars in some funds that aren't committed.

Representative Nelson: Looking at the fiscal note, Rep. DeKrey, this \$92,675 in salaries. Did he propose a FTE for this or is it a temporary position. Did he talk about that at all?

DeKrey: There would be at least 1 FTE.

Chairman Delzer: We don't get that budget until the second half. But I doubt if there's a lot of desire to add another FTE, but we could pass this out with a "may" implement, but won't be able to get any extra money for it. That does put the bill over in front of Senate. They might change things. Whatever the committee wishes.

Representative Martinson: I move we send the bill back to Jud Committee.

Representative Hawken: Second the motion.

Chairman Delzer: I don't think our rules allow us to send that to the Judiciary Committee. We could send it back to the floor, and have a motion on the floor and have it requested to come back and be re-referred. I don't think there is a rule in the book to move it from here to Judiciary Committee.

Representative Skarphol: I agree with Rep. Martinson, there's really no money in this bill.

Chairman Delzer: We can send it out w/o recommendation, but I don't think we can send it back to that committee.

Representative Martinson: If you want me to change my motion that we send it back to the Floor for re-referral back to Judiciary, I'll make that motion. I'm not interested in sitting here for a half-hour talking about this when there is no money in it; when they've changed their mind and they probably don't even want it, let them kill it.

Chairman Delzer: I understand what you're trying to do, but I don't think we as a committee have the authority to send it back that way when you read the rule book.

Representative Skarphol: Do we have the ability to ask the leadership to bring the bill back to the Floor for re-referral.

Chairman Delzer: We certainly do, and don't need a motion for that. We can just ask them that.

Representative Martinson: I withdraw my motion.

Rep. Hawken: I withdraw my second.

Ch. Delzer: The bill will go back to the Floor.

2011 SENATE JUDICIARY

HB 1269

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1269
3/9/11
Job #15188

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mental disability and firearm possession

Minutes:

There is attached testimony

Senator Nething – Chairman

Representative K. Karls – District 35 – See written testimony. Also reads testimony from **Darin Goens** – NRA-ILA ND state liaison.

Opposition

Jonathan Byers – Assistant Attorney General – See written testimony

Senator Olafson – He is concerned with the re-instatement process and feels if that process is allowed it is going to have to be effective. He asks if there is a better way to do that process.

Byers – Points out that under the mental health civil commitment there is an automatic restoration of rights after 3 years. He remarks that the criminal history records director was not sure if all the items A through G are even area that are reportable to NICS. He said to even qualify for the NICS program they want a court to make a finding that the person no longer has the prohibiting disabilities that are listed in the Federal law.

Senator Olafson – Ask about the people that have never been treated in a facility how does the court make a recommendation on their current mental state.

Byers – Responds he is unsure but at some point a professional has evaluated the person.

Senator Nething – Asked if he testified in the House.

Byers – Said he did not testify.

Neutral

Bill Neuman – Executive Director of the State Bar Association - He says there are a few technicalities he would like to point out. First being all the additional workload for the courts and prosecutors. He said it is bound to have a fiscal impact. He also says the retro activity provision in Section 5 would require courts to go back to every involuntary mental health commitment in the last two years and reopen the commitment in order to make the finding whether the provisions of the Federal law applied.

Senator Nething – Asks him how many of these he thinks we may have.

Neuman – Said he has no idea but he knows there are a lot of mental health commitments and if they wait for 3 years they will have their rights reinstated. He thinks the greater burden would be to reopen every mental health hearing and have a presentation of evidence so they could have a finding. He says as he reads the law, any mental health hearing that has been conducted after December 31, 2007 would have to be reopened in order to provide that finding that is required on Sec. 3, page 3. He also mentions that the ND Supreme Court does not do de novo trials.

Senator Olafson – Asks what is the worst thing if this bill doesn't pass.

Neuman – Says information from ND wouldn't go into the NICS System

Jim Gange – Supreme Court, Office of the State Court Administrator – He says the de novo review at the Supreme Court level was removed in 1970 because it was felt inappropriate for an appellate court to try to go back and review the de novo (do over).

Close HB1269

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1269
3/21/11
Job #15780

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mental disability and firearm possession

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses an amendment and fiscal note. Senator Nething explains what the amendment does. Senator Olafson says the amendment reads that these funds \$585,000 or as much as may become available under a grant under the act of Congress. He asks if this is contingent upon this grant being approved. Senator Nething responds with saying this is their amendment and does what they want it to do. Senator Olafson asks what if the grant doesn't show up. Senator Nething assumes they would not have the funding to do it. Senator Nething asks the intern to check with John Bjornson about the wording. Committee adjourns and comes back to continue work.

Senator Olafson moves to adopt amendment #1

Senator Lyson seconded

Verbal vote – all yes

Senator Olafson moves to adopt amendment (de novo)

Senator Sitte seconded

Verbal vote – all yes

Senator Olafson moves a do pass as amended

Senator Sitte seconded

Roll call vote – 5 yes, 0 no, 1 absent

Senator Olafson will carry

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1269
3/28/11
Job #16079

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to mental disability and firearm possession

Minutes:

Senator Nething – Chairman

Committee work

The committee has Johathan Byers from the Attorney General's office to come in to explain the new amendment. They ask him if it is intended to eliminate the retro-active application. Byers explains he believes it was the intent of the amendment to replace that language. Senator Olafson asks if people are allowed after three years to reapply to have their rights re-instated. Byers replies that it might have been the intent but the language does not accomplish that. He said they were never real clear why this language showed up with the retro-active period and why they chose 3 years.

