

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1077

2007 HOUSE JUDICIARY

HB 1077

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1077

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/9/07

Recorder Job Number: 772

Committee Clerk Signature

Dawn Penrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1077.

Tim Schuetzle, Warden, State Penitentiary, DOCR: (see attached testimony).

Rep. Delmore: What are the inmates paid? Are they paid on an hourly rate and also a question on the disciplinary committee, who makes that up?

Tim Schuetzle: The starting pay for inmates is \$1.35/day. They will receive that when they are working at a prison institutional job. It could be in the kitchen, the laundry, as a janitor, working in the rec yard, one of those jobs. The pay for institutional jobs can go all the way up to \$5.50/day. For example, the person who is the head grill person in the kitchen, the baker, some of the more important jobs get paid the higher amount. We also have Roughrider Industries and they make substantially more, probably averaging \$150-200/month. That is a good program. That's what they can make. Who makes up the disciplinary committee: right now it is a two person committee, the deputy warden and we always put a case manager on that committee with them. We have seven case managers at the State Pen, so it rotates between them.

Rep. Dahl: Can you clarify the second part of section 5, can that be read to say that when an inmate discharged after, that you could still withhold funds that were earned even when they have outstanding obligations. Do you discretion.

Tim Schuetzle: Are you asking if we can keep money after the person is discharged.

Rep. Dahl: Yes.

Tim Schuetzle: Right now, the way I read it, you can't. You give them the money after their final release from one of the facilities within the prison system. They may go to county jail, they may go to the transition center, but the day they get out of that, say they are no longer on inmate status; in other words, the day their sentence expires, we will give them all the money that they have in that release account. We are not allowed to hold on to that for future things that may come up or for restitution for his fines. If there is a judgment against them, we can't withhold that, the way section 5 is worded now. Does that answer your question?

Rep. Dahl: Yes.

Rep. Onstad: You talked about damages that a prisoner might cause, for restitution, does that also cover for a county jail or a city jail. Does this wording go over towards helping, if they had a similar situation with property damage to their county jail or city jail?

Tim Schuetzle: The chapter 12-48 is strictly for the state-run facilities. I'm not sure, section 12-44 deals with county jails and I don't know which part of the century code deals with city facilities. I'm not sure if they have similar type of statute in 12-44 for the counties. This is only applied to, in my understanding, to state prisoners. Is that correct, Ken Sorenson?

Ken Sorenson, AG: Yes.

Tim Schuetzle: Ken is with the AG's office, he is the person who drafted this bill.

Rep. Onstad: Just to follow up with that, in property damage situation, the counties may recover their costs.

Tim Schuetzle: I'm not the person who can answer for the counties. I think the county representative is here today and he may be able to answer that.

Rep. Charging: What if they owe money and they get out and still owe the funds.

Tim Schuetzle: Those are forgiven. We realize that we're not going to be able to collect from all the inmates, just because a lot of them aren't working, we have a lot more inmates than we have jobs. They leave in debt, but it is really surprising the number of inmates that do, they understand that they have this obligation. Since we've been tracking this, we've collected \$7,000 since April 2004 to the end of that year; but about \$20,000 in 2005 and into 2006. That then goes back into a fund for the prison to help offset the costs of the medical that we've had to pay upfront, out of our appropriated funds.

Rep. Charging: How about for child support, does any of that obligation get paid.

Tim Schuetzle: We have a number of inmates that owe child support and a number of child enforcement agencies will put a lien on their accounts at the penitentiary. They are obviously not able to pay the \$200-400/month that they paid while they were free people; but 50%, that is the first deduction we take when they get a job. If there is a child support enforcement order and we receive that, they ask for 50% of their earnings and we take that right off the top. So this person who is making \$1.35/day, maybe \$30/month – 50% of that goes to child support, leaving him \$15.00. Then we take 25% of that and put it into his RA (release account or savings account). That leaves him with \$11.22 for the rest of the month to pay for his personal hygiene items for the month; things like that.

Rep. Koppelman: Returning to Rep. Dahl's question, I think what she is getting at, and I may be mistaken, but in subsection 5, on page 2, line 25, it appears that changing the shall to a may, gives you discretion in terms of whether or not you refund those funds when a prisoner is

released. So in current law, you don't have discretion, under this bill you may have discretion. Is that the intention?

Tim Schuetzle: I believe what that is saying is that, it is specifying only when an inmate is transferred to a correctional facility outside the state, or – you are talking about then going on, released on parole or discharged from the penitentiary. I understand that could be an issue.

Rep. Koppelman: Do you want to amend that.

