

2009 SENATE JUDICIARY

SB 2114

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2114

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 01/12/09

Recorder Job Number: 6819

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Leann Bertsch, Director of the Department of Corrections and Rehabilitation** – See written testimony in support of the bill.

**Senator Nething** – Discusses that he understood the bill to say that women have the same opportunities as the men did because of a law suit that was pending. He doesn't see what is wrong with having the language there even though you cover it by contract.

**Bertsch** – Stated she as the Director of the Department of Corrections the authority to place any inmates under the Dept of Corrections in the appropriate facility. She said the language in the 2007 legislation was a mistake on their part; it gives the impression that the Dakota Regional Correction Center in New England is a jail or regional facility when in fact it is not. It is a prison.

**Senator Nething** – Does not understand what the problem is. He thinks if this section is taken out it will mean any jail in ND could hold women prisoners. There are no qualifications, other than general ones.

**Bertsch** – States when an inmate is sentenced to the Dept. of Corrections regardless if male or female they have to be housed in an appropriate facility.

She said this section does not belong in the same section as the county jail. The Dakota Women's Correctional facility is a prison.

Discussion continues on that judges do not have the right to sentence to a certain facility, only her department determines that.

Referring to cell phone contraband, cell phones can be used to commit crimes from within the jails. Also cameras are a major security risk. A number of correctional facilities around the nation have experienced significant safety problems because of cell phones and have approached the FCC about cell phone jamming equipment, which is illegal and we're trying to promote the Federal legislation to allow some of this technology to deal with cell phones in prison by trying to define the perimeter so they are not interfering with other cell phone usage around them. The FCC is strongly opposed to this. There are other methods to deal with this such as cell phone sniffing dogs. Cell phone conversations by the inmates cannot be monitored and inmates have tried to put out hits on people from prison.

**Closed hearing for 2114**

Refer to recorder job number 7203 for committee work on this bill

1/19/09

Committee voted

Senator Lyson motioned for do pass

Senator Schneider seconded

Vote – 6 yes 0 no

Senator Lyson will carry



**REPORT OF STANDING COMMITTEE (410)**  
January 19, 2009 1:25 p.m.

**Module No: SR-10-0482**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2114: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2114 was placed on the  
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2114

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2114

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10074, 10076

Committee Clerk Signature

*Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2114.

**Leann Bertsch, Director, ND DOCR:** Support (attachment).

**Rep. Delmore:** On page 2, #3, this applies to New England.

**Leann Bertsch:** Yes.

**Rep. Koppelman:** I think I located the section in 54.23.3 where you say you have this authority already in law and in 3.03 subsection 11, it talks about contracting with US, Canada, and other states; on page 2 of the bill, #3, it doesn't say anything about women prisoners in that section and it doesn't say anything about that particular facility. You're saying because it's not necessary for you to contract with them, you want it to be illegal for you to contract with others under this .....(can't hear).

**Leann Bertsch:** That's not the case. During the last session, we should have taken care of that clause and been repealed. Right now, the DOCR has male and female inmates. This is kind of a leftover of the discriminatory practices. This section that we put in 2007, was to address a sunset clause because we had to put that language in 2003 to address the fact that we wanted the legislature's intent to contract with a county facility. As you know we had a problem when we housed women in county jails, because there was a parity issue because

they don't have the same kinds of programs that are available to the men inmates at the Pen. County jails are not set up for inmates to stay for longer than 1 year. DWCRS is a prison, not a county or regional jail facility, that section isn't even needed. .

**Rep. Koppelman:** I don't read anything that is discriminatory, you're saying that somehow a lawsuit was filed.

**Leann Bertsch:** Yes.

**Rep. Koppelman:** You said the lawsuit succeeded because I didn't follow the case.

**Leann Bertsch:** The state was successful and the state level.

**Rep. Koppelman:** If the 8<sup>th</sup> Circuit affirms the lower court's decision, would there be a reason why you would never want to consider housing prisoners at county jails.

**Leann Bertsch:** We have that authority already, this is just making sure that everything is spelled out.

**Rep. Klemin:** On the penalty for the wireless communication device; why a class C felony is opposed to a class A misdemeanor.