Senator Olafson motions to reconsider

Senator Sitte seconded

Verbal vote – all yes

Senator Olafson motions to reconsider amendment

Senator Lyson seconded

Verbal vote – all yes

Senator Olafson moves to adopt the new amendment

Senator Sorvaag seconded

Verbal vote – all yes

Senator Olafson motions do pass as amended and rerefer to Appropriations

Senator Nelson seconded

Roll call vote

6 yes, 0 no

Senator Olafson will carry

AG

PROPOSED AMENDMENT TO REENGROSSED HOUSE BILL NO. 1269

Page 1, line 4, replace "for application" with "an appropriation"

Page 5, after line 6, replace lines 7 through 11 with:

"SECTION 4. APPROPRIATION. There is appropriated to the attorney general \$585,859 or so much of that amount as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub.L. 110-180, 121 Stat. 2559.] or other funds."

Renumber accordingly.

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment ^{#1}
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes

Committee

PROPOSED AMENDMENT TO HB 1269

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo"

Date: 3/21/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment *de novo*
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Olafson Seconded By S. Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal yes

Date: 3/21/11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Olafson Seconded By S. Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson		
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No _____

Absent 1

Floor Assignment S. Olafson

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

Date: 3-28-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	1		Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - yes

Date: 3/29/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT OF HOUSE BILL 1269

In lieu of the amendments adopted by the Senate as printed on page 813 of the Senate Journal, House Bill 1269, Second Engrossment, is further amended as follows:

Page 1, line 4, replace "for application" with "an appropriation"

Page 1, line 5, replace "retroactive application" with "a contingent effective date"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 11 with: "**SECTION 4. APPROPRIATION.** There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Page 5, replace lines 12 through 13 with "**SECTION 5. CONTINGENT EFFECTIVE DATE.** Subsections 2 and 5 of the new section to chapter 62.1-02 of the North Dakota Century Code created by Section 3 of this Act become effective when the attorney general certifies to the secretary of state and to the office of management and budget and to the legislative council that the state has received the grant under Section 4 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of the new section to chapter 62.1-02 of the North Dakota Century Code created by Section 3 of this Act. "

Renumber accordingly

Date: 3/28/11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment new
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

- Verbal yes

Date: 3/28/11
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Olafson

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

REPORT OF STANDING COMMITTEE

HB 1269, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "for application" with "an appropriation"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 11 with:

"SECTION 4. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1269, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1269 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on page 813 of the Senate Journal, Reengrossed House Bill No. 1269 is amended as follows:

Page 1, line 4, replace "for application" with "an appropriation"

Page 1, line 4, remove the second "for"

Page 1, line 5, replace "retroactive application" with "a contingent effective date"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 13 with:

"SECTION 4. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 5. CONTINGENT EFFECTIVE DATE. Subsections 2 and 5 of section 3 of this Act become effective when the attorney general certifies to the secretary of state, the office of management and budget, and the legislative council that the state has received the grant under section 4 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of section 3 of this Act."

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1269

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1269
April 1, 2011
Job # 16267

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to mental disability and firearm possession.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee hearing to order on HB 1269. Roll call was taken.
Sheila M. Sandness - Legislative Council; Lori Laschkewitsch - OMB.

Chairman Holmberg asked if any of the sponsors (Representatives) were going to testify.

Senator Wardner: They were going to be on the floor until 10:00.

Chairman Holmberg: See if Senator Lyson is around. He is a Senate sponsor. (Sen. Lyson was called)

This authorizes the utilization of federal grant money that we already have. It authorizes the spending of the money. Am I looking at the wrong bill?

Kathy Roll, Attorney General's Office: We don't have the money yet. There are some other things that have to happen first. It's basically a contingent appropriation.

Chairman Holmberg: That's why we have it. This would authorize the expenditure of the money if you received it. If we passed this bill and you did not receive the money, what would happen? Would it force you to take money out of the budget, or would it just not occur?

Kathy Roll: The way the contingent appropriation reads is that parts of the bill that require reporting do not occur if the appropriation is not received. I think its section 3 and subsections 2 & 5 – the non-clinical court information. That would not occur unless the moneys are received and the system is in place to handle that reporting from the courts.

Chairman Holmberg: We know what the financial aspect is. Welcome Senator Lyson. The House is in session and will until 10:00. We have HB 1269 before us and you are the Senate sponsor. The financial aspect of it has to do with \$585,859 that the Attorney General's office may get from the federal government. If they get it, then subsections 2 & 5 become effective.

If they don't get the money, those don't subsections don't become effective. Our role is to determine whether or not we should allow them to spend that \$585,000.

Senator Robinson: There's \$181,634 impact to the general fund.

Senator Stan Lyson, District 1, Williston

I don't know what you're talking about. I didn't bring the bill so I don't know what it looks like.

Chairman Holmberg: Your DNA is on the bill (laughter). We don't want to put you on the spot.

Senator Lyson: I'm not the prime sponsor, so I don't understand the bill.

Chairman Holmberg: If you don't feel that you want to say a lot about it.

Senator Lyson: I'm not the prime sponsor on this, as you well know. I set in a position where a lot of people tap me on the shoulder and sometimes when I'm doing something else, I just sign.

Chairman Holmberg: We've all been there.

Senator O'Connell: Based on that excellent testimony, he moved Do Pass.

