

**2013 SENATE JUDICIARY**

**SB 2198**

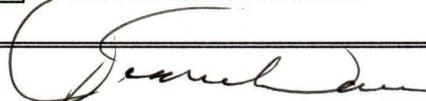
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2198  
1/28/2013  
Job #17808

Conference Committee

Committee Clerk Signature



**Minutes:**

*Attached testimony*

**Relating to annual reviews & petitions for discharge during a period of imprisonment, relating to reports regarding a defendant's fitness to proceed in a criminal proceeding.**

**Senator David Hogue - Chairman**

Justice Dale Sandstrom - Justice of the Supreme Court - See written testimony (1)

Senator Hogue - Asks what the point of reviewing them for release if they are already in the State Penn.

Justice - Replies they may not be getting the same treatment as they would the State Hospital or they may not be getting treatment at all and they cannot be evaluated on the progress they are making because they are not at the State Hospital. He said they view this as just filling some gaps in the law.

Senator Sitte - Asks about the people they are dealing with.

Justice - Said they could be out on bail or in jail but they are sent for evaluation. He explains the process.

Senator Armstrong - Says these are done well before the trial date.

Jonathan Beyers - Attorney General's Office - In support of the bill. He gives the scenario on fitness to proceed. He asks the committee if he can submit an amendment.

The committee says they will wait for his amendment.

Opposition  
Neutral

Close 2198

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2198  
2/12/2013  
Job #18814

Conference Committee

Committee Clerk Signature 

**Minutes:**



Senator Hogue - Chairman

Committee discusses

Senator Hogue mentions there is an amendment coming for this bill. Committee puts this on hold until the amendment comes in.

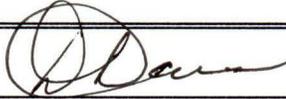
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2198  
2/12/2013  
Job #18816

Conference Committee

Committee Clerk Signature



**Minutes:**

Vote

## Senator David Hogue - Chairman

Committee work

Committee discusses the amendment that came in from Jonathan Beyers.

Senator Armstrong moves the amendment

Senator Lyson seconded

Verbal vote - All yes

Motion passes

Senator Armstrong moves a do pass as amended

Senator Sitte seconded

Vote - 7 yes, 0 no

Motion passes

Senator Armstrong will carry

13.8217.01001  
Title.02000

Adopted by the Judiciary Committee

February 12, 2013



Handwritten signature and date: 2-12-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2198

Page 2, line 14, after "29-27-07" insert "or is serving a term of imprisonment in a county jail or regional corrections center"

Renumber accordingly

Date: 2/13/13  
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2198**

Senate JUDICIARY Committee

Check here for Conference Committee 13.8217.61001

Legislative Council Amendment Number Bypass Amendment

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S. Armstrong Seconded By S. Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte		Senator John Grabinger			
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent Verbal - all yes

Floor Assignment \_\_\_\_\_

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

Date: 2/12/13  
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2198**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8217.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S. Armstrong Seconded By S. Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Armstrong

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

**REPORT OF STANDING COMMITTEE**

**SB 2198: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2198 was placed on the Sixth order on the calendar.

Page 2, line 14, after "29-27-07" insert "or is serving a term of imprisonment in a county jail or regional corrections center"

Renumber accordingly

**2013 HOUSE JUDICIARY**

**SB 2198**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2198  
March 25, 2013  
Job 20406

Conference Committee

Jocelyn Gallagher

## Explanation or reason for introduction of bill/resolution:

Relating to annual reviews and petitions for discharge during a period of imprisonment; relating to reports regarding a defendant's fitness to proceed in a criminal proceeding.

## Minutes:

Testimony 1

**Chairman Kim Koppelman:** Opens the hearing on SB 2198.

**Jim Gange: (0:48) (Testimony 1)** Here to convey written testimony of Dale Sandstrom and email from Judge Fontaine.

**Rep. Lois Delmore: (7:13)** How often would we have people in either county jail or a regional correction center?

**Jim Gange:** I'm not certain of the number but I suspect very few. It doesn't happen that often.

**Rep. Gary Paur:** I can't see any differences between the engrossed and non-engrossed version.

**Jim Gange:** If you look on page two, line 14 and 15.

**Jon Byers, Attorney General's Office: (9:10)** Testified in support of SB 2198. The Attorney General does support the passage of this legislation.