**Leann Bertsch:** This is extremely serious conduct and I'm surprised that we haven't addressed this sooner, but ND has been very fortunate not to have experienced some of the severe consequences of cell phones in correction facilities. This is more of a deterrent and we want to make sure that people understand that this is serious conduct if they try to bring in a cell phone that there will be serious consequences. We believe that a C felony is consistent with penalties that other states have employed for many years.

**Rep. Klemin:** Do prisoners use hearing aids if they are deaf or hard of hearing.

**Leann Bertsch:** Any assistive devices are provided to the inmates. This wouldn't cover hearing aids.



**Rep. Klemin:** Well actually as I read the definition of a wireless electronic communication device, it is pretty broad, "any other electronic device capable of reception of oral communications". It would seem to include a hearing aid, and then hearing aids have batteries. I'm wondering if we need to say that a "wireless electronic communication device does not include a hearing aid".

**Leann Bertsch:** That would be fine with me, maybe saying something about hearing aids and other prescription devices.

**Rep. Klemin:** I was thinking on page 3, line 8, just to say a wireless electronic communication device does not include a hearing aid.

**Leann Bertsch:** I think that would be a good idea.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

**(Reopened in the afternoon session).**

**Ch. DeKrey:** We will take a look at SB 2114.

**Rep. Klemin:** I have an amendment here, on page 2, line 16, after facility, insert except for law enforcement purposes and page 2, line 21, after facility, insert the same as on line 16.

**Rep. Wolf:** Second.

**Chairman DeKrey:** Voice vote, motion carried.

**Rep. Koppelman:** I move the DOCR amendment.

**Rep. Delmore:** Second.

**Chairman DeKrey:** Voice vote, motion carried.

**Rep. Klemin:** I move a Do Pass as amended.

**Rep. Dahl:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Delmore**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2114 & SB 2116

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/4/09

Recorder Job Number: 10177

Committee Clerk Signature

*D. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2114. I need a motion to reconsider our actions taken on 3/3/09.

**Rep. Delmore:** I move that we reconsider our action on SB 2114.

**Rep. Vig:** Second.

**Chairman DeKrey:** Voice vote, motion carried. I will appoint a subcommittee of Rep. Klemin, Rep. Koppelman and Rep. Delmore to work on SB 2114 and SB 2116.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2114

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10603

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will take another look at SB 2114.

**Rep. Klemin:** I have another set of amendments that came out of our subcommittee for SB 2114. SB 2116 and SB 2114 have similar amendments. The consensus of our subcommittee on section 1, is to delete section 1 out of the bill. If you look at the top of page 2, there is a bunch of language that is marked off, that would stay in the law if we delete section 1. So we're not changing anything in this part. What this does is, it allows the DOCR on request of a correctional facility to keep prisoners longer than 1 year. Normally they can only be held in a facility for one year, except on a temporary basis. They can apply to keep prisoners longer than one year, if they meet certain criteria and if they meet those criteria, then the DOCR can approve it. So taking this section 1 out of the bill, leaves that option in the law. They will have to meet all the criteria in order to get approved. The second amendment is in section 2 of the bill, and this was the amendment that was proposed by Leann Bertsch, at the hearing, "except for law enforcement". At the end of line 16, after "facility", insert "except for law enforcement purposes", and on line 21, the same language. On page 3, line 5, remove "battery or" and on line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

**Rep. Koppelman:** Second.

**Chairman DeKrey:** Voice vote, motion carried. We have the bill before us as amended.

What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass as amended.

**Rep. Boehning:** Second.

**11 YES 0 NO 2 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Klemin**

VR  
3/3/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2114

Page 2, line 14, replace "It" with "Except for law enforcement purposes, it"

Page 2, line 17, replace "It" with "Except for law enforcement purposes, it"

Page 3, line 8, after the underscored period insert "A wireless electronic communication device does not include a medically prescribed device for hearing or for other health-related purposes approved by the department."

