

2015 HOUSE JUDICIARY

HB 1118

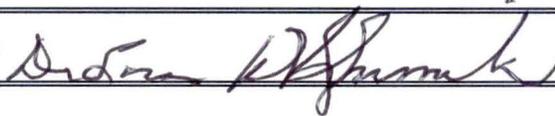
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1118
1/19/2015
22113

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to probation and parole officers as peach officers.

Minutes:

Testimony #1 & #2

Chairman K.Koppelman: Opened the hearing on HB1118.

Steven Engen, Director of Staff Development & Facility Rehabilitation (DOCR): (See Testimony #1) (3:20-10:50)

Rep. Mary Johnson: 1 b to enforce the law, conduct investigations and make arrests for violations etc. Is that to enforce the law within any premises under the control of the Department of Corrections?

Steven Engen: It is to make arrests and do complete investigations on DOCR property.

Rep. D. Larson: All the patrol officers are sworn police officers or law enforcement officers and this is just so you don't have to call in another agency to do the work on those properties. Is that correct?

Steven Engen: Yes that is correct. It is an efficient use of state resources. We have licensed peace officers that meet same standards as any other agency in the state of ND. We have specialized ability to deal with criminal offenders because we do a lot of training with communicating, interviewing and interrogation of criminal defenders and I think we have expertise in this field and I think this would be very efficient.

Rep. Lois Delmore: How often do you see the need for this to be utilized?

Steven Engen: This is an ongoing issue. In the last two years we have had at least 80 responses to our facilities from the highway patrol. This would resolve many of them. We believe we could reduce this by half or more. We have 1700 criminal offenders and they sometimes continue to commit crimes within their facility and we have the training etc. to resolve this.

Rep. K. Wallman: Does this change the accountability that goes away with this if you don't have to call the other agency? If something would go wrong would it be on your agency if something went wrong if you don't call in the highway patrol?

Steven Engen: Yes I assume it would.

Chairman K.Koppelman: How do you see this playing out in terms of making an arrest would you in most cases still call the highway patrol to come and assist after you detain someone?

Steven Engen: Our licensed peace officers would handle it until the time we needed an outside agency to assist. We would complete the arrest; all the reports, all the evidence and we would be meeting with the prosecution and bring the case forward just like any other agency.

Chairman K.Koppelman: So in many cases you may not call an outside agency; it would depend on the circumstances?

Steven Engen: Any time we have a staff involvement we would absolutely request assistance from another agency like any other agency would. If there is suspected criminal activity our trained staff can complete those investigations and bring them forward for prosecution in a timely fashion. We think this would bring about a much greater efficiency.

Rep. D. Larson: This is simply a jurisdictional issue. With the highway patrol being the one who responds to all state property a Bismarck police officer could be driving right past the capitol and if there is a crash that happens one block into the property it has to be highway patrol that responds; not the Bismarck police officer because it is not their jurisdiction. Since DOCR staff is already there it only is logical for them sworn officers to be able to handle the situation on that property rather than wait to call somebody else in off the street off their other duties to come in and handle something that they are already able to do.

Chairman K.Koppelman: Would it make a difference if the general public might be the one charged with the crime versus someone in your custody in terms of who would proceed?

Steven Engen: I we had a visitor bringing contraband into our facility we would certainly make that arrest with probably cause by a licensed peace officer and pursue the case. We would also notify the highway patrol just to make sure they are aware of what is occurring.

Rep. K. Wallman: If that a policy issue or statue to make them aware of what was going on.

Steven Engen: Now they have authority over all state property and that wouldn't change. This would be a compliment to it. It is not in statue and is required right now.

Rep. L. Klemin: Once you make an arrest then what happens?

Steven Engen: If we make an arrest for a crime against another inmate we will pursue prosecution just like any other law enforcement agency. Nothing would change.

Rep. L. Klemin: Would the parole or probation officer do the arrest and transport that person to the local jail or would you call on the highway patrol to do that?

Steven Engen: If this was passed I believe we would do this on our own.

