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2005 HOUSE JUDICIARY

HB 1441

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1441

House Judiciary Committee

Conference Committee

Hearing Date 1/31/05

Tape Number	Side A	Side B	Meter #
2		xx	18.7-end
3	xx		0-18.8
Committee Clerk Signature <i>Naomi Penrose</i>			

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1441.

Rep. Alon Wieland: I am a sponsor of the bill (see written testimony). Testimony from his sister (see written testimony), because she can't be here today. I am not here in support or opposition.

Chairman DeKrey: How did this matter come about.

Rep. Alon Wieland: I received a telephone call from a citizen who is here, who is going to describe that story in detail. The sister's testimony is in corroboration of that, but she could not be here today.

Lila Hazemann: I am here to talk about the bill (see written testimony).

Representative Zaiser: Can you understand why there are laws, because there are people out there, there has to be some sort of regulation, because the damage on the other side, that the sex offender creates is also pretty mammoth. I agree that there has to be balance.

Lila Hazemann: Yes.

Representative Onstad: If this situation was switched around, and he lived in ND and worked in MN, how does MN currently handle that.

Lila Hazemann: I don't know, but I'm going to find out.

Representative Zaiser: Your son was falsely accused?

Lila Hazemann: Yes. It happens a lot. It says that states have created a criminal charge that has no defense, once you are accused, you are convicted. Very few people get out of the courthouse without being convicted, because you can't bring any proof that you weren't guilty.

Representative Koppelman: If I understand the bill correctly, it would say that once you are informed of the requirement, then it would be prosecuted retroactively; in other words, if you didn't register after being informed, then everything would go forward.

Lila Hazemann: Yes. Dan registered as soon as he was informed.

Representative Koppelman: But if this bill had been the law, you're saying that he wouldn't have been charged with anything, because he had applied once he was informed.

Lila Hazemann: As soon as he was informed, he registered. If MN knew of the law in ND, it would have been done immediately, because he has nothing to hide.

Representative Meyer: Are there any reporting requirements now across states.

Representative Kretschmar: I don't know.

Representative Charging: Is there not a list, if they are found to be guilty of this crime, isn't there someone in the legal system that prescribes the therapy thereafter. Isn't there anything in place in the legal system.

Lila Hazemann: Yes, there is. When you are convicted of a sex crime, you have to go through therapy. Being I've worked in the system so long, I was not aware exactly thrilled with what they do with perpetrators. They pretty much treat them badly in jail, I don't believe there is a lot of building up and saying you don't have to do this again, and help them work through things. So we made an agreement with the court, we found a therapist, he had to do so many weeks of therapy with this person, because of being found guilty. He continued on for over two years to try and rebuild his self-esteem.

Representative Charging: I'm not asking about the personal level, I'm asking more on a professional level, if he underwent therapy,

Lila Hazemann: You have to go through treatment, until they feel that you are finished and whoever does that.

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

Jonathan Byers, Assistant Attorney General: I appear on behalf of the AG, I wish to testify in opposition to HB 1441 (see written testimony). The registration law is here because of the trauma and the nightmares that are caused for victims, not for that of the offender. I don't see any positive benefit to this bill and we ask for your Do Not Pass.

Representative Koppelman: You say in item #1, that the intent of the law is that offenders must willfully violate. I'm not seeing that, either in the statute or where it says that.

Jonathan Byers: There is a provision in the criminal code that indicates if there's not a culpability level spelled out anywhere else, or not a specific culpability level, then the standard is willful, and there's a case called, State vs. Knowles, out of Grand Forks, where the Supreme

Court verified that in order to prove someone guilty of the crime of failing to register, you have to prove that they willfully violated. They knew of the law, and didn't register.

Representative Koppelman: So I assume that there was some kind of adjudicative proceeding in this case, where it was proven that the violation was willful and then this kicked in.

Jonathan Byers: That's what I wanted to find out. I called Mark Boehning, who was the prosecutor in the case, and I asked how did you prove that Mr. Hazemann willfully violated the statute. He said that when the police department brought the case to him, he wasn't sure if they could meet that standard. He checked with the MN probation office, and they came up with this chrono and we subpoenaed that person to come in and testify to those facts and that's how it happened.

Representative Koppelman: You said that all states have this employment registration requirement, as people move back and forth, is the offender notified, I understand that all states may have this, but if an offender that's just been convicted for the first time would he necessarily know that. How does the process work.

Jonathan Byers: We put right in our registration form that if you move to another state, or you go get a job or go to school in another state, you are going to have to register there. Black and white writing tells the offender, that you do this and you're going to have to register. MN could improve their form and maybe they have, so that their form also indicates that. But the fact of the matter is, if we have a case where somebody is asking the question, this person has moved here, and we don't have any indication either from a probation chrono or from their registration form that this person knows they're supposed to, we tell them don't even arrest him, we'll just send him a letter. I can show you a thousand letters, where before anybody got arrested or

prosecuted, we've sent them a letter saying you may or may not be aware of this, but you're required to register and if you don't go and do that, then you are going to be prosecuted.

Representative Koppelman: In the section of code that we're talking about here, #2 on the bill, section 1, it begins by talking about the court shall impose, in addition to the penalty provided by law, etc. and I'm looking in the century code also, it reads like this is having to do with a court sentencing someone for committing a crime in ND and the other things that court has to do. How does this come into play in this kind of scenario, where it is an out-of-state conviction and how is the court involved in ND in these requirements.

Jonathan Byers: Subsection 2 that you're seeing there, is a requirement that a court advise somebody of the duty to register. For the most part, courts do that. It tells them under what conditions the court has to impose that requirement. But then if you look in subdivision 3 on the bottom of page 2 talks about situations where a court has not ordered somebody to register in this state. We have three scenarios here where if a court in ND or elsewhere has failed to order somebody to register, then they still have to register. This covers those situations where a person may or may not have been advised by a court in another state that they are required to register, but as I indicated we will send them a letter first and tell them that, if we don't have an indication that they've already been told.

Representative Koppelman: Finally, on page 3 you talk about the section being covered in BCI's operating manual for offender registration. Is that an administrative rule or just a guideline that BCI follows.

Jonathan Byers: We started that operational manual just so we knew where we were at and how we were going to handle all of these procedures, but then in a session or two ago, we

specifically exempted that manual and the guidelines that we use for assigning their risk level, we exempted that from the Administrative rule process. So it isn't something that does go through the administrative rules, but as far as where it indicates that, copies of a certain completed form, given to the individual, two copies to the AG, and the AG shall forward to the appropriate law enforcement agency. We actually have those instructions right at the bottom of the form, and I think it is a 7 colored form set, and it says on the very first page, where each of those 7 copies goes. Having all this in here, wouldn't change anything but simply make it more difficult to handle, if we decided to go to a different process of handling that procedure.

Representative Delmore: Is there any type of form for a person to sign that says I've been informed of my rights that I need to register. Did you ever send any of the letters that you alluded to that are sent out to people who are not in compliance.