Renumber accordingly

Date: 3/3/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2114

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Klemin Seconded By Rep. Dahl

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        | ✓   |    |
| Rep. Dahl       | ✓   |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     | ✓   |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
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Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Delmore

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

**REPORT OF STANDING COMMITTEE**

**SB 2114: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2114 was placed on the Sixth order on the calendar.

Page 2, line 14, replace "It" with "Except for law enforcement purposes, it"

Page 2, line 17, replace "It" with "Except for law enforcement purposes, it"

Page 3, line 8, after the underscored period insert "A wireless electronic communication device does not include a medically prescribed device for hearing or for other health-related purposes approved by the department."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2114

Page 1, line 1, replace "a" with "three" and replace "subsection" with "subsections"

Page 1, line 3, remove "section 12-44.1-06 and"

Page 1, line 4, remove "grades of correctional facilities and"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 11

Page 2, line 12, replace "A" with "Three" and replace "subsection" with "subsections"

Page 2, line 13, replace "is" with "are"

Page 2, line 14, remove "a."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 17, remove "b."

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 2, line 22, remove "c."

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly



VR  
3/11/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2114

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 1, line 3, remove "section 12-44.1-06 and"

Page 1, line 4, remove "grades of correctional facilities and"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 11

Page 2, line 12, replace "A new subsection" with "Subsection 8"

Page 2, line 13, after the colon insert:

"8."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

Date: 3/10/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2114

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Boehning

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        | ✓   |    |
| Rep. Dahl       |     |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     |     |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
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Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Klemin

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

**REPORT OF STANDING COMMITTEE**

**SB 2114: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2114 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 1, line 3, remove "section 12-44.1-06 and"

Page 1, line 4, remove "grades of correctional facilities and"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 11

Page 2, line 12, replace "A new subsection" with "Subsection 8"

Page 2, line 13, after the colon insert:

"8."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2114

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2114

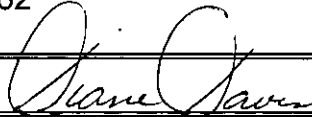
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/15/09

Recorder Job Number: 11862

Committee Clerk Signature



Minutes:

## Conference committee

Members present:

**Senator Lyson, Chairman**

**Representative Klemin**

**Senator Schneider**

**Representative Hatlestad**

**Senator Olafson**

**Representative Zaiser**

Senator Lyson asks Rep. Klemin to explain the amendment the House put on. Rep. Klemin explains the consensus of the sub-committee was to leave the language in the law, to delete section one out of the bill. He said in talking with the Dept. of Corrections they would like that taken out of the law, in other words leave in section one. It might have been a misunderstanding on their part on that issue. He continues to explain the changes they made in section two. They made those changes that law enforcement recommended be done. On the 3<sup>rd</sup> section their concern was not to have this apply unintentionally to medically prescribed devices, like hearing aids or pacemakers. They also didn't want it to apply to other things which the Dept. might approve, for instance a standard am/fm radio. They changed it to any other device approved by the department. He understood that those changes were approved

by the Dept. of Corrections. They also took the word battery out. Rep. Klemin says he thinks they are one the same page as the Dept. now except for the part deleted from the original bill.

Senator Lyson asks Leann Bertsch from the Dept. of Corrections to explain her intent on the original bill. She does so and says they made a mistake by requesting a provision to be placed in this section of the code because this section of the code deals strictly with county and regional jails, grades one, two and three. They are now asking it to be removed. She explains she wants the overstrikes to be put back in the bill.

Rep. Klemin mentions he thinks if you look at the original bill 0100, the Dept. would like to keep the entire section one that was in the original bill.

Senator Schneider asks if there is no change to the current code under section one. The law would be as it is.

Bertsch said she is asking the overstrike language be put back in so it is taken out of the code.

Senator Schneider asks who determines what a medically prescribed device is.

Bertsch said it has to be by Dept. of Corrections medical personnel.

The committee decides the Senate will accede to House Amendments and further amend, to add back in section one from 0100.

Verbal vote, all yes.