Chairman K.Koppelman: Would that then take resources away from the prison if your folks are transporting people to the county jail or whatever it would be versus being on the premises at the state pen to do their duties there?

Steven Engen: We haven't worked out all the details yet. We have an investigative unit within the DOC and are made up of peace officers. This would not take away from the staffing levels at our institutions at any time.

Rep. G. Paur: The added language to this bill is to enforce the law; you don't enforce it now?

Steven Engen: We do. We just don't have the authority to do those three items on DOCR property.

Rep. G. Paur: You don't conduct investigations?

Steven Engen: We do complete investigations on a daily basis. Many of them are not criminal; however many are requiring the use now of the highway patrol. This would allow us to complete those investigations on our own and bring them forward for prosecution.

Chairman K.Koppelman: You then do an investigation on DOCR property and then you hand that information off to the highway patrol and they pursue it under current circumstances?

Steven Engen: Currently we would work and do most of the interviews, investigation and evidence collection and hand it off to the highway patrol. They may have to start all over again. This is an efficiency thing more than anything.

Mike Gerhart, Superintendent of the ND Highway Patrol: (See testimony #2) (24:26-25:40)

Rep. K. Wallman: How often the highway patrol's come to a different conclusion than the DOC with prosecutions?

Mike Gerhart: I am not aware of any time we have had differing opinions of an investigation.

Chairman K.Koppelman: In your testimony you said that you would continue the investigations, but I am hearing from Mr. Engen that most of them would be handled internally and they would take them from A to Z themselves. How do you see the interplay there if this were passed?

Mike Gerhart: We have a great working relationship with DOCR. This would be a partnership that enhances their authority. A lot of the work is redundant and this would save us time and duplication.

Chairman K.Koppelman: If this bill were passed it would give dual jurisdiction on grounds like the penitentiary to both of you. How do you see that playing out?

Mike Gerhart: It is true dual jurisdiction with those four locations that DOCR currently has authority we would share that. We would gladly help when they wanted our resources when it was dealing with an employee we would obviously deal with the investigation.

Bruce Burkett, ND Peace Officers Association (30:00- 32:17) discussed his history in the law enforcement of North Dakota.

Rep. P. Anderson: What is the turnover rate for your peace officers?

Bruce Burkett: Where I worked for 41 years with Game & Fish we stay there forever. We are very small in number compared to other agencies. The demands have increased recently and the staffing has increased greatly.

Opposition: None

Hearing closed.

Motion Made Do Pass by Rep. Lois Delmore: Seconded by Rep. D. Larson:

Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. G. Paur

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1118**

House **JUDICIARY** Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep. Lois Delmore: Seconded By Rep. D. Larson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment: Rep. G. Paur

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

REPORT OF STANDING COMMITTEE

HB 1118: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1118 was placed on the Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1118

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1118
3/11/2015
24648

- Subcommittee
 Conference Committee

Committee Clerk Signature

D. Penrose

Minutes:

1,2,3

Ch. Hogue: We will open the hearing on HB 1118.

Steve Engen, Director of Staff Development and Facility Inspections for ND
DOCR: Support (see attached #1).

Sen. Grabinger: You mentioned the pre-act of 2003 and that you are in compliance. Can you tell me how many cases we are seeing that the Highway Patrol has had to respond to?

Steve Engen: I can't give you exact numbers; we have had several instances where an inmate alleges that another inmate has abused them in any manner, we must follow up and if we see that instance has probably occurred, if there is any possibility of any criminal activity, which any abuse would be, we would contact the Highway Patrol. The Highway Patrol has responded approximately 80 times in the last year to our facilities around the state; not just the Prison Rape Elimination Act of 2003 (PREA) but with assaults and other crimes. The PREA Act will bring more situations requiring HP's response if not for this bill.

Ch. Hogue: I presume by statute we designate that the Highway Patrol perform investigations on state-owned facilities, is that true.

Steve Engen: Yes, under the 39 Code. This would not replace that. It would simply say that on property owned by or leased to DOCR, it would be concurrent authority. It certainly is not meant to replace or reduce the authority of the Highway Patrol in any manner. We believe it simply becomes an efficient use of licensed peace officers.