Jonathan Byers: The form that we use in ND is a two part form. The top 2/3 of it, is the notice that you're talking about. It is called the acknowledgment portion of the form, and sets forth all of their responsibilities and then they actually sign it, showing that they've read that and understand what that means. That's the notice given to each offender in ND, then the bottom 1/3 of it is filled out at the place where they are going to register. So that notice is either done by the judge, the probation officer, or their jail facility and then they carry the form with them and show up at the police department to fill out the bottom 1/3, that is the actual registration. I think the form we have in ND is very thorough in advising people of their rights and their responsibilities. MN can do a little more by adding the part of the employment into it. And in answer to your second question, did we ever send Mr. Hazemann a letter, no. The part of the reason we didn't do that is because the prosecution and the police department was aware that he'd already been

advised of his requirement to do that. So I guess do we give somebody two notices. I don't know.

Representative Maragos: How did the complaint come to the West Fargo Police Department.

Jonathan Byers: I think that when she called, indicating that she was concerned about it being so cold and that maybe his car didn't start, that brought law enforcement into contact with Mr. Hazemann, which maybe caused them to do some kind of check, perhaps a radio check or something, which advised that he was a registered offender in MN and through that process, I think, is what started them wondering whether he should be registering in ND. Many times what happens, is we get a call from West Fargo Police Department, said we have a Danny Hazemann, and we think he might have to register, is that the case; and I'll tell them that yes, he does have to and we'll send him a letter. That never happened, and I'm not sure if that was because they already knew he's been told by that MN probation officer that he was required to register.

Representative Maragos: I suppose if it is a law that we have, we probably have some responsibility, we wouldn't have to defend on MN, would we.

Jonathan Byers: Not only do we, in common sense, not want to rely on that, the whole Jacob Wetterling act and the scenario that it sets forth from state to state, tries to not let it be up to each individual state on whether there is registration, but to have common requirements from state to state, that's one of the common requirements, is that if you work over here, but live over there, you are going to have to register in both places. That should be a message that's going to 50 states, statewide.

Representative Klemin: I guess I'm concerned that the bill is shifting the burden to the court or law enforcement to inform somebody of their duty to register when they may not have

knowledge that the person is here. That person coming in from out-of-state, to ND to live, work, go to school, what would trigger the duty on the part of law enforcement to inform this person if he hasn't given them any other notice that he's here.

Jonathan Byers: That's one of my concerns as well. There are offenders that have lived here for a number of years before we've ever caught on to the fact that they are here and supposed to be registering. If we did find that out, if this bill requires that the person needs to be informed by the court, and that court requires the individual to read and sign a form, if we have an offender who's moved here from Louisiana and has never been advised by a Louisiana court to register, we find out that he's moved here, I don't know how we would ever get a court action to require that person to register at all, if the law was changed this way. Because a ND court isn't going to have an action before it, so that this could be brought before it, and I don't know how we could force a Louisiana court to go back to their case, from 3, 4, 5 years ago, and insert that requirement. I think we'd be left without being able to make that person register.

Representative Zaiser: You've said that the Jacob Wetterling law requires all 50 states to comply and have this form, and have everybody sign it before they work in another state. One thing can you tell me how ambiguous other states' forms are. Are there a lot of states that have ambiguous forms, or they just don't enforce it, is that how we end up with people in the state that have been convicted of sex crimes in their own state without you knowing.

Jonathan Byers: I think you would see, if you did some kind of comparison through the 50 states, you would see a variety of states that are in very high compliance, very meticulous forms and notice, and see some states that aren't really meeting the requirements of the Wetterling act at all. That's why this bill would rely on other states to be just as compliant as ND is, and we

know that's not the case. Not every state is as compliant, not every state has forms that are as thorough, we don't want to rely on that. We simply want to rely on, is there a qualifying conviction, has the person been given notice that they need to register;

Representative Zaiser: If they don't meet the requirements of the Jacob Wetterling law, then why aren't their funds taken away. I get frustrated hearing that other states that don't meet the requirements, that they don't pull their funding.

Jonathan Byers: They threaten the loss of 10% of each year of Edward Byrne Memorial funds. I'm not aware of any situation where they've actually taken it away from a state. One of the most egregious violators of their requirements, was the federal courts, because for many years, although all of these requirements were put on state courts, the federal judges and courts weren't even making any orders at all, as far as registration goes. They're better now, but States get threatened with it, sometimes they will send out a threatening letter saying here are the 10 states that are not in compliance yet, and you're going to lose your money. I'm not aware that they've ever taken it away.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. Terry, did Jonathan cover the concerns that the counties had.

Terry Traynor, ND Assoc of Counties: No, it's really a technical correction to the same chapter of century code 62.1-02 that the states attorneys are concerned about. This was the only bill that hasn't crossed over that addresses that chapter. I don't know if you are interested in amendments.

Chairman DeKrey: If you can get a states attorney lined up, we will hold HB 1441 until they can come in and tell us what their technical correction is.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1441

House Judiciary Committee

Conference Committee

Hearing Date 2/2/05

Tape Number	Side A	Side B	Meter #
3		xx	13.5-16

Committee Clerk Signature *A. Penrose*

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

Chairman DeKrey: What are the committee's wishes in regard to HB 1441.

Representative Delmore: I move a Do Not Pass.

Representative Zaiser: Seconded.

13 YES 0 NO 1 ABSENT DO NOT PASS CARRIER: Rep. Zaiser

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1441

House Judiciary Committee

Conference Committee

Hearing Date 2/7/05

Tape Number	Side A	Side B	Meter #
1		xx	36.9-38
2	xx		35.2-end
2		xx	0-11.7
Committee Clerk Signature <i>Al Penrose</i>			

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

Chairman DeKrey: Let's take a look at HB 1441. We had to take 1121 and 1441 back. HB 1441 is going to get a hog house amendment from the AG's office. I talked to the sponsors of the bill, and basically they don't care what we do with the bill because it's a loser. The AG's got something they need to take care of with weapons and they're going to come down with a proposed amendment to hog house that bill. The sponsors are fine with whatever we want to do, because it is totally going to change the intent of the bill. We'll let the AG come down and make his case, and we'll see if that is what we want to do or just return the bill to the floor and kill it. We will recess until we hear from the AG.

(Reopened in the afternoon session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1441.

Terry Traynor, Association of Counties: A fairly recent Supreme Court decision had raised a question about a section of 12.1-32, raised by the states attorney to our office and we looked

around quickly to find a bill that addressed 12.1-32 and HB 1441 was the only bill that had not yet crossed over that addressed that chapter of NDCC. As we sat in on the hearing and hearing that the bill was probably not going to be passed, I asked if it would be all right to prepare a hog house amendment to address the states attorney's issues, which I'm fortunate today to have Asst. States Attorney, Cynthia Feland, here to explain this (passed out amendment).