Senator Schneider will carry for the Senate

Representative Klemin will carry for the House.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2114

That the House recede from its amendments as printed on page 893 of the Senate Journal and page ~~1023~~ of the House Journal and that Senate Bill No. 2114 be amended as follows:

1958

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 2, line 12, replace "A new subsection" with "Subsection 8"

Page 2, line 13, after the colon insert:

"8."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

Date: 4-15-09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB2114** as (re) engrossed

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
  - SENATE accede to House Amendments and further amend *to add back in section 1 from 0100*
  - HOUSE recede from House Amendments
  - HOUSE recede from House amendments and amend as follows
- Senate/House Amendments on SJ/HJ pages(s) 393 -- ~~258~~
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By Sen. Olafson Seconded By Rep. Klemin

| Senators             | Y | e | s | N | o | Representatives | Y | e | s | N | o |
|----------------------|---|---|---|---|---|-----------------|---|---|---|---|---|
|                      |   |   |   |   |   |                 |   |   |   |   |   |
| Senator Lyson -Chair | X |   |   |   |   | Rep. Klemin     | X |   |   |   |   |
| Senator Olafson      | X |   |   |   |   | Rep. Hatlestad  | X |   |   |   |   |
| Senator Schneider    | X |   |   |   |   | Rep. Zaiser     | X |   |   |   |   |

Vote Count 6 Yes \_\_\_\_\_ No \_\_\_\_\_ Absent

Senate Carrier Schneider House Carrier Klemin

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_



**REPORT OF CONFERENCE COMMITTEE**

**SB 2114:** Your conference committee (Sens. Lyson, Olafson, Schneider and Reps. Klemin, Hatlestad, Zaiser) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 893, adopt amendments as follows, and place SB 2114 on the Seventh order:

That the House recede from its amendments as printed on page 893 of the Senate Journal and page 958 of the House Journal and that Senate Bill No. 2114 be amended as follows:

Page 1, line 1, remove "a new" and after "subsection" insert "8"

Page 2, line 12, replace "A new subsection" with "Subsection 8"

Page 2, line 13, after the colon insert:

"8."

Page 2, line 16, after "facility" insert "except for law enforcement purposes"

Page 2, line 21, after "facility" insert "except for law enforcement purposes"

Page 3, line 5, remove "battery or"

Page 3, line 8, after the underscored period insert "A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department."

Renumber accordingly

SB 2114 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2114

**SENATE JUDICIARY COMMITTEE**  
**Senator Dave Nething, Chairman**  
**January 12, 2009**

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**North Dakota Department of Corrections and Rehabilitation**  
**Leann K. Bertsch, Director**  
**Presenting Testimony Concerning: SENATE BILL 2114**

Chairman Nething and members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation testifying in support of Senate Bill 2114.

Section 1 of Senate Bill 2114 amends Section 12-44.1-06 of the North Dakota Century Code. In 2003, the department of corrections and rehabilitation ("DOCR") sought legislative approval to remodel a building at the State Hospital to house its female prisoners. The female prisoners had been housed on separate floors at the James River Correctional Center ("JRCC"). There were a number of problems with this arrangement, including maintaining separation of the male inmates from the female inmates, and also, the JRCC was out of room because of the growing female prisoner population.

At the same time, a number of local correctional facility administrators requested the 2003 Legislative Assembly authorize the DOCR to contract with the local correctional facility administrators to house female inmates in the county jails and regional corrections centers. Because of these efforts, the 2003 Legislative Assembly enacted a new statute, N.D.C.C. § 12-47-38, to require the DOCR to contract with county jails to house female prisoners if no qualified state facility was available, and also enacted Sections 12-44.1-06.2 and 12-44.1-06.3, both of which have expired under sunset clauses, to allow county and regional correctional facilities to house female prisoners for more than one year.

After the 2003 special session, the DOCR submitted requests for proposals to the county jails and regional correctional centers for housing DOCR female

prisoners. Although a number of facilities indicated substantial interest in housing DOCR female inmates during the 2003 Legislative Session, only one facility, the Southwest Multi-County Correctional Center ("SWMCCC") in Dickinson, North Dakota, submitted a proposal. The proposal from SWMCCC was to convert the New England St. Mary's Catholic Boarding School into a women's prison.