Tim Schuetzle: I'm trying to remember why we have the word "may" in there. I understand your concern.

Rep. Koppelman: I think the release issue is there.

Tim Schuetzle: We don't want the discretion not to give them the money, we want to give them the money.

Rep. Koppelman: You talk about the concern, the idea that this kind of thing happening within the DOCR rules and why in subsection 4 on page 2. What rules are you referring to, are those administrative rules or are they penitentiary rules and how are those arrived at.

Tim Schuetzle: Those are not part of the state administrative rules. Those are penitentiary rules that part of 12-47 gives the warden the authority to make rules and the DOCR to make rules in the operation of the prison. Those are the rules they are referring to; rules that our department has made.

Rep. Koppelman: So if the statute is changed this way, you can change your rule next month, or next year, or somebody replaces you and does that, you are sort of codifying or giving credence to what that rule is, it may not even be a big deal but are there other places in code where that happens, where we reference --- I know that is a big problem if it's an administrative rule because then it has some oversight and scrutiny in the legislative process, but you certainly have to make rules in the prison, don't get me wrong. I'm just saying that if

we reference that in statute, we're kind of giving blessing to whatever the rules are and we have no idea.

Tim Schuetzle: I can understand your concern and I can't think of an example right now, in other statutes relating to the penitentiary operations, where it refers to the penitentiary rule. That's something we can research and see where it is in statute.

Rep. Koppelman: Just one final question, what happens to the money that you collect for fines, does that go into your general operating budget, or is there a specific line item, do you use that for a specific use or?

Tim Schuetzle: That actually goes into a special fund that we have created, it's on our appropriation as special funds, but we really never know how much we are going to be able to collect. It just really goes back into the general operations for the penitentiary. It would be nice if we could replace the medical budget with that, but we can't; or if they bust up their cells and you have to go and buy new cell furniture, if we could use the money, but right now we can't. It just goes into special funds.

Rep. Koppelman: That would make sense. It seems to me, if particularly the portions that come from restitution, if somebody wrecks their cell and you have to spend money to fix it, but there are also fines, where it's not necessarily a monetary amount, or restitution.

Tim Schuetzle: It's 12-47-12, where it says that the warden can make rules subject to approval of the director of the division of adult services shall make rules not in conflict with the laws of this state and shall perfect them with a violation of the rules.

Rep. Wolf: Are the RA accounts on all prisoners. What about the person who is incarcerated and has a life sentence without possibility of parole. Are their people who have that type of sentence. Do they have RA accounts as well.

Tim Schuetzle: Every inmate has their release account except an inmate that we are holding from another jurisdiction, because they do not fall within the ND statutes. What I have done administratively is, they may have a life sentence, we put money into their release account continuously. But if they would like to withdraw money from their RA for something that normally would not be covered under our rules; if they have a balance of over \$2500.00, we have a policy that will allow them to spend some of that money provided they keep a \$2500 balance. The reason for that are funeral expenses.

Rep. Kretschmar: Are there offenses that inmate's commits that you take them back into the criminal courts in the state.

Tim Schuetzle: Yes there are, if they commit an offense such as an assault, or smuggling marijuana or other drugs into the facility. We do bring those to the Burleigh county states attorney's office and ask that they press charges on those inmates.

Rep. Kretschmar: In this release account, are those funds placed in an interest bearing account for the inmates.

Tim Schuetzle: They can be placed in there, but it is up to the inmate to ask that. He has to request that he wants his money, the RA account balance, moved down to the Bank of ND. If they make that request, we will move that RA down to the Bank of ND where they can earn some interest on that savings account.

Chairman DeKrey: Seeing no further questions, thank you for appearing. Further testimony in support of HB 1077. Testimony in opposition to HB 1077. We will close the hearing on HB 1077.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1077

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/15/07

Recorder Job Number: 1045

Committee Clerk Signature

N. Penrose

Minutes:

Chairman DeKrey: We will take up HB 1077. This bill was about the inmate's money. Rep. Koppelman, go ahead and explain your amendment.

Rep. Koppelman: This is on HB 1077, this is the one where the warden testified on regarding inmate funds. The amendment that I am passing out is one that was prepared by Mr. Sorenson, an Asst. AG. The amendment deals with the issue that was raised during the hearing on the bill regarding the fact that the way the bill was written, the warden could withhold money from an inmate when he's released on parole. That certainly wasn't the intent with the original bill drafters. The amendment, the language on line 27, page 2, basically inserts the language as follows: it puts a period after the word state and inserts the language that says "the warden shall pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is" released on parole or discharged from the penitentiary.

Rep. Griffin: Second the amendment motion.