Cynthia Feland, Asst. States Attorney: Basically the amendment we're seeking is a very simple amendment, 12.1-32 is the penalty provisions of the criminal code and as of right now, under subsection 9, there is a provision where if somebody pleads guilty or is convicted of a felony, the court has the ability to impose a sentence that is one year or less. If they do that, and they successfully complete their period of probation, it then reverts to a misdemeanor. This is helpful in some of those cases where someone may not have a criminal history whatsoever. They have a more minor type of felony offense, and the judge decides that instead of them carry permanent felonies on their record, where they would have to report those for job purposes and things of that nature, this mechanism then allows them to basically, if they successfully complete probation, it reverts to a misdemeanor, and they are not required to report that they have been convicted of a felony. However, there has been a problem that has come up and that problem has to do with section 62.1-02, which is the weapons provision. Right now, anybody who is convicted of a felony, cannot possess or purchase any type of firearm. Where the difficulty has come in is that this misdemeanor equivalent provision is not supposed to come into play unless they have successfully completed their probation. But we're having some defendants and judges that aren't clear as to what the real intent of this section is. So we have some inconsistencies in several of the jurisdictions where some courts are saying and agreeing that even if they haven't

completed the period of probation, the fact that they've only been sentenced to a year, then they're not required to abide by the weapons provision. What this does, it says that regardless of what happened, you still have to abide by the weapons ban provision for the requisite period of time.

Representative Koppelman: So they would have to abide by it during that probationary period, then if it reverts to a misdemeanor, they would be allowed to have weapons again.

Cynthia Feland: Once it reverted to a misdemeanor, they wouldn't have a felony conviction, so we wouldn't have this issue. This basically is meant to clarify to those people who are still on probation, that if you're still on probation, technically you still have that listed as a felony conviction and treated by all other avenues as a felony. But because of this question, this inconsistency, there have been a couple of jurisdictions have had problems. My particular jurisdiction has not. We haven't had this problem come up, but what we typically see is if it happens in one jurisdiction it becomes an issue in all of the jurisdictions. Barnes County has been the one who's had a fairly significant problem with this coming up recently. They contacted the states attorney's association and in turn we basically came up with this type of draft.

Representative Delmore: First of all, why can't we use the first sentencing for these, why do we need another section of code that reduces a felony to a misdemeanor.

Cynthia Feland: We already have that, that isn't being changed. Why do you have that, there may be cases where they want the person to have the misdemeanor conviction on their record. Typically, I don't make a recommendation for misdemeanor disposition. Often times the defense attorney may say, sentence them to one year, let them serve the time straight, because they aren't

going to be able to make probation, and then here we sit with this provision. Well then what happens is they complete their year, but they're not required to abide by the other provision. So we're clear and there's no misunderstanding, right now if they have a felony conviction, there is a 10 year ban on being able to possess those weapons. So this would exceed that time frame. Basically we're saying, even if they successfully complete a three year probation, they still cannot possess a weapon for 10 years. That's how we've always treated it in the South Central Judicial District, that's how most jurisdictions have treated it. But there have been some issue, as I've indicated that have come up in some of the other jurisdictions that say, no, we're not going to treat it as a felony at all, because they've been sentenced to less than 1 year, whether they're on probation or not. Because of that the weapons provision isn't going to apply. That really wasn't the intent when this provision was there, this was put there more to basically allow people to change their ways, if you will, not have such a permanent scar on their record, that it would prohibit them from being able to get certain types of job or have certain types of careers, or in some cases, we may be dealing with an individual who is fairly young, 20, 21, 22 years old. They get their life on straight, goes back to school, but as a result of the felony conviction they are going to be forestalled from basically being able to go into certain types of professions. This provision was put in there to make sure that there was that potential for option, because in some cases probation isn't going to work. Maybe they're not going to be in this locale, this one year period basically allowed the court to address the issues in a short period of time to ensure that the person was going to change their ways, but it was never intended to modify the weapons provision. That's what we're having the conflict with.

Representative Delmore: It still remains 10 years, even with this change before they have access to the weapons.

Cynthia Feland: Correct.

Representative Delmore: What is it were a domestic violence case.

Cynthia Feland: If it a felony domestic violence case, even if they do not, or even on misdemeanors, if it's a felony case, there's a specific provision that says that they can't possess a firearm because of that type of offense. This doesn't change that at all. All this is saying, is that even if the court gives a misdemeanor disposition in a case, that has no effect whatsoever on the weapons provision and the ban against possessing a weapon for 10 years. This just makes it abundantly clear that that is what the intent is. As I indicated, this is not an issue in most jurisdictions at the present time. It is a question in some jurisdictions and we thought it would be nice to basically to make it clarified for everyone, that this didn't become a bigger issue within the next few years.

Representative Koppelman: I thought I heard you say initially that it would affect the ban, now you made it clear that it would not, and I thought you said something about three years versus 10. Can you clarify that.

Cynthia Feland: I was talking about the period of probation. Where this gets really sticky is that sometimes a person with a felony conviction, say on a C felony, you can be sentenced anywhere from 0-5 years. A lot of times, courts will impose 3 years with all time suspended, or 2 years with all time suspended, or 2 years with part of that time served. The court has actually imposed a sentence greater than one year, this provision does not apply. But if the court would decide, you know what, we're going to sentence you to one year, and we're going to suspend all

of that for three years, we have an argument. That argument is that, they weren't really convicted of a felony. They were convicted of a misdemeanor by virtue of the judge's sentence. Well there are two counter-arguments to that. The first is no, they were convicted of a felony that they will get a misdemeanor disposition for if they successfully complete their probation. But there is a jurisdiction that is saying, no, you've now changed it to a misdemeanor from the point of sentencing and the only issue that comes up as a result of that is the weapons provision, because if it is a misdemeanor, unless it is a domestic violence misdemeanor, this weapons provision doesn't come into play, because they won't be on felony probation. It only comes into play on felony cases, with all felonies, there is a 10 year ban on firearms. If they say I wasn't convicted of a felony, I was convicted of a misdemeanor, it doesn't apply. That's where the problem is created.

Representative Koppelman: But if we adopt this, in essence, they would not be getting a misdemeanor disposition because they would be in effect saying the penalty for a felony when it comes to arms possession, and in effect for all purposes, they would be treated as if they were a misdemeanor offender.

Cynthia Feland: Not in the beginning, the only reason we have this provision, is for those cases, as I've said, where the court doesn't want to saddle a person with a permanent felony conviction because of what it would do to either a career that they have at the moment, or a career that they may decide to go into down the road. If they're sentenced to a period of probation, and they don't meet that period of probation, clearly you have revocation issues, the judge could completely resentence on a case. The isolated problems that we're dealing with are what is the legislative intent. This person has pled guilty to a felony, so be clear. This is a felony

type of case. But the judge, for whatever mitigating reasons, has said that we don't want this person have to say on job applications, I was convicted of a felony. Our concern in this is that it is still a felony, and we don't want people to misinterpret the fact that because it is a felony, regardless of what the court's disposition is on it, you still must abide by the 10 year ban on weapons. This clarifies that point, because if you look at it the other way, you're basically giving someone an added benefit because a judge decided to say, I'm going to sentence to a year or less, under identical fact patterns as somebody else in another jurisdiction, you're going to ban one from having weapons for 10 years, but you're not going to ban the other. This is basically saying, we don't care what the disposition is, everybody who has a felony conviction has to deal with the 10 year ban.

