

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1214

2005 HOUSE JUDICIARY

HB 1214

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1214

House Judiciary Committee

Conference Committee

Hearing Date 1/17/05

Tape Number	Side A	Side B	Meter #
1	xx		34.6-40
2		xx	16-16.6

Committee Clerk Signature



Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1214.

Rep. Froelich: I am the sponsor of the bill, support it (explained the bill). I believe the bill is self-explanatory.

Chairman DeKrey: Thank you, I believe the AG's office is bringing amendments that they would like us to look at. They are not prepared at this time.

Rep. Froelich: This is a vehicle for this committee. I think it's a law that's needed.

Representative Meyer: Would this bill, under the provisions of this bill is passed, that you couldn't own a home within the 1,000 ft of the school?

Rep. Froelich: That's probably the way it's worded. I've thought about it too. If I were a property home owner within that area, and somebody wanted to come and rent this building, under current laws, I think it has to be published when a sex offender moves into your city. Are we going to infringe upon private property rights. Which comes first, the safety of our children

or a little infringement on property rights. I believe in property rights 100%. Where's the balance.

Chairman DeKrey: Thank you. Further testimony in support.

Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the ND

Council on Abused Women's Services/Coalition against Sexual Assault in ND: (see written testimony).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Chairman DeKrey: Today the AG's office wants to bring in some amendments. We will wait for those amendments and take this up later.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1214

House Judiciary Committee

Conference Committee

Hearing Date 1/18/05

Tape Number	Side A	Side B	Meter #
1	xx		40-50

Committee Clerk Signature



Minutes: 13 members present, 1 member absent (Rep. Kingsbury).

Chairman DeKrey: We will hear from Ken Sorenson, from the AG's office in regard to HB 1214.

Ken Sorenson, AG's Office: The bill was heard yesterday. We had some concerns with the bill as drafted, but we wanted to encourage the concept. As drafted, it prohibited a probationer to go within 1,000 ft of a public, primary or secondary school. A lot of cities have their schools on major thoroughfares and would have made it virtually impossible for people to travel around. At the same time, we recognize the concern and this happened fairly recently here in Bismarck, that some time people will drive around schools, or park fairly close to the school and try to solicit students to come over to their cars. With our amendments that we're proposing, that it be a mandatory condition of probation that a person not be allowed to remain within 1,000 ft of a school or not enter onto school property; but we give the court a little latitude to adjust that, it might be a 19 year boy who has been convicted of an offense with a 16 year girl, and that 19 year

old might still be in school. Or it may be a situation where there might be a church across the street from the school. This gives the court some latitude to identify it on the record, so that everybody knows why they are going to be making an exception for that set of conditions. It will allow them to adjust the probation terms to fit the particular circumstances. We also inserted Class A misdemeanor felony, because there are a lot of B misdemeanor type of offenses as well, that would be pretty broad.

Representative Meyer: I had asked a question yesterday about an offender owning a home within 1,000 ft of the school property. Would they have to move or..

Ken Sorenson: Yes it does, by giving the court the flexibility to modify the mandatory conditions so that if they do have a house within the immediate vicinity or they work part-time in the vicinity, that could be brought up on the record of the court proceedings, and the probation as well.

Representative Meyer: That's covered under the last part.

Ken Sorenson: The last part of the amendment, to allow the court to make modifications on the record.

Representative Onstad: In a situation where not a typical sex offender is in school, is there a provision where they can't go anywhere near the school.

Ken Sorenson: There are offenders who have to go into schools, from time to time. This bill is making it a mandatory condition to allow the court to adjust it. In a lot of the Class A gross sexual imposition, as part of the terms and the conditions of probation, the court will impose what they call the sex offender appendix A condition. That will include some very specific conditions, such as not go into places that are frequented by children, they may not work in

daycare, not go into elementary school without the permission of the parole/probation officer. It does come up.

Representative Onstad: You just make provisions, to allow or disallow it whatever the situation.

Ken Sorenson: The courts have that already.

Representative Koppelman: It appears that your amendments, are trying to achieve, that if somebody has to walk to school past a sex offender's house, etc. But I don't know how you deal with that; you are inserting the word "remain" which I guess it would prohibit that unless the court said it was okay to live there. Is that true.