Chairman DeKrey: Discussion on the amendment? We will take a voice vote on the amendment. Motion carried.

Rep. Kingsbury: I move a Do Pass as amended on HB 1077.

Rep. Wolf: Second.

Chairman DeKrey: The clerk will call the roll on a Do Pass as amended motion.

14 Yes 0 No 0 Absent

DO PASS AS AMENDED

CARRIER: Rep. Kingsbury

Kopp Amed

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRISONS DIVISION'S PROPOSED AMENDMENTS TO HOUSE BILL 1077

Page 2, line 27, overstrike the comma after "state" and insert immediately thereafter ". The warden shall pay an inmate all funds in the inmate's accounts, less the inmate's outstanding obligations to the penitentiary, when the inmate is"

Page 2, line 28, overstrike the comma after "parole"

Renumber accordingly

House Amendments to HB 1077 (78204.0101) - Judiciary Committee 01/15/2007

Page 2, line 26, after "account" insert an underscored comma and after "penitentiary" insert an underscored comma

Page 2, line 27, overstrike the comma and insert immediately thereafter ". The warden shall pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is"

Page 2, line 28, overstrike the comma

Renumber accordingly

Date:
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1077

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP as Amended

Motion Made By Rep. Kingsbury Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	/		Rep. Delmore	/	
Rep. Klemin	/		Rep. Griffin	/	
Rep. Boehning	/		Rep. Meyer	/	
Rep. Charging	/		Rep. Onstad	/	
Rep. Dahl	/		Rep. Wolf	/	
Rep. Heller	/				
Rep. Kingsbury	/				
Rep. Koppelman	/				
Rep. Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1077: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1077 was placed on the Sixth order on the calendar.

Page 2, line 26, after "account" insert an underscored comma and after "penitentiary" insert an underscored comma

Page 2, line 27, overstrike the comma and insert immediately thereafter ". The warden shall pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is"

Page 2, line 28, overstrike the comma

Renumber accordingly

2007 SENATE JUDICIARY

HB 1077

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1077

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3994

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to inmate funds and accounts and fines and restitutions for the misconduct of offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Tim Schuetzle, Prisons Div. Dir.(Warden), NDDOCR – Introduced the bill and gave testimony – Att. #1

Sen. Fiebiger asked (meter 10:39) in Sec. 5, line 25-why "shall" verses "may"? He discussed the process of an offender possible having offences in other states. We need the flexibility that if for certain, he was not coming back to ND, we need to be able to release the funds at that time (multi-jurisdictional crimes) The committee discussed the different scenarios of not letting the funds release to early, or they will not have any funds when they are released.

Testimony Against the bill:

None

Testimony Neutral to the bill:

The committee discussed; the prisons furniture program, high school kids who used to visit the prison and are not allowed to-due to liability and being offensive to the students.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass HB 1077 and **Sen. Olafson** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

HB 1077, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1077 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1077

House Bill 1077

Testimony before the House Judiciary Committee; January 9th, 2007
Tim Schuetzle, Prisons Division Director, NDDOCR

House Bill 1077 makes changes to NDCC statutes 12-48-15 and 12-48-22 that we believe will clarify the intent, and should help the prison recover restitution from an inmate when they intentionally damage state property, or incur costs to the taxpayers that rise above the normal costs for their care.

The first change is to the title of section 12-48-15. We are asking that the wording "money's earned" be replaced with "inmate funds". It is our policy that we collect restitution from an inmate when they violate one of the department rules, or cause personal injury or property damage. We collect this money from all sources, including wages the inmate receives from his prison work assignment and money he may have sent to him from people outside the facility.

For example, let's say that an inmate assaults another inmate within the prison. He receives a disciplinary report, and a due process hearing to determine his innocence, or guilt. If he is determined to be guilty, one of his sanctions will be for him to pay restitution back to the state to cover the medical expenses incurred as a result of this assault. He has the right to appeal this decision to the DOCR Director, but if it is upheld, the prison staff will deduct any money the inmate has in his spending account to repay the debt. If the inmate does not have the required funds, staff will place his account in the red, and will garnish 50% of future earnings from his job, or from money that may be sent into him from outside sources (i.e. family, tax refunds, etc.) until his restitution has been repaid.

The title of a statute is not part of the statute, and this title is causing confusion among some of the inmates. One inmate is now challenging our policy of taking money for restitution from all sources, in court. He claims that we are only allowed to take money from his prison job, basing it on the language in the title of this statute. The department believes that making this change to the title, and the other changes found in the body of this bill, will help clarify the department's authority to collect restitution for expenses an inmate incurs above and beyond what is considered normal costs for their care.