Senator O'Connell moved Do Pass on HB 1269.

Senator Wardner seconded.

Senator Wardner: I think you summed it up pretty well. That's what we're interested in. The feds won't comply; there won't be anything to spend.

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

Back to Judiciary Committee and Senator Olafson will carry the bill.

Senator Christmann: Not only did this bill come through the House, but it had a full hearing in a Senate Committee that dealt with it in more depth, and all these bills with an appropriation or fiscal impact come through here. It's almost a matter of us being able to run through and get the amounts so we can work it in as opposed to really studying it. We don't pass out a bunch legislation through the ND Legislature that haphazardly, but this is more a keeping track of the numbers for this committee.

Date: 4-1-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1269

Senate APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By O'Connell Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg			Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Judiciary Cleason

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

[Handwritten signature]

REPORT OF STANDING COMMITTEE

HB 1269, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed HB 1269, as amended, was placed on the Fourteenth order on the calendar.

2011 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1269

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1269
April 15, 2011
16628

☒ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dahl: We will open the conference committee on HB 1269. All members are present. This bill originated in the House.

Rep. DeKrey: This bill is known as the mental gun bill. It gives the Attorney General the authority and county sheriffs to do background checks on people applying for concealed carry permits, to see if they have any history of mental problems in their background. The other side of that is that it has a mechanism on the backside of the bill for an individual that has had these problems to regain their gun rights.

Ch. Dahl: Mr. Trenbeath is here from the AG's office with some additional information for the committee.

Tom Trenbeath: I had talked to a few of you with respect to potential amendments to this bill. This bill is not an AG's bill, but of course, we would have to implement. It is based on the availability of federal funding at this time to implement the situation. It is based on a federal law that directly results from the Virginia Tech shooting, and the recent Arizona events. It's become important to the federal government and I think important to us, that people that have mental difficulties, that the governmental entities that are responsible for issuing permits for concealed carry weapons are aware of these problems. That has never been a situation that's reasonably able to be done in ND. We've had problems that aren't able to be overcome with MN in a reciprocity situation there, because we have no ability to collect that information from individual hospitals and other treatment facilities. This bill would make this possible through the courts for involuntary commitment situations. So it involves some programming aspects in the court system to be able to provide the information to BCI for the purposes of entering into the NICS databank at the FBI. In so doing, the federal government insists that you have some sort of rehabilitative section also, which is the section that Rep. DeKrey referred to. The whole situation, whether or not you agree it is a good idea, the Legislature has agreed it's a good idea because it has passed both houses, is how we implement the statutes. The appropriation is for slightly over a half of a million dollars, federal funds. The contingent effective date is, of course, the date when the federal funds are received in order to

implement it. Once the federal funds are received, there are federal funds enough to hire 1.5 FTEs at BCI in order to actually cause this to function over the next biennium. I realize that FTEs are an anathema to the legislature and we don't come easily to you and ask for that. The actual implementation, the programming, will be done by contract; but just to allow the system to function, the bodies needed to acquire and disseminate the information over the course of the biennium. I had prepared amendments which you have before you. This provides for the appropriation of federal funds, provides for the FTEs, and provides for the contingent effective date, which would forestall implementation until the federal funds were received. It also, on a different matter, in the concealed carry situation, needs another change. The champion in concealed carry issuance in the US is probably UT. They have reciprocity over most of the nation and have reciprocity with MN, which we don't. So that causes a lot of concealed carry permits along the eastern part of the state that borders MN, to have UT permits. UT just passed a law last month, which is the reason I am here, that says that they will not issue concealed carry permits to anybody that does not have a concealed carry permit from their home state. Our applications have doubled in the last month, which means that presently in statute, we're obligated to do a turnaround from the time we receive the application for permit, until the time we make a decision to send one out or reject it for some lawful reason, is 30 days. We have been up against that time period this entire time because we have 15,000 permits issued now in this state. With this change in the UT law, we can't reasonably meet that 30 day turnaround any longer. So the amendment does include an extension from 30 days to 45 days. We thought that would be an easier sell with the legislature than saying we need another FTE to make the 30 day turnaround. In addition, across the country it's not unusual to find turnaround times in the statute of 60-90 days, so 45 is still fairly reasonable. We would ask you to consider that as well.

Sen. Nelson: Wouldn't it have been easier to put an emergency clause on our concealed carry bill that was supposed to be the same as UT. I carried it on the Floor, and that was the whole selling point; that this was going to be "to the word" exact as UT's.

Tom Trenbeath: If I could guarantee that, I would agree with you wholeheartedly. We spent a considerable amount of time last legislative session tailoring our concealed carry permit laws so that we could obtain reciprocity with MN. Every time we thought we had it, they threw up new roadblocks. Hopefully the new wrinkles will facilitate that, but we can't say that it's going to be a done deal.

Sen. Olafson: Do we need to put an emergency clause on section 4, so that you are able to have the 45 day turnaround time now. The rest of the bill will still have the contingent effective date.

Tom Trenbeath: Excellent point.

Rep. Dahl: Further questions. I distributed an amendment that Mr. Trenbeath and I have had discussions on (see attached 1). In part it takes care of the 45 day issue that he just discussed, but there is also an issue of the grant and the appropriation along with the 1.5 FTEs. As you read through this, I would ask that the amendment also include not only the emergency clause on section 4; in addition, include language that indicates that when this federal money goes away, so do the FTEs. I highly doubt this bill would have made it this far if we were being asked to use state general fund money. That would be the preferred language, to have the FTEs go away once that federal grant goes away.