Ken Sorenson: Again it gives flexibility, in this case walking past. So we're trying to deal with the situation where they're not going to stay.

Representative Koppelman: Loiter.

Ken Sorenson: Yes.

Chairman DeKrey: Thank you. We will take up HB 1214.

Representative Meyer: I move the amendments to HB 1214.

Representative Maragos: Seconded.

Chairman DeKrey: Further discussion of the amendments, we will take a voice vote. Motion carried.

Representative Galvin: I move a Do Pass as amended.

Representative Boehning: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Onstad

Proposed Amendment to House Bill No. 1214

Page 1, line 9, replace the word "go" with "remain"

Page 1, line 10, after "[300.48 meters] of" insert "or enter upon"

Page 1, line 11, after the second "a" insert "class A misdemeanor or felony"

Page 1, line 12, after "minor" insert ", subject to modifications the court has expressly made on the record"

Renumber accordingly

VK
1/18/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1214 JUD 1-18-05

Page 1, line 9, replace "go" with "remain"

Page 1, line 10, after "of" insert "or enter upon"

Page 1, line 11, after the second "a" insert "class A misdemeanor or felony"

Page 1, line 12, after "minor" insert ". subject to modifications the court has expressly made on
the record"

Renumber accordingly

Date: 1/18/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1214

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Galvin* Seconded By *Rep. Boehning*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	A				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment *Rep. Onstad*

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

REPORT OF STANDING COMMITTEE

HB 1214: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1214 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "go" with "remain"

Page 1, line 10, after "of" insert "or enter upon"

Page 1, line 11, after the second "a" insert "class A misdemeanor or felony"

Page 1, line 12, after "minor" insert ", subject to modifications the court has expressly made on the record"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1214

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1214

Senate Judiciary Committee

Conference Committee

Hearing Date February 16, 2005

Tape Number	Side A	Side B	Meter #
1	X		4360 - End
1		X	0.0 - 190

Committee Clerk Signature *Morgan R Solberg*

Minutes: Relating to conditions of probation for sexual offenders.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for ND (meter 4360)

Gave Testimony - Att. #1

Senator Syverson questioned the definition of "time". For example to stay away from a school? It would be as long as on parole **Senator Triplett** asked the attorneys what they thought was meant by the statement "subject to modifications the court has expressly made in the record"? The understanding was that this was need to make this constitutionally acceptable. We are attempting to restrict a persons freedom, while they are on probation or parole. It gives court the discretion. Example they may own a home within a thousand feet of a school. **Senator Triplett** sited the record had to be made at the time of sentencing? I don not know. Sen.

Trenbeath stated that if this was about parole then it would be at the time of the parole that this would be issued.

Testimony in Opposition of the Bill:

none

Testimony Neutral to the Bill

Ken Swarnson, Deputy to the Attorney General (meter 4900) This bill started with a mandatory requirement of not being within 1000 feet of real property during a time of parole. This caught our eye due to the fact that most schools are located on public thoroughfares and it could in some cases be virtually impossible for a person to drive past a school, even with a legitimate reason. Site home ownership issue. All sex offenders would encompass a Class B misdemeanor for sexual assault, this person would not be a pedophile and may have to pick up kids from school or go to parent teacher conferences. There could be a 19 yr. kid who is still in school? We came up with this amendment. We still have a problem with the word "remain" due to its vagueness. If the committee can come up with a better word we would appreciate it.

Senator Syverson asked if the court would have the ability to make the restraints and conditions to address these issues already? Yes even without this provision, the courts do an Appendix "A" conditions for sentence to probation - Att. #2. They also use on a sex offender a presentence and assessment investigation, generating into a "sex offender condition of probation" in most cases. Those almost always contain conditions of locations where children are present. This bill would only mandate it.

Senator Triplett questioned the necessity of the bill if they already have the discretion and are already doing it? This bill has vague language, that we cannot define and setting up a

presumption in favor of it. This is a problem that is a response to a less than 20% chance of repeat offense? Judges usually have a better handle with information they have to decipher these issues.

Sen. Trenbeath stated the Appendix A - Att. #2, is stated in rule already.