**Chairman Kim Koppelman: (9:35)** Are you familiar with other examples of how this issue has come to bear on the need for the bill?

**Jon Byers:** The individuals are sent for evaluation for one day if they are being housed in a county jail waiting for their trial. With regards to the making it inapplicable that they have an annual review while being incarcerated, I do know there were circumstances where individuals were committing simple assault and misdemeanor kinds of crimes were getting in county jail sentences and that is the reason for the amendment on the Senate side.

**Rep. Lois Delmore: (11:27)** Would this help to cover some of the instances that were covered in the other bill?

**Jon Byers:** I think they are totally different classes of individuals and I think that still needs to be addressed by that other bill.

**Chairman Kim Koppelman:** You mentioned years ago they used to do 30 day evaluations and now it takes a day. Why the change?

**Jon Byers:** I would hazard a guess that it's in large part to do with better communication scheduling.

**Chairman Kim Koppelman:** Any further testimony is support of SB 2198, opposition, neutral. Closed the hearing.

**Chairman Kim Koppelman:** Rep. Kretschmar moves a do pass, second by Rep. Delmore.

**Roll call on do pass SB 2198**

**Motion carries 14-0-0 Rep. Steiner will carry the bill.**

Date: 3-25-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB2198

House Judiciary Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

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

**REPORT OF STANDING COMMITTEE**

**SB 2198, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2198 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2198**

**Senate Bill 2198**  
**Senate Judiciary Committee**  
**Testimony of Justice Dale Sandstrom**  
**January 28, 2013**

Mr. Chairman and members of the committee, I'm Dale Sandstrom, a Justice of the Supreme Court. I'm here in my capacity as chair of the committee on legislation of the North Dakota Judicial Conference. The Judicial Conference is a statutory body which includes all Supreme Court Justices, all District Judges, all Surrogate Judges, the Attorney General, the Dean of the Law School, the Clerk of the Supreme Court, two Municipal Judges, and five members of the Bar engaged in the practice of law. One responsibility of the Judicial Conference is evaluating legislation and making recommendations for the improvement of the administration of justice.

I'm here to express our support of Senate Bill 2198. We appreciate the efforts of Senator Joe Miller and the other sponsors of this legislation. The need for the legislation was suggested to the Judicial Conference by Judge Laurie Fontaine, who is now the Presiding Judge of the Northeast Judicial District. Judge Fontaine regrets that she is unable to be present for today's hearing, but she has provided a letter which is attached to my testimony.

Senate Bill 2198 relates to mental status, evaluation, and timing issues. I view the changes as common-sense technical adjustments to fill some gaps in the law.

Section 1 relates to mental evaluation for fitness to proceed to trial. The current provision works well when the defendant is, for example, sent to the State Hospital for 30 days for evaluation, but does not really fit when a person is evaluated on an out-patient basis somewhere else. The change would provide approximately the same amount of time to complete the written report as is afforded for an in-patient evaluation.

Section 2 establishes what happens when a person who has been civilly committed as a sexually dangerous individual is incarcerated during the period of commitment. Judge Fontaine gives the example of a case of hers in which a person who was civilly committed as a sexually dangerous individual committed a criminal offense while at the North Dakota State Hospital and was charged with a felony and sentenced to the penitentiary. While he was in the penitentiary, this person continued to request the annual review hearing on whether he continued to be a person in need of treatment as a sexually dangerous individual. The goal is to clarify that if a person committed as a sexually dangerous individual is incarcerated, those review hearings are suspended, at least until that person is released from incarceration. While Judge Fontaine gives the example of a person having committed a new criminal offense after civil commitment, it could also happen that a person had committed the criminal offense previously but was sentenced after the civil commitment had taken place.

I would be happy to try to respond to any questions.



(1)

**State of North Dakota**  
**DISTRICT COURT CHAMBERS**  
**OF**  
**The HONORABLE LAURIE A. FONTAINE**  
Melissa Morden, Electronic Recorder

301 Dakota Street W #3  
Cavalier ND 58220-4100  
Telephone (701)265-8783

901 Third Street  
Langdon ND 58249  
Telephone (701)256-2540

January 25, 2013

RE: Senate Bill No. 2198

To Whom it May Concern:

I regret that due to previously scheduled court hearings I cannot be present at the hearing on January 28, 2013, on Senate Bill No. 2198. I am enclosing my comments to explain these changes.