Representative Koppelman: I understand that. I'm struggling with the issue of splitting, either we're giving some grace here or we're not, either we're saying yes, you pled guilty to a felony, but if you jump through these hoops, we're not going to treat it as a felony, or if we're saying, you seem to be saying, well this is a felony, but you don't have to put it on your job record, so we're going to erase this part of it, and not the rest. What if a judge said you're not a threat, you've gone through this procedure, you shouldn't have this on your job application and you should be able to hunt ducks. Why go through such legal calisthenics.

Cynthia Feland: Because in some of these cases, we're trying to make sure that, in essence, all of these people who are being either convicted by a jury, or are pleading guilty to a certain level of offenses are all treated the same as far as their ability to possess weapons. The fact that you may give a different disposition should not affect whether or not this person is allowed, or disallowed to carry that weapon.

Representative Koppelman: But if part of the penalty of having a felony on your record, is a) you can't possess a gun for 10 years; and b) you've got to carry it on your record when you apply for a job, isn't one argument just as strong as the other. If we're going to say to these people, because of these factors, we're not going to treat you anymore like a felony offender, even though you kind of were, but you've done what the law says and court has prescribed, therefore we are going to kind of let you off the hook from that stigma.

Cynthia Feland: When this provision was put into effect, if you go back and look at the legislative history, it had to do with, if you take someone who is 54 years old, and has an established career, having a felony probably won't have any effect on them whatsoever. You take that same set of circumstances and you look at somebody who has a clean record, who's 20 years old and you put that same felony on them, they will never have the opportunity to potentially get to the same place as that 54 year old is that, because of the fact that, that one mistake they made will basically be there and ruin their life. This provision was intended to fix that, but as with anything else, some interpretation factors, as I've indicated, have done things to it that were not intended, and are not part of either the legislative history or specifically part of the bill. This addition just makes it clear that while you may not have to report it, if you successfully complete, you're looking at a misdemeanor disposition for purposes of reporting it for employment, you still have to abide, like everybody else, with the 10 year ban.

Representative Klemin: Well we had another bill that was before the committee, and it was brought up that there are all kinds of felonies. Should this apply for speeding in school zones, which could be a felony depending on how fast you are driving, and this reads that this applies to all kinds of felonies, if you write a bad check big enough it's a felony, and there are hundreds of

felonies. Would it make more sense that if the way that this is applied, is if it had to do the same kinds of the things that this 62.1-02.01 applies to in cases involving some form of violence or use of firearms and so forth, that those kinds of felonies that were still, would not be applied to every felony under the sun, the way this would work.

Cynthia Feland: Part of this has to do with a federal provision. Part of it tracks with what federal law is as far as possession of weapons. We're just trying to make sure that local treatment isn't going to differentiate from what the federal requirements are. If you're convicted of a felony, it can be a federal violation for you to possess it, even though I may not be able to charge you in state court for possession of a firearm, under the argument that is being presented here, you could be charged under federal legislation with that, because there is that ban. This is meant to keep that consistency. All felonies, whether we like it or not, you're right, if you drive through a school zone, during a period of time going 50 or 60 mph, you could be charged with reckless endangerment, which is a Class B felony, if it's charged under circumstances manifesting extreme indifference to the value of human life, so absolutely in those cases, you potentially could be charged with a felony. If you write checks over \$500, you could be charged with a felony, if you have multiple prior misdemeanors, it could be charged out as a felony again for NSF checks; but all felons at the present moment are treated the same. Even felons who say, have a deferred imposition of sentence, this provision has absolutely no effect on those. So if you have a person who finishes a three year for an imposition of sentence, they finished three years of probation, they haven't been able to carry a weapon, they aren't going to be able to carry that weapon for 10 years, regardless of the fact that the court deferred sentence. These things still apply. You're basically, because of one isolated situation, saying to this defendant, okay, in these

instances we want to give the judge the ability to give you a misdemeanor disposition so you're not saddled with this as a permanent felony, and here is a mechanism to do that. What we're asking you to do is to make sure that we're not separating these people out, and also getting them this other benefit that was entitled, and in most jurisdictions is not granted. But because of a few jurisdictions, it is.

Representative Delmore: A felony is a felony. It's like degrees of sin. That's the way it's listed in the big law book, and so it's something that I think we have to accept. It is a felony, I do agree with the idea of some people having a second chance. But I also feel that there needs to be a level playing field, that all felons are going to be treated the same way when we look at weapons.

Chairman DeKrey: In federal law, it is the Lawtonberg amendment.

Jonathan Byers, AG's office: It's similar in relating to felonies. One of the curious things about this is if a person under federal law does get a domestic violence offense reduced to a misdemeanor, they wind up getting their restrictions bumped from 10 years up to a lifetime for a misdemeanor crime of domestic violence, so it has the opposite effect a lot of times.

Representative Koppelman: The federal violations you are talking about, the consequences, if I understand you correctly, have to do with consequences for violating a felon. There is a firearms issue at the federal level. If we're changing the definition of what they're deemed to have committed, it's no longer listed as a felony, then those don't apply, right.

Cynthia Feland: Except we're not changing what they're deemed to have committed. We're saying that we're going to sentence you to less than a year, we're going to give you a second chance, we're not doing anything else, other than basically providing a mechanism for a court to

make a determination, we're looking at all factors to give this person a second chance as far as employment issues. That's where this whole thing came up.

Representative Koppelman: You're saying, you're still a felon, but we're going to take a big eraser, and with a wink and a nod, nobody who's hiring you is going to know that. That's essentially what we're doing.

Cynthia Feland: That's essentially what we're doing. That is already in law. We're not here to say one way or another, whether we think it should be or shouldn't be, I'm not taking a position on that, we're just here to make sure that we're treating everybody the same as far as the weapons issue, and it makes it a real procedural nightmare, if you're dealing with probation officers who are trying to contend with these types of issues.

Representative Charging: What you're trying to do is to say that no matter what, wouldn't it be up to the judge to determine.

Cynthia Feland: If you want to go back to the beginning, this came into being in the first place, as far as the 10 year weapon ban, because of the federal government and tracking with the federal government, because they wanted to make it clear and consistent with people, that you can't carry a firearm under federal law, you can't carry under state law either. It gave a mechanism for state courts to deal with felony possession of a firearm. The irony of all this is, felony possession of a firearm in state law, is a Class C felony, which carries no mandatory penalties, you can be sentenced from 0-5 years. Now, if you look at the federal system, and you are a felon in possession of a firearm, and I decide that instead of charging in state court, I want to send you to the feds, their mandatory minimum is 5 years. That's the maximum that I can get. So you may see in certain types of cases, where someone has a significant criminal history, that

part of the case is handled in state court but that the weapon charge is sent to the federal court, because they are much more restrictive in their handling of weapons. It does become an issue and there are a lot of defendants who argue that they want to be able to hunt. The prosecutor has the ability in working with the defense attorney, to even amend the complaint and come up with another charge that may fit, or cover the issue the prosecutor is concerned about here at the misdemeanor level, so that no longer becomes an issue. There are other mechanisms if there is a situation that warrants it, but you can look at those isolated situations. But if you think about it, if somebody is convicted of a felony, why would we not want to track with the federal law; because otherwise we are inconsistent, and we're subjecting them to penalties under federal court, that we aren't holding them accountable for in state court, which doesn't make sense.