Senator Hacker questioned the GPS system they are using for monitoring? Yes that is one of the purposes of the system. They are not at a "real-time" bases with the technology, but they can look at its history.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

The committee discussed that while the intent of the bill is honorable, the judges do and should have the right to rule. The new language is broad and vague and takes away from the existing law. Sited their trust in the Judges.

Senator Triplett made the motion to Do Not Pass bill, seconded by **Sen. Trenbeath**. All members were in favor and motion passes.

Carrier: **Sen. Trenbeath**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 2/16/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1214

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Senator *Triplet* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplet	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) *56* No 0

Absent 1 0

Floor Assignment *Sen. Trenbeath*

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

REPORT OF STANDING COMMITTEE (410)
February 16, 2005 1:54 p.m.

Module No: SR-31-3159
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1214, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1214 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1214

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

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson DeKrey and Member of the House Judiciary Committee

Date Monday, January 17, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of HB 1214, relating to conditions of probation for sex offenders.

The risk of recidivism for sex offenders is the highest of any criminal offender. In order to reduce rates of recidivism, it is imperative to restrict and limit the access to potential victims while the offender is re-integrating into a community. The restriction on sex offenders' access to schools is not only necessary but required, especially in cases involving offenses against minors. This type of supervision and limited access to potential victims is supported by the National Center for Sex Offender Management. Finally, it is one way to protect victims and potential victims.

Please support HB 1214 on conditions of probation for sex offenders.

Thank you.

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

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Chairperson Traynor and Member of the Senate Judiciary Committee

att #1

Date Wednesday, February 16, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of HB 1214, relating to conditions of probation for sex offenders.

According to the National Center for Sex Offender Management, child molesters had a 13% reconviction rate for sexual offenses and a 37% reconviction rate for non-sex offenses over a five year period; and rapist had a 19% reconviction rate for sexual offenses and a 46% reconviction rate for non-sexual offenses over a period of five years (Hanson and Bussiere, 1998). In order to reduce rates of recidivism, it is imperative to restrict and limit the access to potential victims while the offender is on probation in a community. The restriction on sex offenders' access to schools is not only necessary but required, especially in cases involving offenses against minors. This type of supervision and limited access to potential victims is supported by the National Center for Sex Offender Management. Finally, it is one way to protect victims and potential victims.

Please support HB 1214 on conditions of probation for sex offenders.

Thank you.



HB 1214
 AH #2

APPENDIX "A"
CONDITIONS FOR SENTENCE TO PROBATION
DEFERRED OR SUSPENDED SENTENCE IN THE CASE OF

STATE vs.
 CRIMINAL CASE # - COUNTY

Pursuant to the Order of the Court, as the Defendant in this case, you must not violate any Federal, State, County or Municipal criminal law or ordinance during the period of probation.

In addition, you shall:

- 1. Continue your present employment or seek and maintain suitable employment; you may pursue a vocational or educational course of study which will lead to future or better employment.
- 2. Refrain from excessive use use or possession of alcohol. You will not purchase, possess or consume any controlled substance, except as prescribed by a licensed physician. You understand that any excessive use of chemicals will give your probation officer the right to require you to undergo an outpatient evaluation and will abide by the recommendations of the evaluator.
- 3. If on a supervised probation, inform your probation officer immediately in the manner that they direct of any changes in your place of residence and employment, and other pertinent activities. This information will be furnished to the probation officer by written report, telephone, or a personal visit to their office. You also understand that your probation officer has the right to visit your residence or place of employment at reasonable hours. You are to report within twenty-four hours to Bismarck District Parole/Probation Office, 515 East Main, Bismarck, ND 58501; telephone 701-328-6660.
- 4. If on a supervised probation, not to leave the State of North Dakota without permission from your probation officer.
- 5. Not own, purchase, borrow, possess, use or carry any type of firearm, destructive device, or dangerous weapon. (If convicted of a felony, federal law bars you from owning, purchasing, or possessing a firearm, destructive device or explosives.)
- 6. Waive extradition to the State of North Dakota from any jurisdiction in or outside the U.S. where you may be found, and also agree that you will not contest any effort by any jurisdiction to return you to the State of North Dakota while this probation is in effect.
- 7. Support your dependents.
- 8. Regularly attend weekly Alcoholic Anonymous/Narcotics Anonymous meetings.
- 9. Not knowingly associate with drug users or traffickers in controlled substances possessed, manufactured, or delivered in violation of law.
- 10. If on a supervised probation, submit to a medical examination or other reasonable testing including the Breathalyzer, Intoxilizer, blood samples or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any probation officer.
- 11. If on supervised probation, submit to search of your person, vehicle, or place of residence by any probation officer at any time of the day or night, with or without a search warrant.
- 12. Attend, participate in, cooperate with and successfully complete the following rehabilitative or treatment program(s):
- 13. Pay the sum of \$ _____ as reimbursement to the Clerk of the Court for defense counsel costs and expenses as follows:

14. A. Pay Court costs in the amount of \$ _____ to the Clerk of Court as follows:

-OR-

B. Pay administrative fees in the amount of \$ _____ to the Clerk of Court as follows:

15. Make restitution in the amount of \$ _____ to the Clerk of Court and with such amount to be paid to as follows:
16. Pay a fine in the amount of \$ _____ to the Clerk of Court as follows:
17. Pay a supervision fee each month to the North Dakota Division of Parole and Probation pursuant to Subsection 2 of section 12.1-32-07 of the North Dakota Century Code.
18. Shall undergo various agreed-to community constraints as intermediate measures of the Department of Corrections and Rehabilitation to avoid revocation pursuant to Subdivision q of subsection 3 of section 12.1-32-07 of the North Dakota Century Code.
19. I have been informed and understand that I have been court ordered by N.D.C.C. 12.1-32-15 to register within 10 days with law enforcement in the county or city of my intended residence, as an offender sex offender against children.
20. Pay the amount of \$50.00 to the North Dakota Division of Parole and Probation pursuant to N.D.C.C. 12.1-32-02 Subsection 10 and 11.
21. Agree to be fingerprinted.
22. Shall not have unsupervised contact with minor females under the age of 18. The individual supervising the contact must be approved by his probation officer and sex offender treatment staff.
23. Shall not telephone or write to the victim, contact the victim, or contact the victim through third parties or be within 25 yards of the victim.
24. Shall not go to or loiter near schoolyards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18 years.
25. Shall not obtain employment with any agency/place of business that provide services for the care/custody of minors under the age of 18, nor will you operate a business that provides such services.
26. Shall not enter onto the premises, travel past, or loiter near where the victim resides.
27. Shall not purchase, posses, or use sexually stimulating materials of any kind. Defendant shall not utilize 900 telephone numbers.
28. Shall not date or socialize with anybody who has children under the age of 18 years.
29. Shall submit to any program of psychiatric, psychological or physiological assessment at the direction of your probation officer, including the penile plethysmograph and/or the polygraph, to assist in treatment, planning and case monitoring.
30. Shall provide a sample of blood and other body fluids for DNA law enforcement identification purposes and inclusion in law enforcement identification databases, consistent with provision of NDCC 31-13-03.
31. The Defendant shall provide a sample of blood and other body fluids for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases, consistent with provision of NDCC 31-13-03. The parole/probation officer will arrange the drawing of the samples.

Dated this

day of

, 20____.

BY THE COURT:

JUDGE

The above conditions of probation that I must comply with have been read and explained to me by the Court and I fully understand each one. I will be required to follow the conditions which the Court has listed; and that failure to follow any one or more of those conditions may and probably will result in a revocation of the probation. I acknowledge receipt of a copy of the Judgment.

Dated this _____ day of _____, 20____.

Probationer

The probation conditions have been read and explained to my client by the Court. I attest that my client has stated that he/she understands each one of the court ordered probation conditions.

Dated this _____ day of _____, 20____.

Defense Attorney

Original to Court file

- ___ 1 Certified copy to Warden/NDSP, TRCU, MRCC - if imprisonment is ordered
- ___ 1 Certified copy to Sheriff/Jail Administrator - if county imprisonment is ordered
- ___ 1 Copy to Defendant
- ___ 1 Copy to State's Attorney
- ___ 1 Copy to Local Probation Officer - if on supervised probation