Ch. Hogue: Thank you. Further testimony in support.

Mike Gerhart, Superintendent of ND Highway Patrol: Support (see attached #2).

Sen. Casper: The DOCR staff, are they trained, are they are making arrests. They are trained the same as an officer with the Highway Patrol in regard to Miranda rights, they aren't doing that now, is that correct. This is definitely a change; they'd be taking action that they aren't currently doing.

Mike Gerhart: All DOCR sworn peace officers go through the same basic training that all other officers do. What separates troopers perhaps from other law enforcement is that we specialize in traffic investigation training which really doesn't pertain to the type of instances that occur at those facilities. We all have the same basic training; as well as offer that they probably receive specialized training dealing with some of the cases over and above what our offices do.

Sen. Casper: I see that we are definitely making a change here. We're giving the officers new enforcement the ability to detain or arrest, correct.

Mike Gerhart: They are already attained on property, they are probably already in custody; we are giving them the authority to use their police powers on their property.

Ch. Hogue: Can you confirm the earlier testimony about how many times you were called to these types of instances; around 80 times.

Mike Gerhart: That's approx. correct. We had almost 90 cases.

Ch. Hogue: How many of them would fall under the category where they would be against the inmate or someone is making the accusation against an officer of the DOCR so that they wouldn't be able to make those investigations. Does that reduce your workload quite a bit?

Mike Gerhart: I don't have the exact number; a majority of calls that we take out there, are inmate on inmate. There are some times where we get called dealing with staff.

Ch. Hogue: It's a pretty small number.

Mike Gerhart: Yes.

Sen. Grabinger: This isn't for all correctional officers. This is just probation and parole. When we look at the prison system, we have correctional officers working there; they aren't all trained in police work, correct.

Mike Gerhart: That's correct. It would be the sworn parole and probation officers.

Ch. Hogue: Thank you. Further testimony in support.

Bruce Burkett, spokesman for the ND Peace Officers Association: Support (see attached #3).

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are the committee's wishes in regard to HB 1118?

Sen. Grabinger: I move a Do Pass on HB 1118.

Sen. Luick: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Grabinger

Date: 3/11/2015

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1118

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Grabinger

REPORT OF STANDING COMMITTEE

HB 1118: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1118 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

HB 1118

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1-19-15
pg 1

House Bill 1118
House Judiciary Committee
Representative Kim Koppelman, Chairman
January 19, 2015

Chairman Koppelman, and members of the House Judiciary Committee, I am Steven Engen, the Director of Staff Development and Facility Inspections for the North Dakota Department of Corrections and Rehabilitation ("DOCR"). I am here today to provide testimony in support of House Bill 1118.

The North Dakota Department of Corrections and Rehabilitation ("DOCR") currently employs about ninety Probation and Parole Officers. The DOCR's Probation and Parole Officers are sworn peace officers who must meet the same training and licensing requirements as any other peace officer in the state of North Dakota. These officers also have unique training that focuses on convicted criminal offenders.

N.D.C.C. § 12-59-20 presently authorizes Probation and Parole Officers to enforce probation and parole laws and to assist, as well as receive assistance from, other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling criminal activity. Section 12-59-20 also authorizes Probation and Parole Officers to supervise sexually dangerous individuals who are released to community placement under N.D.C.C. § 25-03.3-24.

Because of their duty and authority to assist other law enforcement agencies, DOCR Probation and Parole Officers participate in multi-jurisdictional agency programs such as the drug task forces and assist other law enforcement agencies in criminal investigations of offenders who may be in DOCR custody or under the supervision and management of the DOCR or have been called to assist another law enforcement agency because of their expertise with convicted offenders.

The ("DOCR") presently has four secure facilities, the North Dakota State Penitentiary, the Missouri River Correctional Center, the James River Correctional Center, and the North Dakota Youth Correctional Center. It also owns and manages real property located east of Bismarck, where it operates shooting range frequently used for peace officer qualification shoots, and a farm property known as the Sunny Farm just to the west of the North Dakota Youth Correctional Center.