Representative Charging: Is domestic violence, is that federal.

Cynthia Feland: That's federal and state. Federal is much more restrictive on them than the state is. But again, part of the basis behind that is, in a domestic situations, people are much more volatile and the fact that they possess a weapon, when they're in that volatile state, just creates additional potential for risk or harm.

Representative Charging: It's not just that they have one, what if they live in a home where there is a gun.

Cynthia Feland: That is an interesting question to bring up. The probation officer can say, so long as it is in a locked cabinet, to which the person on probation doesn't have access to it, that doesn't prevent that family from having one. We may have a child, 20 or 21 years old, who lives at home with mom and dad, does that mean that mom and dad can't possess weapons. No, if they have them in a locked cabinet where the child or adult child does not have access to them,

that's something where they have been allowed to occur, because they're not in actual possession or even in constructive possession situation because they don't have the ability to have access, because they are in a locked cabinet, and they don't have a key. In those instances, no. Now, if they are married, and if the husband or wife, depending on which one is the defendant, that may potentially become a different issue. But those are things that they try to work out with parole and probation. Sometimes relatives have come in to take weapons from a defendant until their 10 year period of probation is up.

Representative Delmore: How many instances would you have in a typical year where this is used by judges, across the state.

Cynthia Feland: I wouldn't even fathom a guess. I maybe had one case where this would apply to in Burleigh County that I personally have dealt with. These are not handed out all that frequently, and as I indicated we have not had this particular issue come up, this came up around the Valley City area where this has been very significant and where the initial concern was raised, but what we see is once an issue is raised in one jurisdiction, then it gets tried in other jurisdictions, and then there is that potential for there to be the question. This seems like the perfect opportunity to come in, explain what the scenario was, so that we're very clear on what the legislative intent is. When you passed this, was that your intent to basically isolating these people from having to or not subject to the 10 year ban.

Representative Klemm: I guess one question I've got regardless of the amendments, is the bill that it's getting attached to. We have a constitutional provision that says that no bill can be amended so as to change its original intent. I think the bill 1441, has to do with registration of out-of-state sex offenders, and it seems to me that this bill on the weapons thing, doesn't have

much to do with that. So if it were to get attached to this, if I were a defense attorney, I would be saying, well this law is unconstitutional. Wouldn't it be better to tack this on to a different bill that has to do with weapons.

Cynthia Feland: I have to defer to Mr. Traynor. My understanding was that this was the only bill that came even remotely close to being able to attach this onto. I haven't read the other portions of 1441 because I've been informed that they've already been taken care of, as far as any potential issues they may create for my office.

Representative Klemin: If you see my point, wouldn't you want to be in a position of not having to argue the constitutionality here.

Cynthia Feland: I can tell you something, I can still go back and use this legislative history if I'm trying to convince the judge that I'm right by showing him what the legislative intent was in this committee, whether it was attached to the right bill or not. So does it benefit me, yes in my ability to make the argument to the court, that no, the legislative intent if the committee were to pass the amendments as requested, the legislative intent was not to basically give this select number of people an added benefit to which all other people who may not have to report those felony convictions being treated differentially.

Representative Klemin: I don't think legislative intent has anything to do with the constitution. The constitution says you can't attach an amendment to a bill to change its original intent. We can't change the constitution in this committee.

Cynthia Feland: Either way, whether or not there is a constitutional issue, isn't going to affect my ability to deal with this scenario.

Representative Klemin: I bring this up because we did have another bill that Representative Charging has sponsored that might be the appropriate bill to attach these amendments to.

Cynthia Feland: I'm not opposed to what actual bill number is attached to, we just saw this as being a problem, and took the opportunity to bring it to this committee's attention.

Representative Delmore: I do agree with Representative Klemin and we clearly have another vehicle that was presented to us by Representative Charging and that's the bill this should go on.

Representative Klemin: HB 1505.

Representative Zaiser: I totally agree, clearly the amendments are a dramatic departure from the original 1441.

Chairman DeKrey: We're going to send HB 1441 back to the floor with a Do Not Pass and we'll put this amendment on HB 1505 tomorrow. This bill is closed.

(Refer to the Committee Minutes of 2/2/05 and vote sheet.)

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

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1441

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Zaiser

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Zaiser

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2005 7:42 a.m.

Module No: HR-25-2064
Carrier: Zaiser
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1441: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1441 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

HB 1441

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
~~Human Services~~
~~Political Subdivisions~~
APPROPRIATIONS



Representative Alon Wieland
District 13
P.O. Box 412
West Fargo, ND 58078-0412
awieland@state.nd.us

Testimony, HB 1441 Representative Alon Wieland

Mister Chairman and members of the Judiciary Committee,

My name is Alon Wieland, Representative from the 13th District, which comprises most of West Fargo. I am here today to introduce HB 1441 at the request of a concerned citizen.

The intent of this bill is to give a registered sex offender who resides in a neighboring state notification of the need to register in the state of North Dakota if they spend a certain amount of time in North Dakota. They may be employed here, go to school here, or are in the state temporarily for other reasons. The bill requiring this type of registration was passed in 2003, and some testimony provided today by others will explain that at least one person was not told of that requirement, which resulted in an additional arrest.

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
~~Human Services~~
~~Political Subdivisions~~
APPROPRIATIONS



Representative Alon Wieland
District 13
P.O. Box 412
West Fargo, ND 58078-0412
awieland@state.nd.us

I am providing to you written testimony from the sister of the person described, who cannot be here today. Further, I am here neither in support of or opposed to the bill, but to listen to the testimony and await the committee's recommendation.

Thank you for your consideration of this bill. I will attempt to answer any questions. Thank you, mister chairman and members of the committee.

Testimony HB 1441
Trish Olson

On August 25, 2004, my brother appeared before Judge Georgia Dawson in Cass County Court, Fargo, ND. He was charged under the above century code for failure to register as a sex offender, a Class A Misdemeanor.

My brother has been on probation for the past five years in Minnesota and has registered as an offender with the State of Minnesota each and every year. He has totally complied with all conditions of his probation, as required by Clay County Court, Moorhead, MN. While serving time for his sentence at the Clay County jail, my brother secured a job with Davon Press in West Fargo, ND. Each day while in the Clay County jail, he was released to his job in West Fargo, across state lines. For the past five years his sex offender registration with the State of Minnesota has listed his place of employment as being in North Dakota. Each and every one of his probation officers has known where he works as well.

