

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1217

2007 HOUSE JUDICIARY

HB 1217

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1217

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/17/07

Recorder Job Number: 1243, 1244

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1217.

Wayne Stenehjem, AG: (see attached testimony).

Rep. Kingsbury: Do you have more examiners that the reports go to the two experts.

Wayne Stenehjem: The two experts each have to conduct an independent evaluation of the individual.

Rep. Kingsbury: There are other examiners doing this and reporting to the two experts.

Wayne Stenehjem: No.

Rep. Kingsbury: Now you're going to be down to one expert.

Wayne Stenehjem: The respondent has a right, under the statute at state's expense if he can't afford an expert, to get an expert of his own.

Rep. Kingsbury: You're saying that the two experts have to concur.

Wayne Stenehjem: Yes, under the current law both have to do an independent evaluation and they both have to agree before you can proceed.

Rep. Kingsbury: I'm just wondering about the timeline, do they wait a long time.

Wayne Stenehjem: It will shorten the timeline because there are two evaluators at the State Hospital and now they won't each have to do one for every offender. They'll be able to cut their workload in half.

Rep. Meyer: Has there been any record on successes of treatment.

Wayne Stenehjem: Dr. Schweitzer is here, he can perhaps explain the actual treatment program; and what successes they have had. This is a long term program. They are there for a long time. I don't think that anybody has been released since the program was started in 1997. It's very long term because these are people that have serious mental health issues, are likely to reoffend, and are very difficult to treat.

Rep. Charging: You were talking about the older majority, what's happening in ND with underage activities.

Wayne Stenehjem: The underage activities are growing, or at least public awareness is growing, which is probably a good thing. In the treatment program in Jamestown, there is a wide range of people. You can go to the website and you can see pictures and demographics with regard to people who are actually in the state hospital in the treatment program. It is a growing problem. I think the public is becoming more aware, and less tolerant.

Chairman DeKrey: Thank you. Further testimony in support of HB 1217.

Ryan Bernstein, Legal Counsel for Governor's Office: Again, this legislation was proposed by the Governor, with the AG and legislators to help further strengthen the civil commitment process for sexually dangerous individuals, by making it clear that the judges have the ultimate authority to decide whether there is sufficient evidence to commit a person as a sexually dangerous individual for treatment. As the AG mentioned, this legislation really came from a case in Cass County, where a judge felt like he had to deny treatment to an individual because he didn't have two experts concluding that this individual was a sexually

predatory individual. This legislation removes that requirement of two psychologists and makes it clear that the judge is responsible to decide whether to commit an offender based on all the evidence as presented to him/her. Removing that requirement of two experts, it does not lower the burden of the state to show a congenital or acquired condition that manifests itself as a sexual disorder. The state will still be required to prove, by clear and convincing evidence that this is a sexually dangerous individual. This removes any perceived requirement of applying a rigid formula and gives the judge the ultimate authority. We hope you support this and vote a Do Pass.

Chairman DeKrey: Thank you. Further testimony in support of HB 1217.

Aaron Birst: I am a former criminal prosecutor from Cass County. I was the one who prosecuted the case in Cass County which brought about some of these issues. I just want to thank the AG for the work he's given, the tools he's given prosecutors, and I also want to thank the Governor's office. Personally, I do support this. The problem with the Cass County case was the judge felt the language of the experts concluded that the person needed to be committed. The judge felt that tied his hands. I think this language, while probably not as specific as I would probably write, I think it at least puts back the ability for the Judge to conclude that no it's not just based on the two doctors conclusions; I have to make the call on this. I was not planning on testifying on behalf of this bill for my organizations, but I feel I need to mention it. In the Cass County case, the two doctors that did the evaluation couldn't conclude one way or the other. The fact that he had been involved in some successful treatment in the state penitentiary, basically had them throw up their hands and say we're not quite sure. In that, lies the rub. In fact, quite frankly, I lost some credibility with some of the judges for even taking that case, but I thought it was important. I'd be more than happy to address any questions.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1217?

Rep. Kingsbury: I move a Do Pass.

Rep. Kretschmar: Seconded.

Rep. Meyer: I was just wondering about the fact that there hasn't been one successful case. No one has been allowed to leave the facility.

Alex Schweitzer, Superintendent of the ND State Hospital: That's correct. The program was initiated in 1997, with two individuals. We're up to 58 at this point in time. Some of the individuals to what we have in terms of treatment system, where they are actually in a less restrictive environment, but still within the program. No one's ever been discharged.

Rep. Meyer: I don't understand, why aren't they placed back in prison, or doesn't that happen.

Alex Schweitzer: This is a civil commitment program. They have already completed their prison sentences. Under this law, they have to be deemed appropriate to be returned to the community.

Chairman DeKrey: One of the reasons for the longer sentences in the state, you can keep them in prison longer with stiffer sentences. Once they've been adjudicated and served their sentence, you cannot keep them as prisoners.