The next language change is in section 4 of 12-48-15 to help clarify the process used to collect restitution. We are requesting that the words **administratively ordered fee, fine, or restitution** be added on line 8 of page 2 of the bill. On lines 15 and 16, we are asking that we eliminate the wording that provides for the right "**to penitentiary staff assistance**" at the committee hearing, and the right to appeal "**to the director of corrections**". We are replacing this with the wording that they may appeal "**according to Department of Corrections and Rehabilitation rules**".

The reason we request these changes is due to the two levels of rule infractions, major offenses and minor offenses, we have within our rules. An inmate who commits a major offense receives a Class A incident report. Class A reports are heard by an impartial Disciplinary Committee, and the inmates receive all the rights set forth by the Supreme Court in their ruling *Wolff v. McDonnell*, including the right to staff assistance, and to appeal the committee's decision to the Warden, and the Director of the Department of Corrections and Rehabilitation. Due to the seriousness of Class A infractions, if found guilty, the inmate will likely lose good time earned, and could be charged to pay restitution in the hundred's of dollars.

Class B reports are given for minor rule violations, and since there is no loss of good time, the *Wolff v. McDonnell* rights are not applicable. Disciplinary hearings for these reports are conducted by the cell house Case Workers. Class B disciplinary hearings are less formal than for Class A reports, but inmates are still given an opportunity to present evidence in support of their defense and may appeal the Caseworker's decision to the Case Manager. Prison rules allow for sanctions for Class B offenses of "fines and/or forfeiture of wages" (hence the change to line 8), but do not allow for a right to staff assistance or an appeal to the Director (the change requested in lines 15 and 16). Our system of fines for Class B infractions may range in value from \$1.35 for forfeiture of one day's pay, to \$30.00 for the fourth offense for possession of tobacco. The average fine for a class B report is around \$5.00.

The last change to 12-48-15 that we are requesting occurs in section 5, line 22. We would like to clarify that an inmate will receive the funds in his **spending** account when they are transferred from a prison to a county jail or community correction program, but they won't receive money in their **release** account until their prison sentence has expired. Inmates may transfer to a county jail long before their actual prison sentence expires, and in many cases, they return to the prison to finish their sentence. However many inmates argue that we have to give them money from both accounts due to the wording in this statute.

Inmates basically are allowed two types of accounts in the prison system. Their *spending account* is similar to a checking account. They have total access to the money in this account, and can use it to send money outside the facility, order items from commissary, or place it into an interest bearing account at the Bank of North Dakota. Money can be placed into their spending account from wages for work performed at the facility, or from donations from family and friends. The second account is termed their *release account*, and it is a forced savings account where we can take up to 50% of their earnings in the prison, and deposit it into an account for them that is used as their gate money (see Section 1 of 12-48-15). The prison administration has control of any spending from this account, as articulated in 12-48-14 section 4. Sections 1 and 4 are very clear as to what this gate money can be used for, and that it is not to be given to the inmate until their release from their sentence. By granting the changes we're requesting, we'll be able to avoid numerous inmate complaints and grievances from those who believe they should get all their money when they are transferred to a county jail.

Finally, we are also requesting language changes to NDCC 12-48-22 to reflect the changes we're making in 12-48-15. The new language in 12-48-22 clearly identifies that should the inmate break one of the prisons rules and by doing so damages property or causes injury to another person, the institution will take money from any source to repay the restitution.

I ask that you support our request to change these to statutes in Chapter 12-48.

2-27-07
AH #1

House Bill 1077

Testimony before the Senate Judiciary Committee

February 27, 2007

Tim Schuetzle, Prisons Division Director, NDDOCR

House Bill 1077 makes changes to NDCC statutes 12-48-15 and 12-48-22 that we believe will clarify the intent, and should help the prison recover restitution from an inmate when they intentionally damage state property, or incur costs to the taxpayers that rise above the normal costs for their care.

The first change is to the title of section 12-48-15 (page 1, lines 7 and 8). We are asking that the wording "money's earned" be replaced with "inmate funds". It is our policy that we collect restitution from an inmate when they violate one of the department rules, or cause personal injury or property damage. We collect this money from all sources, including wages the inmate receives from his prison work assignment and money he may have sent to him from people outside the facility.