Sen. Nelson: Which version are we going back to?

Tom Trenbeath: I haven't studied it, but my guess is that you go back to the bill as it left the House.

Sen. Nelson: Version 3000?

Tom Trenbeath: You could recede from Senate and amend further.

Rep. DeKrey: I move that the Senate recede from Senate amendments and amend further, with the inclusion of the emergency clause on section 4 and the language on section 5 that the 1.5 FTEs go away if the federal grant goes away.

Sen. Olafson: Seconded the motion. I think we need a little better language than "goes away".

Rep. Dahl: That's correct. LC will draft and we can approve this report, but will have those amendments looked over by the Senate and House conferees before I submit the report. If there is a mistake, we can always come back. Further discussion.

Rep. DeKrey: Call the question.

Rep. Dahl: The question has been called. Clerk will take the roll.

6 YES 0 NO 0 ABSENT

SENATE RECEDE FROM SENATE AMENDMENTS AND AMEND AS FOLLOWS

Rep. Dahl: The conference committee is adjourned. Thank you for your work.

April 15, 2011

VR
4/15/11
1082

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1269

That the Senate recede from its amendments as printed on page 1332 of the House Journal and page 1004 of the Senate Journal and that Reengrossed House Bill No. 1269 be amended as follows:

Page 1, line 3, after "62.1-02-01" insert "and subsection 3 of section 62.1-04-03"

Page 1, line 4, replace "for application" with "an appropriation"

Page 1, line 4, remove the second "and"

Page 1, line 4, remove the second "for"

Page 1, line 5, replace "retroactive application" with "a contingent effective date; and to declare an emergency"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 13 with:

"SECTION 4. AMENDMENT. Subsection 3 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within ~~thirty~~forty-five days of receipt from the forwarding agency.

SECTION 5. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180; 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013. This appropriation includes funding for one and one-half full-time equivalent positions to administer the provisions of the Act, which must be terminated when grant funding is no longer available.

SECTION 6. CONTINGENT EFFECTIVE DATE. Subsections 2 and 5 of section 3 of this Act become effective when the attorney general certifies to the secretary of state, the office of management and budget, and the legislative council that the state has received the grant under section 5 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of section 3 of this Act.

SECTION 7. EMERGENCY. Section 4 of this Act is declared to be an emergency measure."

Renumber accordingly

2 of 2

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: JUDICIARY

Bill/Resolution No. 1269 as (re) engrossed

Date: 4/15/11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1332 -

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1269 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Dekrey Seconded by: Sen. Olafson

Representatives	<u>4/15</u>		Yes	No		Senators	<u>4/15</u>		Yes	No
Rep. Dahl	✓		✓			Sen. Olafson	✓		✓	
Rep. Dekrey	✓		✓			Sen. Lyson	✓		✓	
Rep. Guggisberg	✓		✓			Sen. Nelson	✓		✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Dekrey Senate Carrier Sen. Olafson

LC Number 11.0466.03005 . 06000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1269, as reengrossed: Your conference committee (Sens. Olafson, Lyson, Nelson and Reps. Dahl, DeKrey, Guggisberg) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1332, adopt amendments as follows, and place HB 1269 on the Seventh order:

That the Senate recede from its amendments as printed on page 1332 of the House Journal and page 1004 of the Senate Journal and that Reengrossed House Bill No. 1269 be amended as follows:

Page 1, line 3, after "62.1-02-01" insert "and subsection 3 of section 62.1-04-03"

Page 1, line 4, replace "for application" with "an appropriation"

Page 1, line 4, remove the second "and"

Page 1, line 4, remove the second "for"

Page 1, line 5, replace "retroactive application" with "a contingent effective date; and to declare an emergency"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 13 with:

"SECTION 4. AMENDMENT. Subsection 3 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within ~~thirty~~forty-five days of receipt from the forwarding agency.

SECTION 5. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180; 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013. This appropriation includes funding for one and one-half full-time equivalent positions to administer the provisions of the Act, which must be terminated when grant funding is no longer available.

SECTION 6. CONTINGENT EFFECTIVE DATE. Subsections 2 and 5 of section 3 of this Act become effective when the attorney general certifies to the secretary of state, the office of management and budget, and the legislative council that the state has received the grant under section 5 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of section 3 of this Act.

SECTION 7. EMERGENCY. Section 4 of this Act is declared to be an emergency measure."

Renumber accordingly

Reengrossed HB 1269 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1269

Rep. Karen Karls, District 35, Bismarck

Testimony on HB 1269

January 25, 2011

Mr. Chairman and members of the committee:

I introduced this bill on behalf of the National Rifle Association and their North Dakota members. Unfortunately, Darin Goens who was planning to testify could not be here with us today. I will attempt to give a brief synopsis of the bill and hopefully, Mr. Goens can appear before the committee to answer your questions at a later date.

For the record, I am Rep. Karen Karls from District 35 here in Bismarck.

HB 1169 benefits the citizens of North Dakota and the state. It contains language that will make ND compliant with the National NICS Improvement Act. (NICS=National Instant Criminal Background Check System)...the computerized Insta-Check that everyone who buys a gun is required to pass under Federal Law. The bill would require only information be sent which is already required by federal law, and it actually affords the state an opportunity to get funds to transmit those records.