Approximately one year ago my brother was informed by a police officer with the West Fargo Police Department that he was required to register as an offender because he worked in West Fargo. He complied and registered at the West Fargo Police Department as instructed. Not good enough! No – instead he was served papers that he violated the N.D.C.C. for failure to register as a sex offender. He was supposed to have registered within ten days of being employed – five years ago.

N.D.C.C 12.1-32-15.5 states, “When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department shall, before the discharge, parole, or release of the individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual.” Unfortunately – this state DOES NOT extend the same to individuals who were found guilty in a bordering state.

We certainly don't have a problem with individuals being required to register in the city where they work. We do have a problem with a law that prosecutes someone who complied once “informed” of the individuals obligation to register. It appears that the state applies different guidelines to individuals who are registered offenders in another state. If you were prosecuted in another state you are not informed or given an opportunity to register without being prosecuted.

Our family supported my brother through the devastation he went through five years ago when he was found guilty in Clay County. Since that conviction he had slowly rebuilt his life and had been living happily in Moorhead with his six-year-old son. It all fell apart in August when he was sentenced for earning a wage to support him and his son. From our perspective, his only mistake was finding a job in North Dakota. It just doesn't seem right! He will again have to try and pull his life back together. He will be forced to find a

new job, and will hopefully gain employment before he goes into default on his mortgage. It's unfortunate that sex offender laws are often based on emotion. Unfortunately, many folks are stuck in the hatred, the vindictiveness, and the separate-them-from-us mentality. But, this isn't the first time a group of folks have been singled out. All you have to do is take a look back on history. You'd think we'd learn from our mistakes, but history continues to repeat itself at times in very ugly ways. My brother lives in fear everyday now. He doesn't know if the nightmare will ever end. I'm beginning to wonder myself.

Our family is asking that you revisit your registration requirements for individuals who obtain employment or attend classes in your state. I would hope the intent of the law isn't to keep individuals unemployed and uneducated, and that the state isn't setting them up for failure. That type of mentality only hurts society as a whole.

I submitted a draft bill to Representative Alon Weiland for consideration. I hope you take the draft under serious consideration. I would appreciate hearing from each of you regarding this issue.

Thank you.

Sincerely,

Trish Olson
Fargo, ND
280-1519

HB 1441

RE: Statute 12.1.32-15. Offenders against children and sexual offenders – Sexually violent predators – Registration requirement – Penalty.

Temporarily Domiciled individuals are not being provided with the same notification requirements that are provided to individuals released on probation or discharged in the state of North Dakota. Non-residents who attend school or work in North Dakota and live in a bordering state are not notified of their duty to register if they fall under the definition of being "Temporarily Domiciled". Therefore an individual residing in Minnesota who has complied with MN registration requirements and is under the supervision of MN Department of Corrections is not informed by the State of North Dakota of their duty to register in the state of North Dakota if they are employed or attending classes. Non-residents should also be provided the same notice requirements as individuals under the jurisdiction of the State of North Dakota. Residents and Non-residents should both be treated equally in regard to notification requirements by the State of North Dakota.

12.1-32-15. Registration Requirements.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, *within 10 days of being informed by the court or law enforcement of the duty to register. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual.* The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city.

3. If a court has not ordered an individual to register in this state, an individual who resides or is temporarily domiciled in this state *must, before being charged with failure to register, inform the individual of the duty to register pursuant to this section by the court or law enforcement. The court or law enforcement shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court or law enforcement shall obtain the address where the individual expects to reside, attend school, or work, and shall report the address to the attorney general. The court or law enforcement shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work. If the individual is being monitored by an out of state jurisdiction, and is in compliance with registration requirements of that state, the requirement to register in this state may be waived by the court.*

Timeline of Events:

November, 1999: Dan started serving a 120 day sentence in the Clay County Jail, Moorhead, MN, for a sex crime.

February 28, 2000: Obtained employment at Davon Press, West Fargo, ND, while serving time at the Clay County Jail. Each and every day Dan was released from jail to report to work in North Dakota. He was never informed by law enforcement of his duty to register. Under ND law, he would have needed to register no later than March 10, 2000 (5 years ago!!).

Note: Dan has lived in Moorhead, MN since June, 1975.

August 30, 2004: Dan appeared in court and was found guilty to the charge of Failure to Register as a Convicted Sex Offender, a Class A Misdemeanor.

September 13, 2004: Dan reported to the Cass County jail and was released on home monitoring to Alternative Corrections, PO Box 1121, Moorhead, MN (218-291-0896), to begin serving his 60 day sentence (original release date listed as 11/11/04).

October 12, 2004, at 1:30 p.m., Dan appeared in court regarding the same charges.

October 19, 2004, at 9:00 a.m., Dan appeared in court again regarding the same charges.

The above two court hearings were to correct illegal sentencing. The court order was revised and the defendant is to now serve 3 months rather than 2 months, is eligible for work release, and must report to jail on 10/22/04.

October 22, 2004: Dan reported to jail as directed by the court order, home monitoring was suspended, he was to serve the balance of his time at the jail. However, the jail now shows a release date of 90 days from October 22, 2004, not from September 13, 2004. Therefore, Dan will now serve a 90 sentence from 9/13/04 to 1/22/05, or 130 days!!

Dan was given no credit for the time he spent under the home monitoring program from September 13, 2004 to October 22, 2004, and was not reimbursed for the payments made to Alternative Corrections.

December 18, 2004: Dan is admitted to Innovis Hospital, Fargo, ND, with severe stomach pain. He had been on Nexium, ran out, and has not been able to get more samples from his physician. Dan was treated at the hospital, given morphine and other medications, while under their care.

December 20, 2004: Dan is released from the hospital and returns to jail. He is asked what drugs were administered. He is uncertain other than he knows he was given morphine.

December 21, 2004: Dan was given a urine test for drug testing. He tests positive for morphine and THC. He is now accused of using marijuana! He denies the allegations. His work release is revoked and he is placed in maximum security. The urine sample is sent to Redwood Toxicology Lab for further analysis.

December 23, 2004: While in a single cell in maximum security, the sprinkler head in Dan's cell goes off and he gets soaked with water. The jail accuses him of tampering with the sprinkler head causing it to go off. In order to reach the sprinkler head an individual would either need to stand on the sink or the bed. How can you damage a sprinkler head when your only possessions are a rubber pencil, some paper and a book? In addition, Dan was due to be released the following morning at 9:00.

Note: On January 19, 2005, Dan observed another individual in lock down desperately trying to set the sprinkler head off in his cell. He was even being coached by another inmate on how to do it. The individual tried relentlessly to set it off with no luck. The individual was being transferred to the State Penitentiary and was making life for jail staff as difficult as he could. Dan, however, was informed that he caused his sprinkler head to go off. It just doesn't add up.

December 24, 2004: Dan is released for 2 weeks and is due to report back to jail on 1/6/05 at 9:00 a.m.