Rep. Meyer: That's when they go into this program.

Chairman DeKrey: Yes, the state's attorney does a civil commitment.

Rep. Meyer: Then with supervised probation on the 20 year mandatory sentence on the previous bill, then would they go into this program.

Chairman DeKrey: One of the things that we've heard is that these individuals actually state-shop. The AG's office has gotten calls asking how they deal with sexual offenders in the state of ND. The reason they are doing that is that they are trying to find a state where they will be the least hassled. At the time we heard that, Arkansas was a state they liked to move to. Vermont is also a state to go to.

Chairman DeKrey: The clerk will call the roll on a DP motion on HB 1217.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Meyer

Date: 1-17-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1217

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Kingsbury Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman 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) 13 No 0

Absent 1

Floor Assignment Rep. Meyer

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

REPORT OF STANDING COMMITTEE

HB 1217: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1217 was placed on the
Eleventh order on the calendar.

2007 SENATE JUDICIARY

HB 1217

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1217

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3360

Committee Clerk Signature *Marie L. Solberg*

Minutes: Relating to the proof required by sexually dangerous individual civil commitment.

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

Testimony in Favor of the Bill:

Sen. Nick Hacker, Dist. #42 spoke in support of the bill.

Attorney General Wayne Stenehjem, Introduced the bill. Att. #1 and spoke of the history of this legislation in; 1995 the first bill was introduced and in 1997 it was in acted on. This is new language for the bill.

Sen. Nething asked (5:59) if a committed person wanted a second opinion, they could request it? Yes There will still be two evaluations done if this bill is passed. In any conflict of opinion the cases are not prosecuted. Out of 75 civil commitments in three cases the opinions differed and the cases are dismissed. Spook of the follow up process and a specific case. They discussed placing an emergency clause on the bill

Ryan Bernstein, Legal Counsel for the Governors office (meter 7:57) spoke in support of the bill – Att. #2

Testimony Against the bill:

David Boeck, State employee and lawyer for the Protection and Advocacy Project. – Att. #3

Testimony Neutral to the bill:

Michael Mullen, Attorney Generals Office (meter 15:11) gave his testimony – Att. #4a and submitted an amendment – Att. #4b and stated the emergency clause would be receptive.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1217

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3998

Committee Clerk Signature *Maria L. Salvo*

Minutes: Relating to the proof required by sexually dangerous individual civil commitment.

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

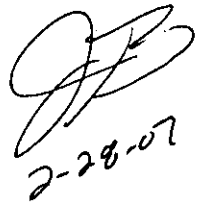
Reviewed the Amendment – Att. # 4b from 2/12 hearing. They discussed that the judge could order an additional “expert’s” advice if he chooses. They were not limited to only this. The committee also reviewed the records part of the bill.

Sen. Nelson made the motion to Do Pass Amendment – Att. #4b from 2/12 and Amendment and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Sen. Olafson made the motion to Do Pass HB 1217 as amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nething**

Senator David Nething, Chairman closed the hearing.



2-28-07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1217

Page 1, line 1, after "reenact" insert "subsection 2 of section 25-03.3-05 and"

Page 1, line 2, replace "proof required for" with "civil commitment of" and replace "individual civil commitment" with "individuals; and to declare an emergency"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this chapter, the disclosure of individually identifiable health information by a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other a mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment. A retained or appointed counsel has the right to obtain individually identifiable health information regarding a respondent in a proceeding under this chapter. In any other case, the right of an inmate or a patient to obtain protected health information must be in accordance with title 45, Code of Federal Regulations, part 164.

Page 2, after line 6, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-27-07

Roll Call Vote # 1 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1217

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amend. 4b 2/12

Motion Made By Sen. Nelson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fiebiger	/	
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment Sen.

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

Date: 2-27-07
Roll Call Vote # 2 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1217

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Olafson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fiebiger	/	
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Nething

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

REPORT OF STANDING COMMITTEE

HB 1217: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1217 was placed on the Fourteenth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 25-03.3-05 and"

Page 1, line 2, replace "proof required for" with "civil commitment of" and replace "individual civil commitment" with "individuals; and to declare an emergency"

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Page 2, after line 6, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2007 TESTIMONY

HB 1217

TESTIMONY ON H.B. 1217
AN AMENDMENT TO THE STATUTE PROVIDING FOR
CIVIL COMMITMENT OF SEXUAL PREDATORS

BEFORE THE
HOUSE JUDICIARY COMMITTEE
JANUARY 17, 2007

WAYNE STENEHJEM
ATTORNEY GENERAL

Chairman DeKrey and Members of the Committee, I am pleased to be here to testify about H.B. 1217, which amends Chapter 25-03.3 of the North Dakota Century Code. Chapter 25-03.3 is the statute that provides for the civil commitment for treatment of sexual predators. The amendment will eliminate the requirement that the state's attorney must provide evidence that "two experts" agree an individual meets the criteria for civil commitment as a sexually dangerous individual and replace it with a requirement that there must be "expert evidence" establishing that the individual meets the criteria for commitment.