The DOCR then began to work with the SWMCCC on a contract to house female prisoners committed to the custody of the DOCR in the converted boarding school.

The SWMCCC is a regional corrections center in Dickinson, North Dakota. See N.D.C.C. § 12-44.1-01(7). It is operated by a board of directors under the authority of a joint powers agreement by a consortium of counties in accordance with N.D.C.C. ch. 54-40. The board of directors for SWMCCC purchased the former Catholic boarding school in New England, North Dakota. They remodeled the boarding school into a women's prison facility, known as the Dakota Women's Correctional and Rehabilitation Center ("DWCRC").

The DOCR has contracted with SWMCCC's board of directors since 2003 to house and provide correctional services to DOCR female inmates. The cost of housing the female prisoners at the DWCRC has been paid through appropriations by our Legislative Assembly.

The SWMCCC is a regional corrections center providing jail services to a number of counties. The DWCRC is not operated as a county jail or regional corrections center. The operation and management of DWCRC is subject to the contract requirements of DOCR, and not to the requirements of chapter 12-44.1, governing county jails and regional corrections centers.

The DOCR had separate statutory authority under N.D.C.C. ch. 54-23.3 to contract with other facilities to provide correctional services for its inmates.

N.D.C.C. § 12-47-38 and sections 12-44.1-06.2 and 12-44.1-06.3, which have expired under sunset clauses, were not necessary for the DOCR to house female prisoners at the DWCRC. Nor was the amendment to N.D.C.C. § 12-44.1-06 in the 2007 legislative session necessary for the DOCR to house female prisoners at the DWCRC.

The DWCRC was not designed to, or intended to, operate as a county jail or regional corrections center. The DOCR has never classified the DWCRC as a grade one, grade two, or grade three correctional facility under N.D.C.C. § 12-44.1-06. It is not inspected as a county jail or regional corrections center under N.D.C.C. §§ 12-44.1-24 and 12-44.1-25.

The DWCRC may not house persons detained for trial. See N.D.C.C. §§ 12-44.1-07(1), 12-44.1-09(4). It may not house persons committed to confinement to secure their attendance as witnesses in a criminal case. See N.D.C.C. §§ 12-44.1-07(2), 12-44.1-09(4), 12-44.1-10. It may not hold juvenile offenders in any part of the facility. See N.D.C.C. § 12-44.1-09(2). It may not hold a defendant convicted only of a class B misdemeanor. See N.D.C.C. § 12.1-32-02(1)(c)(2). And finally, it may not hold male inmates for any purpose.

A chapter 12-44.1 correctional facility is not required to provide any services, including treatment, counseling, vocational, or educational services. See N.D.C.C. § 12-44.1-01(2) (providing that the use of the term "correctional facility," which includes a regional corrections center, does not imply and may not be used to require treatment, counseling, or educational services). The DWCRC is required under contract with the DOCR to provide all these services, and more, to the female inmates housed there. It can only house female inmates sentenced to the legal and physical custody of DOCR and placed at DWCRC by DOCR. See N.D.C.C. § 29-27-07. DWCRC is a women's prison housing female inmates only, and only the DOCR may place inmates at DWCRC.

The DWCRC is not a county jail or regional corrections center subject to N.D.C.C. ch. 12-44.1. Instead, it is a correctional facility that only houses female state inmates committed to the custody of the DOCR under N.D.C.C. § 29-27-07. The contract with the SWMCCC for the operation of the DWCRC in New England is effective until 2015, subject to the availability of appropriations. The DOCR is satisfied with the present management and operation of the DWCRC.

Because the DWCRC is not a county jail or regional corrections center, Subsection 3 of Section 12-44.1-06 is not applicable and not necessary for the DWCRC to house DOCR inmates and provide correctional services for DOCR inmates. Therefore, it should be repealed.