Under current law, although the DOCR Probation and Parole Officers are sworn peace officers, they do not have authority as peace officers on DOCR property unless they are requested by the North Dakota Highway Patrol ("NDHP") to

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provide assistance. The NDHP has primary law enforcement authority on all state property, including DOCR property, under N.D.C.C. § 39-03-09(11) which grants the NDHP the authority to exercise general police powers over all violations of law committed on state owned or leased property.

House Bill 1118 authorizes DOCR Probation and Parole Officers to enforce the law, conduct investigations, and make arrests of violations of law on or within any premises under the control of the DOCR. This would not displace, but be concurrent, with the authority of the NDHP.

The DOCR regularly conducts institutional investigations of offenders in its custody. In these investigations, much of the work will be completed by DOCR staff, including evidence collection, interviews, and reports. If there is suspicion of criminal activity, or if the investigation shows there is criminal activity, the DOCR has to notify the NDHP, which may in turn request assistance from the Attorney General's Bureau of Criminal Investigation ("BCI"). This requires the NDHP, and sometimes BCI, to use resources that are necessary elsewhere in the state when DOCR peace officers could conduct the investigation, make the necessary arrests, and work with the state's attorney's office in pursuing a prosecution.

Visitation is one of the DOCR's vulnerable areas in the prison. If a visitor commits a crime on the premises, most likely bringing in illegal drugs, the proposed amendment to Section 12-59-20 would authorize a DOCR Probation and Parole Officer to arrest the visitor. The DOCR is currently very limited within its legal authority to detain or hinder a visitor's exit from a DOCR facility even with probable cause to believe the visitor has committed a crime on DOCR property. In these situations, the DOCR will have to wait for a response from the NDHP rather than being able to utilize a DOCR Probation and Parole Officer

The United States Department of Justice's revised standards for implementation of the Prison Rape Elimination Act of 2003 ("PREA") also require a more frequent and available law enforcement presence on DOCR property. The revised PREA standards became effective in August 2013. While the DOCR is compliant with the revised PREA standards, because of the revised standards, the DOCR anticipates there will be an increase in the number of investigations requiring a licensed peace officer. These investigations will continue to be the responsibility of the NDHP without HB 1118.

The DOCR will continue to request assistance from the NDHP and BCI in cases in which there are possible criminal charges against an employee of the DOCR or if there is a major situation for which the DOCR would need the assistance of other law enforcement agencies. The DOCR will continue its communications with these law enforcement agencies and provide transparency with its investigations. At times, information received within a DOCR facility will also affect law enforcement investigations in the community, so open communication will be crucial to all agencies involved.

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pg. 3

In closing, this amendment will allow a more efficient response, which will result in a safer institutional environment for staff and inmates, and also for the citizens of the state.

The DOCR asks for your support of House Bill 1118 to authorize licensed DOCR Probation and Parole officers to enforce the laws, conduct investigations and make arrests for violations of the law on or within any premises under the control of the Department of Corrections and Rehabilitation.

I would be glad to answer any questions.

House Bill 1118
House Judiciary Committee
Representative Kim Koppelman, Chairman
January 19, 2015

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pg 1

Mr. Chairman and members of the House Judiciary Committee, my name is Mike Gerhart, superintendent of the North Dakota Highway Patrol. I am here to provide testimony in support of House Bill 1118.

The NDHP is authorized to complete criminal investigations and make arrests at the four facilities under control of the North Dakota Department of Corrections. By allowing DOCR licensed peace officers these investigative and arrest powers, it would allow our troopers in Bismarck and Jamestown to focus on their regular patrol duties. Typically, our troopers respond to these calls and spend a large amount of time conducting interviews and reviewing reports. Often times, these interviews and reports have already been conducted by DOCR staff. The proposed amendment would eliminate this redundant work and allow DOCR licensed peace officers to complete the investigation. Our NDHP troopers responded to DOCR facilities on nearly 90 separate incidents throughout 2013-2014.

For internal investigations, the NDHP would continue to respond and complete the investigation as we currently do. We would also respond to calls involving major situations that are out of the ordinary or any time our assistance is requested.

