

JOINT TECHNICAL CORRECTIONS

HB 1480

THIS WAS THE JOINT TECHNICAL CORRECTIONS COMMITTEE FOR
THE 2001 SPECIAL SESSION

BILL/RESOLUTION NO. HB 1480

Conference Committee

Hearing Date November 27, 2001

Tape Number	Side A	Side B	Meter #
TAPE I	X		01 to 4412
Committee Clerk Signature <i>J. Ann E. Duro</i>			

Minutes:

CHAIRMAN BERG: Called the committee to order on HB 1480. Roll call taken with the following members present: Rep Berg, Rep DeKrey, Rep Delzer, Rep Ekstrom, Rep R. Kelsch, Rep Mahoney, Rep Mueller, Rep Price, Sen. Mutch, Sen. Grindberg, Sen. Krebsbach, Sen. Traynor, Sen. Trenbeath, Sen. Heltkamp, Sen. D. Mathern, Sen. C. Nelson. We will review the process. we are set up real similar to the Redistricting Joint Committee, so since this is a House bill, we will take testimony on the bill. This committee will take a vote on the bill. The bill will then go to the House Chamber for a vote and then will be passed over to the Senate. If the Senate wishes to reconvene this committee, we would reconvene and have another hearing or the Senate may waive that and just take it up on the floor of the Senate. We will begin with testimony in favor of HB 1480.

Wayne Stenchjem: Attorney General for the state of North Dakota and I appear in support of HB 1480 which has been introduced at the request of my office. I want to explain about what the

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bill does and where the history of this came from. In North Dakota since 1991, we have taken the forefront on registration of certain sex offenders, in fact we were registering serious sex offenders before we were required by Federal Law. I think that represents a commitment to the state of North Dakota to protect our children and our families. What has happen in the mean time as we adopted these statutes, is that the Federal government has also made certain requirements under the Pam Lychner Act, the Jacob Wetterling Act, the Campus Violence Protection Act and some others, has made us adopt certain changes. Some of which are very good. But what happened in 1999, we had a bill that was introduced that was in response to Federal enactment, that requires that the conviction of two offenses to result in a life time requirement to register as a sex offender. That was a good thing, we thought, except we worried in some respects that the bill might have gone too far as introduced. We elected to require only two felonies. After you folks left when you adjourned in April, we were notified by the Justice Department that the statute that we passed in 1999 is not in compliance with the Pam Lychner Act. What North Dakota needed to do, in addition the requirement two felony convictions to require a life time registration we also need to include four separate misdemeanor offenses as registration requirements. The conviction of two of which would also result in a require for life time registration. You have on your sheet a listing (see attached). A graph that explains. The blue folder also explains (see attached). What this bill would do is comply with the Federal requirements. Now what will happen if we don't do that, the problem is, if we do not do that, we will lose 10% of the Edward Byrne grant money that is awarded to the state of North Dakota each year. We get approximately 2.2 million dollars per year, and failure to enact this statute would result in North Dakota a lose of \$220,000. That money is used to fight drug trafficking and domestic violence in the state of North Dakota. I have

the list of the money that was awarded (see attached) this year. There are funds from that grant that are awarded to each and every community. I do not come in here lightly seeking introduction of a bill in the legislature, it is only after we learned that the Federal government was not going to grant us and further delays and October was the end of the line for us. To do this we had a phone meeting with the Department of Justice last week, asking us to please let us wait on this measure until next session when you meet, and they said no. You either pass this bill or you lose that funding. I would like to introduce from my office Jonathon Byers, who is the individual who is in charge of prosecuting through an assistance prosecutors, sex abuse crimes in North Dakota and also is the person who oversees this area within our office. So if there are technical questions, he will be here to answer those.

Chairman Berg: Any questions? What is the essence of the Pam Lychner Act? As there a case the evolved into that act?

Wayne Stenehjem: (Attorney General) You will see that with the Jacob Whetterling Act, the Pam Lychner, those who were individuals who were victims of sex offenses or loses and people on their behalf went in and urged the Congress to pass laws in response the bills or laws were named after those victims.

Senator Mutch: Could you restate the name of the source of this fund where the 2 and one quarter or 2 and one half million, is that a foundation?

Wayne Stenehjem: The Edward Byrne grant program, if a Federal program that appropriates money by the Congress to the states for use in dealing with drug trafficking and domestic violence cases. In North Dakota we have a committee that meets and they review applications

from across the state, that money goes to local and state law enforcement agencies to help fight drug trafficking and domestic violence.

Senator Grindberg: Are there any other states that face the same level that we are here?

Wayne Stenehjem: (Attorney General) I don't know, Jon do you know? There are 12 other states.

Senator Grindberg: So the Department of Justice has put down a mandate, it is the Federal government say you do it or lose funding. If there are 12 other states, there has got to be a little latitude here. Are they all in the same, they aren't all in session. Do they face the same dead line.

Wayne Stenehjem: They didn't know that you were going to be in session, nor did they care, when they told us a few months ago that the deadline was October. No one knew that you would be here and we would have this avenue available to us. If you hadn't been here, I guess we would just have lost that funding.