Section 2 of Senate Bill 2114 provides for amendments to Section 12-44.1-21. Section 12-44.1-21 of the North Dakota Century Code addresses contraband in correctional facilities, namely drugs, alcohol, weapons and tobacco. The proposed amendment creates a new subsection to section 12-44.1-21 that makes it a class C felony willfully manufacture, possess, or use a wireless electronic communication device in a correctional facility, or for any person to willfully deliver, or possess with intent to deliver such device to an inmate in a correctional facility or to any person for redelivery to an inmate in a correctional facility, or to allow an inmate to possess or use such a device in a correctional facility.

Section 3 of Senate Bill 2114 provides for amendment to subsection 7 of section 12-44.1-21 of the North Dakota Century Code. The proposed amendment sets forth a detailed definition of a wireless electronic communication device. I refer to such devices as cell phones in the remainder of my testimony.

Cell phones are useful for a number of things such as for calling for roadside help or texting a friend. In a correctional facility, cell phones in the hands of inmates can be dangerous for a number of reasons. A cell phone may allow an inmate

an opportunity in an unmonitored way to continue to conduct criminal activity. An inmate could order a hit on someone, make threatening calls, arrange to have drugs or weapons smuggled in, or plan an escape, to name a few dangers. Cell phones have become a greater problem as the devices have gotten smaller. As technology has advanced, cell phones are more frequently equipped with internet and e-mail capabilities, opening up more chances for unmonitored communication and misuse. Recent headlines confirm that cell phones are dangerous in the hands of inmates. In Philadelphia, a woman was brutally murdered before she could testify in court against a career criminal. She was the victim of a hit ordered from prison by an inmate using a cell phone. A prison dental assistant in Nevada was fired for sneaking a cell phone to an inmate, which he used to plan a successful escape. Inmates in our correctional facilities who have cell phones may be planning an escape or an uprising, taking care of their drug business or planning a murder or some other terrible crime. Of course we can't know for sure because we can't hear the conversations.

Section 4 of Senate Bill 2114 declares this Act to be an emergency measure.

The Department of Corrections and Rehabilitation requests this committee give SB 2114 a "do pass" recommendation.

**HOUSE JUDICIARY COMMITTEE**  
**Representative Duane DeKrey, Chairman**  
**March 3, 2009**

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**North Dakota Department of Corrections and Rehabilitation**  
**Leann K. Bertsch, Director**  
**Presenting Testimony Concerning: SENATE BILL 2114**

Chairman DeKrey and members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation testifying in support of Senate Bill 2114.

Section 1 of Senate Bill 2114 amends Section 12-44.1-06 of the North Dakota Century Code. In 2003, the department of corrections and rehabilitation ("DOCR") sought legislative approval to remodel a building at the State Hospital to house its female prisoners. The female prisoners had been housed on separate floors at the James River Correctional Center ("JRCC"). There were a number of problems with this arrangement, including maintaining separation of the male inmates from the female inmates, and also, the JRCC was out of room because of the growing female prisoner population.

At the same time, a number of local correctional facility administrators requested the 2003 Legislative Assembly authorize the DOCR to contract with the local correctional facility administrators to house female inmates in the county jails and regional corrections centers. Because of these efforts, the 2003 Legislative Assembly enacted a new statute, N.D.C.C. § 12-47-38, to require the DOCR to contract with county jails to house female prisoners if no qualified state facility was available, and also enacted Sections 12-44.1-06.2 and 12-44.1-06.3, both of which have expired under sunset clauses, to allow county and regional correctional facilities to house female prisoners for more than one year.

After the 2003 special session, the DOCR submitted requests for proposals to the county jails and regional correctional centers for housing DOCR female



prisoners. Although a number of facilities indicated substantial interest in housing DOCR female inmates during the 2003 Legislative Session, only one facility, the Southwest Multi-County Correctional Center ("SWMCCC") in Dickinson, North Dakota, submitted a proposal. The proposal from SWMCCC was to convert the New England St. Mary's Catholic Boarding School into a women's prison.

The DOCR then began to work with the SWMCCC on a contract to house female prisoners committed to the custody of the DOCR in the converted boarding school.