This concludes my testimony. I would be happy to answer any questions.

#1-1

House Bill 1118
Senate Judiciary Committee
Senator David Hogue, Chairman
Wednesday March 11, 2015 at 10:30 a.m.

Chairman Hogue, and members of the Senate Judiciary Committee, I am Steven Engen, the Director of Staff Development and Facility Inspections for the North Dakota Department of Corrections and Rehabilitation ("DOCR"). I am here today to provide testimony in support of House Bill 1118.

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House Bill 1118 authorizes DOCR Probation and Parole Officers to enforce the law, conduct investigations, and make arrests of violations of law on or within any premises under the control of the DOCR. This would not displace, but be concurrent, with the authority of the NDHP.

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Visitation is one of the DOCR's vulnerable areas in the prison. If a visitor commits a crime on the premises, most likely bringing in illegal drugs, the proposed amendment to Section 12-59-20 would authorize a DOCR Probation and Parole Officer to arrest the visitor. The DOCR is currently very limited within its legal authority to detain or hinder a visitor's exit from a DOCR facility even with probable cause to believe the visitor has committed a crime on DOCR property. In these situations, the DOCR will have to wait for a response from the NDHP rather than being able to utilize a DOCR Probation and Parole Officer

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The DOCR will continue to request assistance from the NDHP and BCI in cases in which there are possible criminal charges against an employee of the DOCR or if there is a major situation for which the DOCR would need the assistance of other law enforcement agencies. The DOCR will continue its communications with these law enforcement agencies and provide transparency with its investigations. At times, information received within a DOCR facility will also affect law enforcement investigations in the community, so open communication will be crucial to all agencies involved.

In closing, this amendment will allow a more efficient response, which will result in a safer institutional environment for staff and inmates, and also for the citizens of the state.

The DOCR asks for your support of House Bill 1118 to authorize licensed DOCR Probation and Parole officers to enforce the laws, conduct investigations and make arrests for violations of the law on or within any premises under the control of the Department of Corrections and Rehabilitation.

I would be glad to answer any questions.

House Bill 1118
Senate Judiciary Committee
Senator David Hogue, Chairman
March 11, 2015

Mr. Chairman and members of the Senate Judiciary Committee, my name is Mike Gerhart, superintendent of the North Dakota Highway Patrol. I am here to provide testimony in support of House Bill 1118.

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For internal investigations, the NDHP would continue to respond and complete the investigation as we currently do. We would also respond to calls involving major situations that are out of the ordinary or any time our assistance is requested.

This concludes my testimony. I would be happy to answer any questions.

#3-1
3/11/15

Testimony on HB 1118

My name is Bruce Burkett, a spokesperson for the North Dakota Peace Officers Association. NDPOA has membership that encompasses all the disciplines involved in law enforcement in North Dakota.

I have a unique perspective in how law enforcement has changed in the last 40-50 years. In 1969 the Legislature authorized the first central Law Enforcement Training Center on the campus of Bismarck State College. In 1971 I graduated from the first class held at the Training Center.

There wasn't licensing of officers in general at that time. During the late 1970's and 1980's the Attorney General's Criminal Justice and Training Division implemented training requirements that all law enforcement officers needed to take to be certified and licensed as Peace Officers. Basic and advance training monitored and recorded thru the POST Board insures that licensed officers have received the training necessary to perform their law enforcement function.

When I was hired as a Game Warden in 1972, there were 23 wardens to cover the whole state. It's my recollection that there were only 18 Parole Officers for the state, several being former Game Wardens.

The vast increase of law enforcement duties in North Dakota has made the use of cooperation between all LE disciplines necessary. Probation and Parole Officers are certainly the most familiar with the premises under the control of the Department of Corrections. It is consistent with the advancement in training, that the DOC receives concurrent authorization to conduct law enforcement activities on or within their premise with the State Highway Patrol.

Section 2 of this bill states DOC officers shall provide assistance to and receive assistance from other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling of criminal activity. This is consistent with 44-08-20 NDCC that exists today.

(Prepared by Bruce Burkett)