Senator Grindberg: Is there a congressional delegation, concern over how Justice is being summarized?

Wayne Stenehjem: I have to tell you the Justice Department is only being stubborn because that is what the Congress passed in their legislation. They are not making a mistake on this. They don't have any latitude, they are enforcing and interrupting the statute as passed by the Congress and they are doing it accurately. So if there is a problem, it is not that the Justice Department is being unwieldy they are enforcing the law that the Congress passed. The Congress could make a change, but I don't see that happening before next year.

Senator C. Nelson: When the bill came up in 1999 we had a long discussion on corruption and facilitation of a minors and sexual assault.

Wayne Stenehjem: We did, but the problem, but there are some changes that the Congress is suggesting that I think are a great idea. I think that anyone that is convicted twice (who is an adult) who is trying to lure a minor through the Internet for sexual purposes, deserves to be a life time registrant. The problem that we have is this, under our law, technically it is possible if you have an 18 year old guy and his 17 year old girlfriend who engage in sexual intercourse, it is a criminal offense. If they are convicted twice, those individuals would have to register for life as sex offenders. We had a problem with that. Certainly many felt it should be some time of criminal offense, we weren't certain that it was a good idea to require a life time registration. So what we did, we provided for the first time offense, a judge would have the discretion to not require registration. That seems to be all right. The practical reality and I think that Rep Mahoney will tell us this, is that States Attorneys don't prosecute these crimes. They know they will have trouble getting a conviction or they know that the results might be a registration requirement so they either don't charge them or they plea bargain or reduce the charges down to a disorderly conduct or some other offense that is not register able. Senator Nelson has correctly outlined what concern we had, but I think that the problem we have is with North Dakota law that needs to be tweaked a little bit so we don't have the kind of result that we are talking about. My office is more than willing to meet with anyone that wants to sit down and talk about ways that we can fix that one problem in the next session. In the mean time I don't think that it is too likely that we will see any body convicted not once but twice of an offense that States Attorneys will enforce anyway.

Senator Heitkamp: There was no way for your office to see this storm coming before so that these funds were put at risk. The problem being is that they didn't care whether we were going to

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have a special session or not. It is somewhat fortunate that we are, so we don't lose these funds.

But did we drop the ball here.

Wayne Stenehjem: They caught on to it. In 1999 we passed that law and we knew that there was a possibility that we were going to have some trouble. It wasn't until this April 2001 that the Justice Department looked at our statute and decided that we were out of compliance. You were gone by then. They granted us a waiver until October, but they told us that was it.

Senator Heltkamp: This April?

Wayne Stenehjem: It was after you left.

Rep Mueller: Two issues, you talked about the 2.2 being involved. How much of the 2.2 goes into the effort of drug trafficking and the seconded question is I am not so sure that I am getting the tie together of drug trafficking and sexual predator offenders. Could you explain.

Wayne Stenehjem: I don't know how much of a tie in there is between the two. I can just tell you that the Federal government says enact this statute this way or lose the funding. I don't know why they tie it in. (see attached)

Senator Traynor: I noticed in the bill that you have modified the definition of domicile is that about the federal?

Jonathon Byers: (member of the Attorney General's staff) We are attempting in this bill to comply with a couple of different Federal mandates. Number one with the Pam Lychner Act also by next fall there is a Fiscal Year Appropriations Act that we have to comply with and the Campus Sex Crime Safety Act. That definition comes out of one of those two Acts. So we decided to fix both of those problems with this bill.

Senator Traynor: If the Legislature does not pass this, what happens to the money?

Wayne Stenehjem: I know the money doesn't come to North Dakota and I imagine that it doesn't go to anybody. I felt I should come and talk to you after reading the article that was in the Fargo Forum about the police man who out of their own pockets, are paying for vests, guns and their own ammunition. I think that is not a good situation, we need in North Dakota we need to keep our families and our streets safe. We need to utilize all of our resources that we can find and we cannot afford to lose this money.

Senator Traynor: Would this bill improve the safety in our neighborhoods?

Wayne Stenehjem: Yes, I think it would. I think the registration requirement is a very good thing. We have set up a web site for some of these serious sex offenders, so that people would know who is in their neighborhoods. In addition to that, the lose of this money is something that will hamper our ability to protect our families and keep our streets safe.

Chairman Berg: You are not promoting your web site producer?.

Wayne Stenehjem: www.sexoffender.com

Senator Mutch: The money, do you have some formula as how you allocate that out?

Wayne Stenehjem: We have a committee composed of a number of individuals that is sub divided into three groups and they allocate those funds based on applications that are received. It is a hearing process.

Rep Delzer: Your Bryne money, how steady has that been over the past few blennium's?

Wayne Stenehjem: I don't know how long ago the Bryne grant money was set up, it has been very steady and looks to be that way in the foreseeable future.

Rep Delzer: You don't think the September 11th will have any change on the Bryne money coming out of the Federal.