The NICS Improvement Act (NIAA) was enacted by Congress in the wake of the April 2007 shooting tragedy at Virginia Tech. The shooter was able to purchase firearms from a Federal Firearms Licensee because information about his prohibiting mental health history was not reported to NICS, and the system was unable to deny the transfer of the firearms used in the shooting. This Act seeks to fill these information gaps and keep guns out of the hands of persons prohibited by federal or state law.

However, the NIAA also protects citizens by requiring states to report mental health records to NICS for inclusion in the federal database used to clear gun purchases. The NIAA also protects individuals from having their constitutional rights arbitrarily stripped and provides for due process with respect to rehabilitating and restoring a person's rights if that person is subsequently adjudicated to be competent and eligible by a court.

States that are compliant with the Act may receive substantial financial incentives from the federal government. To be eligible to receive funds, a state must meet 2 specific conditions:

- 1. A state must provide a reasonable estimate of records subject to the NIAA's completeness requirements to the Attorney General.**
- 2. A state must also implement a program permitting persons who have been found by the courts to be a mental-defective or committed to a mental institution to obtain relief from the firearms restrictions imposed by law. The program must be certified by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.**

This relief must be based on a finding by a state court, board, commission or other lawful authority that under the circumstances of the disability, criminal record and personal reputation, the person will not be likely to act in a manner dangerous to public safety and that granting relief would not be contrary to public interest.

In conclusion, this is a good piece of legislation which strengthens public safety while striking a reasonable balance in guaranteeing the civil liberties of our citizens.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 2, line 18, overstrike "mentally ill" and after "person" insert "requiring treatment"

Page 5, line 3, after "investigation" insert "in the format and medium specified by the bureau after consultation with the state court administrator.", replace ", which" with "The bureau"

Page 5, after line 5, insert "**SECTION 4. RETROACTIVE APPLICATION.** This Act applies retroactively to cases arising after December 31, 2007, under chapter 25-03.1 of the North Dakota Century Code.

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 3, line 25, remove "public"

Page 4, line 13, remove "mental health and substance abuse services division of the department of"

Page 4, line 14, replace "human services" with "treatment facility that treated the individual pursuant to the court order"

Page 4, line 15, remove "mental health and"

Page 4, line 16, replace "substance abuse services division" with "treatment facility that treated the individual pursuant to the court order"

Renumber accordingly

1

Good morning members of the committee. My name is Darin Goens, and I'm the NRA-ILA North Dakota state liaison. I'm here to testify in support of House Bill 1269. I'd also like to thank Rep. Karen Karls for sponsoring this legislation.

This bill brings North Dakota into compliance with NIAA (the NICS Improvement Amendments Act) of 2007. The issue of mental health "disqualifiers" for gun purchases became a well-discussed topic after the tragic shooting at Virginia Tech in April 2007. The discussion largely focused on the completeness of records in the federal criminal background check database used to screen gun buyers. The instant computerized background check became mandatory in 1993 under the federal Brady Act. As you may recall, after the shooting, Virginia's mental health reporting was exposed, and the shooter Cho should have been disqualified from purchasing a gun, however, those records had not been submitted for inclusion in the federal database. After much discussion in Congress, federal lawmakers devised improvements which would enhance reporting of mental health records from the states. In Jan. 2008, President George Bush signed the NICS Improvement Amendments Act into law.

The overarching purpose of the NICS Improvements Act is the protection of American citizens. One way the Act protects citizens is by encouraging states to report information to NICS about individuals who, in accordance with state procedures subject to the rules of due process, have been found to suffer from debilitating mental illness or to require commitment for mental health treatment. Such reporting allows for more effective enforcement of federal prohibitions relating to those whose mental conditions may prevent them from safely handling or possessing firearms.

Just as importantly, the NIAA also protects individuals from having their constitutional right to arms arbitrarily or discriminatorily infringed when their condition no longer presents this safety concern. States implementing the NIAA should bear in mind that Congress carefully crafted the law so that neither goal would eclipse the other.

Substantial departures from the congressional scheme or overemphasis on any one aspect of it at the expense of another can undermine the Act's purpose and effectiveness.

States that are compliant with the Act may receive substantial financial incentives from the federal government. In FY 2009, \$10 million was appropriated for grants, and three states gained compliance and were awarded financial benefits. In FY 2010, eight states gained eligibility and received \$17 million in grants, of the \$20 million made available that year.

House Bill 1269 would make ND compliant with federal law, avoid future penalties, make the state eligible for grant monies, ensure due process for granting relief from disabilities and contribute to effective operation of the federal NICS database, and thereby enhancing everyone's public safety. I respectfully ask that you please support the bill. Thank you.

2

EXPLANATION OF PROPOSED AMENDMENTS TO HOUSE BILL 1269 REGARDING RESTRICTIONS ON POSSESSIONS OF FIREARMS BY MENTALLY ILL AND MENTALLY DEFICIENT PERSONS

HB 1269 relates to identification of classes of individuals disqualified from the right to purchase or possess firearms. The first amendment on page 2, line 18 replaces the reference to a person civilly committed for the treatment of mental illness with a "person requiring treatment," which is a defined term that covers those civilly committed for the treatment of drug abuse as well as those committed for the treatment of mental illness.

The next amendment on page 2, line 19 replaces the term "mentally deficient person" with "an individual with a developmental disability as defined in section 25-01.2-01." Reference to an individual with a developmental disability is more consistent with current terminology and other provisions of the mental health laws.

Third, page 3 lines 23 and 24 contains a corresponding amendment that replaces the term "mentally deficient person" with "an individual with a developmental disability."