January 3, 2005: Via the attorney, the drug test came back negative; guilty until proven innocent. This error cost Dan time away from work/income, and visits with his 6 year old son. This was a huge price to pay for someone else's error.

January 6, 2005: Dan reports back to the jail. Dan is denied work release again due to his poor attitude when informed that he tested positive for THC by the jail, and due to tampering with the sprinkler head in his cell. He will now be in lock down until his release date of 1/22/05. He is in a locked cell 23 hours/day!! No work, no pay, no contact with his son. This is a living nightmare for Dan.

January 22, 2005: Dan is finally released from jail.

He paid for 2 months of home monitoring and wasn't given credit for it, lost weeks of work and wages, was accused of taking marijuana and setting off a sprinkler head, and most importantly – was separated from his 6 year old son.

It appears to our family, friends and Dan's co-workers that Dan went to jail because he had a job in West Fargo, ND. Had his employer been located just miles across the river in Minnesota, he would have never gone to jail

Dan is still employed at Davon thanks to the support of his co-workers who banded together and covered his duties while he was living a nightmare – a nightmare that seems to never end. Their support of him speaks to his character. It totally amazes our family and friends how an individual who served his time in Clay County jail without a single incident, and had fully complied the provisions of his probation in Minnesota, could run into so many problems in Cass County. It makes us wonder about the criminal justice, or injustice, that may be going on with individuals because the word sex appears in their crimes. In fact, we were told by an attorney and a staff person with a non-profit organization that Dan should stay out of North Dakota. They encouraged him to leave his job unless he wants to end up back in jail. They conveyed that the word on the street is to lock all sex offenders up and look for loop holes in the law to keep them there. And, that's exactly what we feel has happened. The Cass County Sex Offenders website states that actions will be taken against persons who harass sex offenders. Well what if the harassment is coming from the criminal justice system itself?

He now lives in fear wondering what he'll be accused of next. He is looking for work in Minnesota as a result of the warnings issued by the 2 individuals mentioned above. It appears to us that once you have the word "sex" in your criminal history, you are no longer a human being with feelings, family, friends, rights, or anything else. You are now always and forever perceived as something less than human. - an outcast of society.

Once notified by the West Fargo Police Department that Dan needed to register (5 years after the fact), he went in and registered. That didn't matter – he was sentenced to jail anyway. Where was his written notification informing him of his duty to register in this state? All we are asking for is a level playing field. Out of state offenders should be given an opportunity to comply once "informed" of their duty to register. All we're asking for is that the law be changed to allow out of state sex offenders the opportunity to comply with registration requirements before being sentenced to jail.

Sex Offender Registration Requirement
ND Century Code 12.1-32-15

On August 25, 2004, my brother appeared before Judge Georgia Dawson in Cass County Court, Fargo, ND. He was charged under the above century code for failure to register as a sex offender, a Class A Misdemeanor.

My brother has been on probation for the past 5 years in Minnesota and has registered as an offender with the State of Minnesota each and every year. He has totally complied with all conditions of his probation, as required by Clay County Court, Moorhead, MN, where he was found guilty. While serving time for his sentence at the Clay County jail, my brother secured a job with Davon Press in West Fargo, ND. Each day while in the Clay County jail, he was released to his job in West Fargo, across state lines. For the past 5 years his sex offender registration with the State of Minnesota has listed his place of employment as being in North Dakota. Each and every one of his probation officers has known where he works.

Approximately one year ago he was informed by a police officer with the West Fargo Police Department that he was required to register as an offender because he worked in West Fargo. He complied and registered at the West Fargo Police Department as instructed. Not good enough! No - instead he was served papers that he violated the NDCC for failure to register as a sex offender. He was suppose to have registered within 10 days of being employed - 5 years ago.

NDCC 12.1-32-15.5 states, "When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of the individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual." Unfortunately - this state DOES NOT extend the same to individuals who were found guilty in a bordering state.

We certainly don't have a problem with individuals being required to register in the city where they work. We do have a problem with a law that prosecutes someone who complied once "informed" of the individuals obligation to register. It appears that the state applies different guidelines to individuals who are registered offenders in another state. If you were prosecuted in this state then you will be informed of your duty to register. But, if you are registered in another state you are not informed and given an opportunity to register without being prosecuted.

Our family supported my brother through the devastation he went through five years ago when he was found guilty in Clay County. Since that conviction he has slowly rebuilt his life and had been living happily in Moorhead with his 6 year old son. It all fell apart in August when he was sentenced for earning a wage to support him and his son. From our perspective, his only mistake was finding a job across the state line. He fell through the cracks big time. It just doesn't seem right! He will again have to try and pull his life back together. It's unfortunate that sex offender laws are often based on emotions. Unfortunately, many folks are stuck in the hatred, the vindictiveness, and the separate them from us mentality – a division of sorts. These types of attitudes will only erode the individuals fundamental rights. My brother lives in fear everyday now. He doesn't know when the nightmare will ever end. I'm beginning to wonder myself.

Our family is asking that you revisit your registration requirements for individuals who obtain employment or attend classes in your state. I would hope the intent of the law isn't intended to keep individuals unemployed and uneducated.

I submitted a draft bill to Representative Alon Weiland for consideration. I hope you will take the draft under serious consideration.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Trish Olson". The signature is written in a cursive, flowing style.

Trish Olson
280-1519

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA
Plaintiff

Send Payments: CRIMINAL JUDGMENT
Clerk of District Court
P.O. Box 2806
Fargo, ND 58108
*Restitution - SA Office

DANNY DALE HAZEMANN
817 3RD STREET SOUTH
MOORHEAD, MN 56560

D.O.B. 12-31-64
Social Security # 475-92-6042
Defendant

Case No. 09-04-X-01001/001

~~On August 30, 2004~~, the State Of North Dakota represented by the Prosecuting Attorney, and the Defendant, represented by Leslie Johnson Aldrich, appeared before the Court and the Defendant entered a plea of guilty to the charge of ~~FAILERS TO REGISTER AS CONV. OFFENDER/NA~~ a Class A Misdemeanor, in violation of N.D.C.C. 17.1-32-15.

The Court imposes sentence as follows:

- (X) The Defendant will pay ~~CRIMINAL ADMINISTRATION FEE~~ in the amount of ~~\$200.00~~.
- (X) The Defendant will pay ~~DEFENSE/FACILITY ADMIN FEE~~ in the amount of ~~\$200.00~~.
- (X) The Defendant will serve ~~12 months~~ in the Cass County Jail, with ~~10 months~~ of this sentence being suspended.

The Defendant is placed on unsupervised probation for a period of 12 months from the date of this CRIMINAL JUDGMENT. The conditions of probation are as follows:

- THE COURT WILL ALLOW ELECTRONIC HOME MONITORING THROUGH ALTERNATIVE CORRECTIONS AT THE DEFENDANT'S OWN EXPENSE TO REPORT TO JAIL ON SEPTEMBER 13, 2004 AT 9:00 A.M. APPLY BAIL AND PAY THE BALANCE OWING WITHIN 6 MONTHS
- (X) The Defendant will not commit another offense during the probationary period.

