

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1362

2001 HOUSE JUDICIARY

HB 1367

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1367

House Judiciary Committee

Conference Committee

Hearing Date 01-30-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		983 to 6245
		x	01 to 1760
Committee Clerk Signature <i>Juan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1367. Relating to sentencing for drug offenses.

Rep George Keiser: District 47, Bismarek. This bill deals with those who manufacture drugs and the dealers. Our drug program has not worked. Drugs are stronger than ever and drugs have become more powerful. Drug dealers are not being prosecuted. Teenagers even know the law. Drug dealers know the law better than we do, they read the law and tell the teens that they will be prosecuted as minors not as adults until they reach the age of 18. They even know what amount of drugs they can have on their person and what the charge will be. The impact of drugs. 65% of the prisoners nationally are in prison today because of drugs. You talk about the fiscal note. Where is the fiscal note on families and our insurance companies. This bill tries to attack the problem, on page two line 5, we change the age - dealing for a minor from 18 to 16 years of age. Line 8 and 9 changes the amount of drugs or grams. Page 3, section 2 increases the penalty if they deal to children. I have some amendments to add to the bill.

Rep Onstad: Did you give any thought when you lowered that from 18 to 16, that again they might read the law and go to 14.

Rep Keiser: Absolutely, that is why there are two levels of mandatory.

Rep Fairfield: Asks questions to clarify the age.

Rep Keiser: says that she is correct.

Rep Fairfield: The 16 year old isn't the one you want, how do you get to the big fish.

Rep Keiser: That is a problem, but we are interested in getting anyone and all.

Chairman DeKrey: Thank you for appearing.

Rep Mahoney: Spoke in support of HB 1367. He gave examples of working in law enforcement of the rural area.

Rep Klemm: In HB 164, we said we were too tough on crime, this bill, we are saying we want to get tougher. Can we reconcile these two bills?

Rep Mahoney: We can do, but we are focused on the dealers using the youth.

Rep Klemm: I have a concern on page three, section two, the penalty part. We don't have mandatory sentencing under section 23, how are we going to have people in jail for a long period of time, unless it is the second offense.

Rep Mahoney: The rules of reconciling bill, there is a process that legislative council uses, if they don't we will have to take another look at it.

Rep Klemm: Did we create a loophole.

Rep Mahoney: Yes.

Rep Maragos: All we did in the first bill was remove the word mandatory, I'm not so sure I see a conflict.

Rep Mahoney: Thank, you, I'd have to look at the bills again.

Rep Klemm: I'm not sure there is a problem, just want to make sure there is none.

Judy Roberts: teacher from Bismarek High, would like to appear neutral. She gave examples within her classes, with out giving names, and she told us that at least one fourth of her junior and seniors have been through treatment.

Rep Maragos: Of the twenty five per cent, how many have harmed themselves beyond reasonable life?

Judy Roberts: A handful.

Rep Maragos: Are we lucky?

Judy Roberts: Meth is so scary, it is so available. At present juvenile records don't go on, maybe the should follow the student.

Rep Maragos: If they know that, then is it peer pressure that makes them do it.

Judy Robert: Wen you see what meth does, no. they don't think. I really can't answer why they do it.

Chairman DeKrey: Thank you for appearing, is there anyone else who wishes to testify.

Jeff White: Special Agent with the Bureau of Criminal Investigation. He had samples of different drugs and explained how it can be taken.

Rep Delmore: Is this the amount that is in the bill?

Jeff White: That is 50 grams.

Chairman DeKrey: How many hits are there in 50 grams?

Jeff White: About 200 doses.

TAPE II SIDE B

Jeff White: Continues to explain about the samples of sealed drugs that he brought to the committee He explains to the committee the composition of the drugs and the street value of each sample

Chairman DeKrey: Any more questions, if not thank you for appearing . Anyone in opposition of HB 1367.

Ladd Erickson: States Attorney of Bismarek, he was not opposed to the bill, more neutral. Would recommend a DO NOT PASS on both bills (not on merit) and have a study first before we have legislation.

Rep. Delmore: My comment, saying that we should put off legislation until a study is done. we are mandated to legislate every other year.

Rep. Mahoney: Are you speaking on behalf of the Attorney General?

Ladd Erickson: No. I am testifying on behalf of our office.

Rep. Maragos: Are you saying that heretofore, we have not had the information from the Attorney General's office?

Ladd Erickson: Under the bills that are purposed, the Attorney General would report to the legislature 6 months prior to each legislation session.

Chairman DeKrey: No other questions, thank you for appearing.

Elaine Little: Director of Department of Corrections and Rehabilitation (see attached testimony).

Rep. Klemm: The money seized from drug activities, is any of that being used to take care of the expense of corrections?

Elaine Little: Generally, no.

Chairman DeKrey: Under our present law could we seize a teen-agers car.

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Elaine Little: I'm not the one to answer that.

Rep Onstad: What are other states changing to?

Elaine Little: Most states are doing is a combination of treatment and some jail time.