Finally, on page 3, lines 25, the bill is amended to refer to private as well as public mental health treatment facilities, since some civilly committed individuals are treated in a private facility.

To summarize: the primary purpose of these amendments is to reference a more appropriate definition for one class of persons who are not eligible to possess firearms.

The legislative history of terminology used to define mentally deficient and developmentally disabled individuals is set forth below.

HB 1269 Firearms and Mentally Deficient Individuals: Legislative History

The term "mentally deficient" and similar terms have a long history in the North Dakota Century Code. For example, a 1931 law created a new section as follows:

The term "feeble-minded" person" in this Act, means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care of his own, or the public's welfare.

1931 N.D. Sess. Laws ch. 146, § 1. The definition of a "feeble-minded person" was carried forward without substantive change in the North Dakota Revised Code of 1943. See N.D. Rev. Code § 25-0101(2) (1943).

The 1960 North Dakota Century Code contained the following definition:

"Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing himself and his affairs and to require supervision, control, and care for his own or the public welfare."

N.D.C.C. § 25-01-01(2) (1960).

The 1960 North Dakota Century Code also provided (carrying forward long-standing law) that an institution for the mentally deficient shall be maintained at or near the city of Grafton and be known as "Grafton state school," N.D.C.C. § 25-04-01 (1960), and further provided that "the state school shall be maintained for "the relief, instruction, care, and custody of the mentally deficient of this state." N.D.C.C. § 25-04-02 (1960) (emphasis added). It seems reasonably clear from this legislative history that references to "mentally deficient persons" refers to individuals who have been more recently characterized as "developmentally disabled" individuals.

Based on the foregoing legislative history, it appears that the term "mentally deficient person" refers to an individual who is now characterized as a "developmentally disabled" individual. It further appears that the term "mentally deficient person" is also substantially similar to an individual with "mental retardation" as defined in N.D.C.C. § 25-03.3-01(3) ("Mental retardation" means "mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American Psychiatric Association, fourth edition text revision (2000)").

#

PROPOSED AMENDMENTS TO HOUSE BILL 1269

Page 2, line 18, overstrike "mentally ill", after "person" insert "requiring treatment", and overstrike the second "a"

Page 2, line 19, overstrike "mentally deficient person" and insert immediately thereafter "an individual with a developmental disability", and overstrike "25-01-01" and insert immediately thereafter "25-01.2-01"

Page 3, line 21, replace "a person" with "an individual"

Page 3, line 23, replace "a person is a 'mentally deficient' person," with "an individual is an individual with a developmental disability", and replace "subsection 3 of" with "section 25-01.2-01,"

Page 3, remove line 24

Page 3, line 25, after "public" insert "or private"

Renumber accordingly.

Page 5, after line 5, insert:

“SECTION 4. AMENDMENT. A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

Restoration of Right to Possess Firearm

1. A person who is prohibited from possessing a firearm due to a conviction of a felony under sub-subsection b of subsection 1 of section 62.1-02-01 of the North Dakota Century Code may petition the district court in the district where the person resides for restoration of the person's firearm rights.
2. The district court may restore the right of a person to possess a firearm if it determines, by clear and convincing evidence, that all of the following circumstances exist:
 - a. The person has paid all fines imposed for the violation resulting in the prohibition.
 - b. The person has served all terms of imprisonment imposed for the violation resulting in the prohibition.
 - c. The person has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition.
 - d. The person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons.

11.0466.01001
Title.

Prepared by the Legislative Council staff for
Representative DeKrey
February 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1269

Page 1, line 2, remove the second "and"

Page 1, line 4, after "records" insert "; and to provide for application"

Page 5, after line 5, insert:

"SECTION 4. APPLICATION. The attorney general shall implement and administer this Act within the limits of the budget of the attorney general. The attorney general may not add any full-time equivalent positions to assist with the implementation or administration of this Act."

Renumber accordingly

Rep. Karen Karls, District 35, Bismarck

Testimony on HB 1269 – Senate Judiciary Committee

March 8, 2011

Mr. Chairman and members of the committee:

I introduced this bill on behalf of the NRA and their ND members. Unfortunately, Darin Goens (our state liaison from the NRA-ILA) who was planning to testify could not be here with us today. I will attempt to give a brief synopsis of the bill and will hand in testimony from Mr. Goens.

For the record, I am Rep. Karen Karls from District 35 here in Bismarck.

HB 1169 benefits the citizens of North Dakota and the state. It contains language that will make ND compliant with the National NICS Improvement Act. (NICS=National Instant Criminal Background Check System)...the computerized Insta-Check that everyone who buys a gun is required to pass under Federal Law. The bill will require only information be sent which is already required by federal law, and it actually affords the state an opportunity to get funds to transmit those records.

The NICS Improvement Act (NIAA) was enacted by Congress in the wake of the April 2007 shooting tragedy at Virginia Tech. The shooter was able to purchase firearms from a Federal Firearms Licensee because information about his prohibiting mental health history was not reported to NICS and the system was unable to deny the transfer of the firearms used in the shooting. This Act seeks to fill these information gaps and keep guns out of the hands of persons prohibited by federal or state law.

The NIAA protects citizens by encouraging states to report mental health records to NICS for inclusion in the federal database used to clear gun purchases. The NIAA also protects individuals from having their constitutional rights arbitrarily stripped and provides for due process with respect to rehabilitating and restoring a person's right if that person is subsequently adjudicated to be competent and eligible by a court.