A violation of the rules or conditions may result in revocation of the defendant's probation, whereupon the court may impose the maximum penalty allowed by law.

~~Dated this 30th day of August, 2004~~

BY THE COURT:
Georgia Dawson
GEORGIA DAWSON
DISTRICT JUDGE

mailed to defendant
DEFENDANT
COPIES TO: SA PROBATION RESTORE DEFENSE DEFENDANT CITY

SCHEDULE FOR HOME DETENTION SERVICES

CLIENT DATA

Client Name Danny Hazeman
 Hook Up Date 9/13/2004
 Term of Home Detention 30-60
 Release Date 10/13/2004
 Daily Rate for Detention Services \$ 177.00
 Hook Up Fee \$ 55.00
 Total Cost of Home Detention \$ 1,475.00

SON 18 21 11 7

9/13/2004
30-60
10/13/2004
177.00
55.00

PAYMENT SCHEDULE

	Date Payment is Due	Amount Due	Days Paid
First Month Hook-Up Fee	9/13/2004	\$ <u>515.00</u>	<u>30</u> days
Second Month	10/13/2004	\$ <u>520.00</u>	<u>30</u> days
Third Month	11/13/2004	\$ <u>440.00</u>	<u>30</u> days
		995.00	

TOTALS \$ 995.00
~~1,383.00~~

Make All Payments To: Alternative Corrections, Inc.
 P.O. Box 1121
 Moorhead, Minnesota 56561-1121
 Phone: (218) 291-0896

I hereby agree to pay Alternative Corrections, Inc. for home detention services pursuant to this schedule.

Dated this 13 day of Sept, 2004.

Danny Hazeman
 Danny Hazeman

EXHIBIT
2.

Broadsheet sent out on 9/13 to meet con.

ONLY FOR YOUR INFORMATION

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA
Plaintiff

v.

DANNY DALE HAZEMANN
817 3RD STREET SOUTH
MOORHEAD, MN 56560

D.O.B. 12-31-64
Social Security # 475-92-6042
Defendant

AMENDED

CRIMINAL JUDGMENT

Case No. 09-04-K-01001/001

On August 30, 2004, the State Of North Dakota represented by the Prosecuting Attorney, and the Defendant, represented by Leslie Johnson Aldrich, appeared before the Court and the Defendant entered a plea of guilty to the charge of FAILURE TO REGISTER AS CONV. OFFENDER/MA, a Class A Misdemeanor, in violation of N.D.C.C. 12.1-32-15.

The Court imposes sentence as follows:

- (X) The Defendant will pay CRIMINAL ADMINISTRATION FEE in the amount of \$200.00.
- (X) The Defendant will pay DEFENSE/FACILITY ADMIN FEE in the amount of \$100.00.
- (X) The Defendant will serve 12 months in the Cass County Jail, with 9 months of this sentence being suspended.

The Defendant is placed on unsupervised probation for a period of 12 months from the date of this CRIMINAL JUDGMENT. The conditions of probation are as follows:

~~THE COURT WILL ALLOW WORK RELEASE AT THE DEFENDANT'S OWN EXPENSE IF APPROVED BY THE SHERIFF~~
~~DEFENDANT TO REPORT TO THE CASS COUNTY JAIL OCTOBER 22, 2004 @ 9:00AM~~
APPLY BAIL AND PAY THE BALANCE OWING WITHIN 6 MONTHS

- (X) The Defendant will not commit another offense during the probationary period.

A violation of the rules or conditions may result in revocation of the defendant's probation, whereupon the court may impose the maximum penalty allowed by law.

Dated this 21st day of October, 2004.

BY THE COURT:

Georgia Dawson
GEORGIA DAWSON

EXHIBIT

Mailed to defense
DEFENDANT

#3

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

State of North Dakota,)

Plaintiff,)

vs.)

Danny Dale Hazemann,)

Defendant(s).)

ORDER

09-04-K-01001

SA #04-PC-00098

The above-entitled matter came on for hearing before the Honorable Georgia Dawson on the 12th day of October, 2004 at 1:30 o'clock p.m. and again on the 19th day of October, 2004 at 9:00 o'clock a.m. pursuant to Plaintiff's Motion to Correct Illegal Sentence. The Plaintiff appeared by and through Assistant Cass County State's Attorney Mark R. Boening. The Defendant appeared in person and by and through Attorney Leslie Johnson Aldrich of Fargo. After considering the files, records and pleadings herein, the statements of counsel, the evidence adduced at said hearing, and the Court being fully advised in the premises;

THE COURT ORDERS:

- 1) The State's Motion to Correct Illegal Sentence is granted.
- 2) The 3rd paragraph of the sentence imposed in the Criminal Judgment dated 30 August 2004 shall be amended to provide:
The Defendant will serve 12 months in the Cass County Jail, with 9 months of this sentence being suspended.

WAL 10
Chy

FILED

EXHIBIT

3) ~~The 1st~~ paragraph of the conditions of probation in the Criminal Judgment dated 30 August 2004 shall be amended to provide:

The Defendant shall be ~~eligible for work release or alternative placement~~ at the Defendant's expense upon satisfying the Cass County Sheriff's program requirements. To ~~report to Jail on 29~~ October 2004 at 9:00 a.m. Apply bail and pay the balance owing within 6 months.

Who
checked
out?

~~The clerk of this court shall prepare an Amended Judgment consistent with the terms of this order and the otherwise~~

~~unchanged terms and conditions of the Criminal Judgment 30 August 2004.~~ Report on 9/13

Dated at Fargo, North Dakota this 19th day of October, 2004.

BY THE COURT:

does not say that
electronic monitoring
doesn't count


Hon. Georgia Dawson
District Court Judge

HOUSE BILL 1441 TESTIMONY
HOUSE JUDICIARY COMMITTEE
January 31, 2005
PRAIRIE ROOM

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in opposition to House Bill 1441.

I have 4 reasons for respectfully opposing this bill:

1) If it were true that Danny Hazemann, or any offender, could be convicted for not registering when he had no knowledge of such a requirement, then the bill might have some merit. However, the law already provides that an offender must willfully violate this law in order to be charged for failure to register. In Danny Hazemann's case, he was advised by a Minnesota probation officer of the duty to register in North Dakota, and chose to ignore that advise.

2) The extensive language on page 3 is already current practice, as those procedures are set forth in the BCI's operating manual for offender registration. Setting it forth in statute makes it more difficult to change if a better procedure is developed.

3) The most significant concern with House Bill 1441 is that it contemplates that registration would only be triggered by court order. Sometimes judges forget to order it, sometimes offenders with a serious conviction move from other state that have not ordered registration, etc.

4) The requirement of a court order, and the waiver on lines 24-26 of page 3, may result in North Dakota being deemed in noncompliance with the Jacob Wetterling Act. As you may know, 10% of Edward Byrne Memorial funds would be jeopardized.

The Attorney General asks for a do not pass on House Bill 1441. I would be happy to answer any questions.