For example, let's say that an inmate assaults another inmate within the prison. He receives a disciplinary report, and a due process hearing to determine his innocence, or guilt. If he is determined to be guilty, one of his sanctions will be for him to pay restitution back to the state to cover the medical expenses incurred as a result of this assault. He has the right to appeal this decision to the DOCR Director, but if it is upheld, the prison staff will deduct any money the inmate has in his spending account to repay the debt. If the inmate does not have the required funds, staff will place his account in the red, and will garnish 50% of future earnings from his job, or from money that may be sent into him from outside sources (i.e. family, tax refunds, etc.) until his restitution has been repaid.

The title of a statute is not part of the statute, and this title is causing confusion among some of the inmates. We receive a number of grievances on this issue, and one inmate is now challenging our policy of taking money for restitution from all sources, in court. He claims that we are only allowed to take money from his prison job, basing it on the language in the title of this statute. The department believes that making this change to the title, and the other changes found in the body of this bill, will help clarify the department's authority to collect restitution for expenses an inmate incurs above and beyond what is considered normal costs for their care.

The next language change is in section 4 of 12-48-15 to help clarify the process used to collect restitution. We are requesting that the words **administratively ordered fee, fine, or restitution** be added on line 8 of page 2 of the bill. On lines 15 and 16, we are asking that we eliminate the wording that provides for the right "**to penitentiary staff assistance**" at the committee hearing, and the right to appeal "**to the director of corrections**". We are replacing this with the wording that they may appeal "**according to Department of Corrections and Rehabilitation rules**".

The reason we request these changes is due to the two levels of rule infractions, major offenses and minor offenses, we have within our rules. An inmate who commits a major offense receives a Class A incident report. Class A reports are heard by an impartial Disciplinary Committee, and the inmates receive all the rights set forth by the Supreme Court in their ruling *Wolff v. McDonnell*, including the right to staff assistance, and to appeal the committee's decision to the Warden, and the Director of the Department of Corrections and Rehabilitation. Due to the

seriousness of Class A infractions, if found guilty, the inmate will likely lose good time earned, and could be charged to pay restitution in the hundred's of dollars.

Class B reports are given for minor rule violations, and since there is no loss of good time, the Wolff v. McDonnell rights are not applicable. Disciplinary hearings for these reports are conducted by the cell house Case Workers. Class B disciplinary hearings are less formal than for Class A reports, but inmates are still given an opportunity to present evidence in support of their defense and may appeal the Caseworker's decision to the Case Manager. Prison rules allow for sanctions for Class B offenses of "fines and/or forfeiture of wages" (hence the change to line 8), but do not allow for a right to staff assistance or an appeal to the Director (the change requested in lines 15 and 16). Our system of fines for Class B infractions may range in value from \$1.35 for forfeiture of one day's pay, to \$30.00 for the fourth offense for possession of tobacco. The average fine for a class B report is around \$5.00.

The last change to 12-48-15 that we are requesting occurs in section 5, line 22. We would like to clarify how inmate's funds shall be dispersed to them as they transfer through the system to transition programs while still on inmate status. Inmates basically are allowed two types of accounts in the prison system. Their **spending account** is similar to a checking account. They have total access to the money in this account, and can use it to send money outside the facility, order items from commissary, or place it into an interest bearing account at the Bank of North Dakota. Money can be placed into their spending account from wages for work performed at the facility, or from donations from family and friends. The second account is termed their **release account**, and it is a forced savings account where we can take up to 50% of their earnings in the prison, and deposit it into an account for them that is used as their gate money (see Section 1 of 12-48-15). The prison administration has control of any spending from this account, as articulated in 12-48-14 section 4.

We want to be able to give an inmate the funds in his **spending account** when they are transferred from a prison to a county jail or community correction program, but they won't receive money in their **release account** until their prison sentence has expired. Inmates may transfer to a county jail long before their actual prison sentence expires, and in many cases, they return to the prison to finish their sentence. However many inmates argue that we have to give them money from both accounts due to the present wording in this statute. The first engrossment of this bill clarified this further, stating that the warden *may* pay an inmate all funds in his account when transferred to another facility outside this state, but *shall* pay an inmate all funds in his account(s) when his sentence is discharged, either on his expiration date, or due to the inmate receiving a parole. Sections 1 and 4 are very clear as to what this gate money can be used for, and that it is not to be given to the inmate until their release from their sentence. By granting the changes we're requesting, we'll be able to avoid numerous inmate complaints and grievances from those who believe they should get all their money (from both their spending, and release accounts, when they are transferred to a county jail.

Finally, we are also requesting language changes to NDCC 12-48-22 to reflect the changes were making in 12-48-15. The new language in 12-48-22 clearly identifies that should the inmate break one of the prisons rules and by doing so damages property or causes injury to another person, the institution will take money from any source to repay the restitution.

I ask that you support our request to change these to statutes in Chapter 12-48.