The SWMCCC is a regional corrections center in Dickinson, North Dakota. See N.D.C.C. § 12-44.1-01(7). It is operated by a board of directors under the authority of a joint powers agreement by a consortium of counties in accordance with N.D.C.C. ch. 54-40. The board of directors for SWMCCC purchased the former Catholic boarding school in New England, North Dakota. They remodeled the boarding school into a women's prison facility, known as the Dakota Women's Correctional and Rehabilitation Center ("DWCRC").

The DOCR has contracted with SWMCCC's board of directors since 2003 to house and provide correctional services to DOCR female inmates. The cost of housing the female prisoners at the DWCRC has been paid through appropriations by our Legislative Assembly.

The SWMCCC is a regional corrections center providing jail services to a number of counties. The DWCRC is not operated as a county jail or regional corrections center. The operation and management of DWCRC is subject to the contract requirements of DOCR, and not to the requirements of chapter 12-44.1, governing county jails and regional corrections centers.

The DOCR had separate statutory authority under N.D.C.C. ch. 54-23.3 to contract with other facilities to provide correctional services for its inmates.

N.D.C.C. § 12-47-38 and sections 12-44.1-06.2 and 12-44.1-06.3, which have expired under sunset clauses, were not necessary for the DOCR to house female prisoners at the DWCRC. Nor was the amendment to N.D.C.C. § 12-44.1-06 in the 2007 legislative session necessary for the DOCR to house female prisoners at the DWCRC.

The DWCRC was not designed to, or intended to, operate as a county jail or regional corrections center. The DOCR has never classified the DWCRC as a grade one, grade two, or grade three correctional facility under N.D.C.C. § 12-44.1-06. It is not inspected as a county jail or regional corrections center under N.D.C.C. §§ 12-44.1-24 and 12-44.1-25.

The DWCRC may not house persons detained for trial. See N.D.C.C. §§ 12-44.1-07(1), 12-44.1-09(4). It may not house persons committed to confinement to secure their attendance as witnesses in a criminal case. See N.D.C.C. §§ 12-44.1-07(2), 12-44.1-09(4), 12-44.1-10. It may not hold juvenile offenders in any part of the facility. See N.D.C.C. § 12-44.1-09(2). It may not hold a defendant convicted only of a class B misdemeanor. See N.D.C.C. § 12.1-32-02(1)(c)(2). And finally, it may not hold male inmates for any purpose.

A chapter 12-44.1 correctional facility is not required to provide any services, including treatment, counseling, vocational, or educational services. See N.D.C.C. § 12-44.1-01(2) (providing that the use of the term "correctional facility," which includes a regional corrections center, does not imply and may not be used to require treatment, counseling, or educational services). The DWCRC is required under contract with the DOCR to provide all these services, and more, to the female inmates housed there. It can only house female inmates sentenced to the legal and physical custody of DOCR and placed at DWCRC by DOCR. See N.D.C.C. § 29-27-07. DWCRC is a women's prison housing female inmates only, and only the DOCR may place inmates at DWCRC.

The DWCRC is not a county jail or regional corrections center subject to N.D.C.C. ch. 12-44.1. Instead, it is a correctional facility that only houses female state inmates committed to the custody of the DOCR under N.D.C.C. § 29-27-07. The contract with the SWMCCC for the operation of the DWCRC in New England is effective until 2015, subject to the availability of appropriations. The DOCR is satisfied with the present management and operation of the DWCRC.

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Attached to the copy of my testimony is a proposed amendment to Senate Bill 2114. The amendment is being offered at the request of law enforcement. The definition of a wireless device is comprehensive and there was a concern that law enforcement may be prohibited from conducting any undercover investigations that would require an inmate or individual in a correctional facility from using a recording device. The amendment provides an exception for law enforcement purposes.

Section 4 of Senate Bill 2114 declares this Act to be an emergency measure.

The Department of Corrections and Rehabilitation requests this committee give SB 2114 a "do pass" recommendation.

Proposed amendment to Senate Bill 2114

Page 2, Line 16, after "facility", insert ", except for law enforcement purposes"

Page 2, Line 21, after "facility", insert ", except for law enforcement purposes"

Renumber accordingly