States that are compliant with the Act may receive substantial financial incentives from the federal government. To be eligible to receive funds, a state must meet 2 specific conditions:

- 1. A state must provide a reasonable estimate of records subject to the NIAA's completeness requirements to the Attorney General.**
- 2. A state must also implement a program permitting persons who have been found by the courts to be a mental defective or committed to a mental institution to obtain relief from the firearms restrictions imposed by law. The program must be certified by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.**

This relief must be based on a finding by a state court, board, commission or other lawful authority that under the circumstances of the disability, criminal record and personal reputation, the person will not be likely to act in a manner dangerous to public safety and that granting relief would not be contrary to public interest.

HB 1269 was amended in the House to address concerns brought forth by our Attorney General and the BCI.

In conclusion, this is a good piece of legislation which strengthens public safety while striking a reasonable balance in guaranteeing the civil liberties of our citizens.

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NATIONAL RIFLE ASSOCIATION OF AMERICA
POLITICAL VICTORY FUND
11250 WAPLES MILL ROAD
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NRA-ILA

Tuesday, March 8, 2011

North Dakota Senate Judiciary Committee Testimony:

Please Support HB 1269

Good morning members of the committee. My name is Darin Goens, and I apologize for not being able to attend today's hearing. I'm the NRA-ILA North Dakota state liaison, and on behalf of our North Dakota membership, I would respectfully ask you to support HB 1269. I would also like to take this opportunity to thank Rep. Karen Karls and Sen. Stanley Lyson for introducing this legislation.

This bill brings North Dakota into compliance with NIAA (the NICS Improvement Amendments Act) of 2007. The issue of mental health "disqualifiers" for gun purchases became a well-discussed topic after the tragic shooting at Virginia Tech in April 2007. The discussion largely focused on the completeness of records in the federal criminal background check database used to screen gun buyers. The instant computerized background check became mandatory in 1993 under the federal Brady Act. As you may recall, after the shooting, Virginia's mental health reporting was exposed, and the shooter Cho should have been disqualified from purchasing a gun, however, those records had not been submitted for inclusion in the federal database. After much discussion in Congress, federal lawmakers devised improvements which would enhance reporting of mental health records from the states. In Jan. 2008, President George Bush signed the NICS Improvement Amendments Act into law.

The overarching purpose of the NICS Improvements Act is the protection of American citizens. One way the Act protects citizens is by encouraging states to report information to NICS about individuals who, in accordance with state procedures subject to the rules of due process, have been found to suffer from debilitating mental illness or to require commitment for mental health treatment. Such reporting allows for more

effective enforcement of federal prohibitions relating to those whose mental conditions may prevent them from safely handling or possessing firearms.

Just as importantly, the NIAA also protects individuals from having their constitutional right to keep and bear arms arbitrarily or discriminatorily infringed when their condition no longer presents this safety concern. States implementing the NIAA should bear in mind that Congress carefully crafted the law so that neither goal would eclipse the other. Substantial departures from the congressional scheme or overemphasis on any one aspect of it at the expense of another can undermine the Act's purpose and effectiveness.

States that are compliant with the Act may receive substantial financial incentives from the federal government. In FY 2009, \$10 million was appropriated for grants, and three states gained compliance and were awarded financial benefits. In FY 2010, eight states gained eligibility and received \$17 million in grants, of the \$20 million made available that year.

House Bill 1269 would make ND compliant with federal law, avoid future penalties, make the state eligible for grant monies, ensure due process for granting relief from disabilities and contribute to effective operation of the federal NICS database, and thereby enhancing everyone's public safety. I respectfully ask that you please support the bill.

Thank you for your time and consideration,

Darin Goens
NRA-ILA ND State Liaison

**SECOND ENGROSSED HOUSE BILL 1269 TESTIMONY
SENATE JUDICIARY COMMITTEE
MARCH 9th, 2011
FORT LINCOLN ROOM**

By Jonathan Byers, Assistant Attorney General

Chairman Nething, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. The Attorney General opposes the bill in its current form.

The term "NICS" means the National Instant Criminal Background Check System. It is used to process Brady background checks for persons who are purchasing firearms. Second Engrossed House Bill 1269 is a product of a move to implement the NICS Act of 2007. That Act of Congress followed the 2007 shooting at Virginia Polytechnic Institute in which the shooter had a history of mental illness, but the shooter's mental health information was not available in NICS. At first glance, it seems like a worthy and straightforward objective to have that information available to NICS.

However, like many acts of Congress, it does not come without a catch. They want somebody else to do the work. Implementing this program requires action by State Legislatures, State Courts, State Criminal History Records staff, IT staff, prosecutors, and treatment facilities. Since the original Brady Bill was found to be an unconstitutional unfunded mandate, the way they now enlist action by state and local

entities is the old carrot and stick approach. You can apply for a grant that may or may not cover the cost of the implementation.

In order to be eligible to apply for a grant, states have to have a system in place to restore firearms rights to mentally ill people. In order for that system to pass muster, it must be reviewed approved by the Bureau of Alcohol, Tobacco, and Firearms (ATF). In order for ATF to approve something from North Dakota, it will take legislative action. We will have to pass the legislation, set up the court process and reporting system, obtain ATF approval, and THEN get to apply for a grant that IF awarded, might pay for some of it. The grant application will be due in early May.