Chapter 25-03.3 establishes a judicial procedure for commitment of sexually dangerous predators, similar to the procedure for commitment of mentally ill individuals. Under the chapter, a state's attorney usually receives a referral from the North Dakota State Penitentiary treatment staff that an inmate is being released within the following six months who, the treatment staff believes, will meet the criteria for civil commitment.

After an investigation, if the state's attorney makes a similar finding, the state's attorney files a petition for civil commitment of the individual as a sexually dangerous individual under Chapter 25-03.3 and also requests the court issue an order to detain the

individual for evaluation. Within three days of the petition, a hearing is held to determine whether the court agrees there is probable cause to believe the individual will meet the criteria as a sexually dangerous individual. If the court is persuaded, then the individual is transferred to the North Dakota State Hospital for an evaluation, which must be completed within 60 days.

Under the statute, an individual cannot be committed unless there is evidence establishing that at least two experts have concluded the individual meets the criteria of the statute for civil commitment, i.e., that the individual has engaged in sexually predatory conduct and has a mental disorder that makes the individual likely to engage in further acts of sexually predatory conduct, thus making the individual a danger to the physical or mental health or safety of others. If the petition is successful, a respondent is, under the current program, committed to the care, custody, and control of the executive director of the Department of Human Services for treatment in the least restrictive environment. The commitment is until the individual is considered safe to be in the community. In this regard, each year the individual has the right to a hearing on whether the individual meets the criteria for release from the State Hospital. Again, one of the State Hospital's experts must complete an evaluation and preparation for any hearing.

The Attorney General's Office, which originally initiated the commitment legislation, has continued to be involved in the implementation of the statute, working with state's attorneys and the Department of Human Services, most specifically the State Hospital staff, to address concerns that have arisen since the statute's enactment in 1997. A recent concern that has arisen is the time and resources involved for two experts to complete an evaluation of a respondent who has been referred for commitment.

Currently, two State Hospital staff members, either psychiatrists or psychologists, must both evaluate the individual to ensure that the state's attorney will have two concurring experts to proceed with the commitment. The evaluations must be completely independent. It takes approximately 60 to 80 hours for each expert to complete an evaluation of the respondent. In addition, both evaluators must travel to the county in which the commitment is to be held and provide testimony. Depending on the distance, this can also be very time consuming.

At present, there are 18 individuals at the State Hospital who are either undergoing evaluation or have had an evaluation completed and are waiting for their commitment hearing. Another 42 have been committed and 18 evaluations were done with no commitment. Most of these numbers represent the last few years work. While the numbers of individuals referred for commitment were very limited in the early years of the program, the number has increased dramatically since the death of Dru Sjodin. In 2006, approximately 22 sex offenders were evaluated at the State Hospital. This has placed a considerable burden on the two evaluators that the State Hospital has available to do the evaluations for commitment. There have been some evaluations in the past that were not completed within the 60-day time period provided by the statute.

The failure to timely complete evaluations has raised concerns with the North Dakota Supreme Court. In two recent cases, the Supreme Court has admonished the State for failure to be prepared for the commitment hearing within the 60-day time limit because of delays by the State's experts to complete their evaluations.¹ While the Supreme Court, in these two cases, found that there was no prejudice to those particular

¹ In re J.M., 2006 ND 96, 713 N.W.2d 518; In re P.F., 2006 ND 82, 712 N.W.2d 610.

respondents, it chided the State that in the future it would not look kindly on failure to meet the 60-day time limit because the State Hospital staff were not able to complete the evaluations timely because of workload.

The requirement for two experts was originally believed to provide more protection to a respondent. If two experts had to agree that the individual meets the criteria for civil commitment, there would be less chance of a state's attorney pursuing a petition with insubstantial evidence. However, the evaluations have not supported that hypothesis. Despite the complete independence of the evaluations, the two experts at the State Hospital have disagreed on whether an individual meets the criteria only three times out of approximately 75 evaluations. There has been no showing that having one expert complete the evaluation results in unsupportable petitions proceeding to a commitment hearing.

On the other hand, the amendment will reduce by half the commitment of staff required to complete an evaluation with the concomitant cost and resource savings to the State Hospital. It will also enhance the likelihood that commitments will be completed timely, thereby reducing the potential for prejudice to the respondent because of delay in proceeding with the commitment hearing.

Thank you for providing me an opportunity to discuss this amendment to the statute for civil commitment of sexual predators.

Att #1
2-12-07

TESTIMONY ON H.B. 1217
AN AMENDMENT TO THE STATUTE PROVIDING FOR
CIVIL COMMITMENT OF SEXUAL PREDATORS

BEFORE THE
SENATE JUDICIARY COMMITTEE
February 12, 2007

WAYNE STENEHJEM
ATTORNEY GENERAL

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