Chairman DeKrey: If there are no question, thank you for appearing. Is there anyone else wishing to testify. If not we will close the hearing on HB 1367.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1367a

House Judiciary Committee

Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	760 to 2485
Committee Clerk Signature <i>Joan Davis</i>			

Minutes:Chairman DeKrey: we will take up HB 1367.

DISCUSSION BY THE COMMITTEE

Rep Mahoney moves the Keiser amendments, Rep Delmore seconded the motion. A voice vote was taken on the amendment. The motion carries.

DISCUSSION

COMMITTEE ACTION

Chairman DeKrey: we now have HB 1367a before us, what are the wishes of the committee. Rep Wrangham moves a DO NOT PASS, then withdraws them.

Rep Mahoney moves further amendments, to remove certain language from the bill. He moved to reconsider the bill. Rep Onstad seconded. A voice vote was taken. The amendments fail.

Rep Mahoney moved to amend sub section two, Rep Onstad seconded. A voice vote was taken on the amendments, motion carries.

DISCUSSION

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House Judiciary Committee

Bill/Resolution Number HB 1367

Hearing Date 02-12-01

Chairman DeKrey: what are the wishes of the committee? Rep Klemin moved a DO PASS as amend, seconded by Rep Mahoney. The clerk will call the roll on a DO PASS as amend motion on HB 1367. The motion passes with 11 YES, 2 NO and 2 ABSENT. Carrier Rep Mahoney. Motion by Rep Disrud and seconded by Rep Brekke to refer HB 1367 to Appropriations. Motion carries on a voice vote.

FISCAL NOTE
 Requested by Legislative Council
 03/02/2001

Bill/Resolution No.:

Amendment to: Engrossed
 HB 1367

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0				
Appropriations	\$0	\$0				

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0		\$0	\$0		\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed HB 1367, as amended, relates to the penalties for aggravating factors in drug offenses. It allows the prosecutor to increase the classification of an offense when the quantity of various controlled substances reach a certain level, depending on the controlled substance

Information is not available to estimate the impact of this amendment. Department of Corrections staff contacted states attorneys around the state to ask their opinion regarding the impact of Engrossed HB1367, as amended. Generally states attorneys stated that they anticipated no significant increase in the amount of time an offender would be sentenced to serve in prison or on probation. Some states attorneys indicated that they would be willing to charge offenders under the aggravating circumstances. Others indicated that the courts were likely to sentence offenders based on the circumstances of the offense rather than the criminal classification. Thus, there is no solid information available upon which to prepare a fiscal note on the "aggravating factors" amendment.

The amendment also would apply the mandatory minimum drug sentencing statute to persons beginning at age 16 rather than age 18. Present statute already provides that 16 year olds involved in the sale or manufacture of drugs can be waived into adult court. If waived into adult court, there have been no offenders sentenced to the prison at age 16 pursuant to this statute. Unless prosecutors and judges would begin to handle cases differently we do not believe that applying the mandatory minimum drug sentencing to offenders beginning at age 16 would have a significant fiscal impact.

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

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

No impact.

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

See narrative above.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

See narrative above.

Name:	Elaine Little	Agency:	Department of Corrections & Rehabilitation
Phone Number:	328-6390	Date Prepared:	03/09/2001

FISCAL NOTE

Requested by Legislative Council
02/14/2001

Bill/Resolution No.:

Amendment to: HB 1367

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$337,500		\$787,500	
Appropriations			\$337,500		\$787,500	

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed HB No. 1367 would apply the 85% truth-in-sentencing statute to most drug offenses now covered under the mandatory-minimum sentences for drug offenders. It also increases penalties for aggravating factors in drug offenses. The fiscal impact of Section 1 of this bill would be great. For purposes of analysis, of the drug offender inmate population released in year 2000, approximately 39% of inmates were released prior to their good time release date (which co-relates with the date that 85% truth-in-sentencing inmates are eligible for release). These offenders were released on the average 225 days prior to their good time release date. Based upon this data, if the 85% truth-in-sentencing was applied to the drug offenders sentenced in year 2000 under the mandatory minimum statute, the additional cost to house 39% of these inmates (18 inmates) each an average of 225 additional days during a biennium would be \$112,500 each year (18 inmates x 125 days per year x \$50 per day). Assuming that a similar number of drug offenders would be sentenced each year under the mandatory-minimum statute, the cost for the 2001-2003 biennium would be approximately \$337,500 (\$112,500 for the first year and \$225,000 the second year). The cost for the 2003-2005 biennium would be \$787,500 (\$337,500 the first year and \$450,000 the second year). Since the average drug sentence for the mandatory-minimum sentenced drug offenders is 64 months, if the number of incoming drug offenders remains constant, the cost of this measure would level out at \$562,500 each year beginning the fifth year after adoption of this section of Engrossed HB 1367.

The necessary data is not available for the Department of Corrections to calculate the fiscal impact under Section 2 of the bill. We must assume however that the cost would be significant since it appears that the length of mandatory-minimum sentence would be increased for most drug offenders sentenced under this

proposal.

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

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

None.

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

Please refer to the narrative above.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Please refer to the narrative above.

Name:	Elaine Little	Agency:	Dept. of Corrections & Rehabilitation
Phone Number:	328-6390	Date Prepared:	02/15/2001