As to the court process for restoration of firearm rights, there are additional concerns with the way that is dealt with in the bill. A state district court Judge will be making findings under federal law as to the application of federal prohibitions for the sale and possession of firearms in all of the proceedings listed in section 3. When a person petitions to have their firearms disability removed, they are required to notify the director of the treatment facility that treated the individual, as well as the prosecutor of the county where the finding of disability occurred. In some types of proceedings, the petitioner will not have been at a treatment facility. In those proceedings, the county state's attorney will not have been involved in the case. Who is going to show up to contest whether firearms rights get restored to the petitioner?

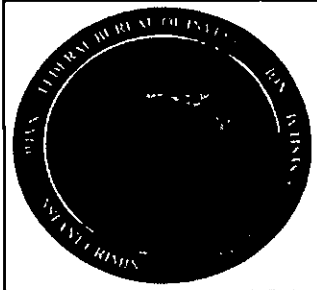
Perhaps the most objectionable part of the bill appears in section 4. That section provides that the Attorney General does not have to comply unless the Attorney General "begins to implement and administer this Act within the limits of the budget of the Attorney General." Section 4 also prohibits the Attorney General from adding any FTE's to assist with implementation or administration of the Act. The effect is having a law on the books that cannot be complied with by the State's chief law enforcement officer—while the courts will still be required to comply with the Act, even though the information will never reach NICS.

I would be happy to answer any questions.



National Instant Criminal Background Check System

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The National Instant Criminal Background Check System, or NICS, is all about saving lives and protecting people from harm—by not letting guns and explosives fall into the wrong hands. It also ensures the timely transfer of firearms to eligible gun buyers.

Mandated by the Brady Handgun Violence Prevention Act of 1993 and launched by the FBI on November 30, 1998, NICS is used by Federal Firearms Licensees (FFLs) to instantly determine whether a prospective buyer is eligible to buy firearms or explosives. Before ringing up the sale, cashiers call in a check to the FBI or to other designated agencies to ensure that each customer does not have a criminal record or isn't otherwise ineligible to make a purchase. More than 100 million such checks have been made in the last decade, leading to more than 700,000 denials.

NICS is located at the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia. It provides full service to FFLs in 30 states, five U.S. territories, and the District of Columbia. Upon completion of the required Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473, FFLs contact the NICS Section via a toll-free telephone number or electronically on the Internet through the NICS E-Check System to request a background check with the descriptive information provided on the ATF Form 4473.

NICS is customarily available 17 hours a day, seven days a week, including holidays (except for Christmas).

Regulations

- Federal Firearms Regulation Reference Guide Index (pdf)
- Firearms Regulations Reference Guide Learning Theater
- National Instant Criminal Background Check System Regulations (pdf)
- Brady Implementation (pdf)
- Privacy Act of 1974; Notice of New System of Records (Proposed Rule)
- Exemption of System of Records Under the Privacy Act
- Temporary Rule: Misdemeanor Crimes of Domestic Violence (ATF) (Proposed Rule)
- Proposed rulemaking cross-referenced to Temporary Rule

Related Sites

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) | ATF Forms
- State Laws and Published Ordinances (pdf)

Notes and Regulations

- Brady Law (P.L. 103-159, Title I; 107 Stat. 1536)
- 1968 Gun Control Act, as amended by Brady Law (18 U.S.C. Chapter 44)
- Prohibited categories (18 U.S.C. § 922(g) (1)-(9) and (n))
- Lautenberg Amendment (18 U.S.C. § 922(g)(9))

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 FBI.gov is an official site of the U.S. Federal Government, U.S. Department of Justice

Close

PROPOSED AMENDMENT TO HB 1269

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo"

AG

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PROPOSED AMENDMENT TO REENGROSSED HOUSE BILL NO. 1269

Page 1, line 4, replace "for application" with "an appropriation"

Page 5, after line 6, replace lines 7 through 11 with:

"SECTION 4. APPROPRIATION. There is appropriated to the attorney general \$585,859 or so much of that amount as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub.L. 110-180, 121 Stat. 2559.] or other funds."

Renumber accordingly.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1269

In lieu of the amendments adopted by the Senate as printed on page 1004 of the Senate Journal, Reengrossed House Bill No. 1269 is amended as follows:

Page 1, line 3, replace "and" with a comma, and after "62.1-02-01" insert "and subsection 3 of section 62.1-04-03"

Page 1, line 4, replace "for application" with "an appropriation"

Page 1, line 4, remove the second "for"

Page 1, line 5, replace "retroactive application" with "a contingent effective date"

Page 4, line 29, remove "The petitioner may appeal a denial of the"

Page 4, line 30, remove "requested relief, and review on appeal is de novo."

Page 5, replace lines 7 through 13 with:

Emergency Clause → **"SECTION 4. AMENDMENT.** Subsection 3 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within ~~thirty~~ forty-five days of receipt from the forwarding agency.

SECTION 5. APPROPRIATION. There is appropriated the sum of \$585,859, or so much of the sum as may become available from a grant under the Act of Congress entitled NICS Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney general for the purpose of implementing software and administering the system, which includes funding for 1.5 FTEs to administer the provisions of this act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

** When the grant goes away - 1.5 FTEs go away*

SECTION 6. CONTINGENT EFFECTIVE DATE. Subsections 2 and 5 of section 3 of this Act become effective when the attorney general certifies to the secretary of state, the office of management and budget, and the legislative council that the state has received the grant under section 5 of this Act and has implemented the software and system to carry out the provisions of subsections 2 and 5 of section 3 of this Act."

Renumber accordingly