*1<sup>st</sup> Request – Modify 12.1-04-07 to allow a report to be filed within thirty (30) days after the outpatient evaluation.*

When there is a question as to a criminal defendant's fitness to proceed, and/or his or her criminal responsibility, either the defense attorney can request a court order or the Court, on its own, can order an evaluation at Jamestown to make those determinations. N.D.C.C. 12.1-04-06 provides the evaluation is not to exceed 30 days. Jamestown used to have these people at the hospital for a period of time to complete these evaluations, but for a few years now they arrange to complete these with one full day appointment. The problem is that 12.1-04-07 requires a report within three days of expiration of the period of commitment. When the defendants stayed at the hospital, the report was being completed while they were there, but now the information is gathered in the one day, 8:00 a.m. to 5:00 p.m. appointment, and the report is usually completed within 25 days. I had one case where an attorney objected to the report not being completed within three days, as required by the statute. This change would simply make the law reflect what is happening.

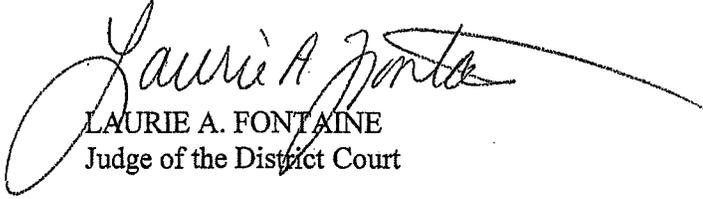
*2<sup>nd</sup> Request – Modification as to the statutes relating to the annual review petitions for discharge as to sexually dangerous offenders.*

I had a case where the order for civil commitment as a sexually dangerous offender was in place, and the defendant committed a criminal offense while at the North Dakota State Hospital in Jamestown. He damaged property, was charged with a felony, and was sentenced to the penitentiary. This respondent continued to request the annual review hearing on his sexually dangerous offender case. My goal was to clarify or suspend these hearings if another criminal offense is committed and the individual is incarcerated, at least until that persons release from incarceration.

I did see there is another bill proposing to change the annual review to a three year review. If this was approved, my concern would lessen; however, there still does not seem to be a reason to have the time and resources of a psychiatrist or psychologist complete an evaluation, an indigent defense attorney to work on the

case, and/or judicial time, if the person is incarcerated on a criminal offense and would not be released anyway. If you do not comply with the annual review requirements, an attorney could argue the civil commitment as a sexually dangerous individual has expired. I think the law should be clarified.

Sincerely,



LAURIE A. FONTAINE  
Judge of the District Court

LAF:mm

/

**Engrossed Senate Bill 2198  
House Judiciary Committee  
Testimony of Justice Dale Sandstrom  
March 25, 2013**

Mr. Chairman and members of the committee, I'm Dale Sandstrom, a Justice of the Supreme Court. I'm submitting this testimony in my capacity as chair of the committee on legislation of the North Dakota Judicial Conference. I regret that I can't be before you in person. The Judicial Conference is a statutory body which includes all Supreme Court Justices, all District Judges, all Surrogate Judges, the Attorney General, the Dean of the Law School, the Clerk of the Supreme Court, two Municipal Judges, and five members of the Bar engaged in the practice of law. One responsibility of the Judicial Conference is evaluating legislation and making recommendations for the improvement of the administration of justice.

I want to express our support of Engrossed Senate Bill 2198. We appreciate the efforts of Senator Joe Miller and the other sponsors of this legislation. The need for the legislation was suggested to the Judicial Conference by Judge Laurie Fontaine, who is now the Presiding Judge of the Northeast Judicial District. Judge Fontaine regrets that she is unable to be present for today's hearing, but she has provided an email explaining her concerns which is attached to my testimony.

Engrossed Senate Bill 2198 relates to mental status, evaluation, and timing issues. I view the changes as common-sense technical adjustments to fill some gaps in the law.

Section 1 relates to mental evaluation for fitness to proceed to trial. The current provision works well when the defendant is, for example, sent to the State Hospital for 30 days for evaluation, but does not really fit when a person is evaluated on an out-patient basis somewhere else. The change would provide approximately the same amount of time

to complete the written report as is afforded for an in-patient evaluation.

Section 2 establishes what happens when a person who has been civilly committed as a sexually dangerous individual is incarcerated during the period of commitment. In explaining the concept behind the bill, Judge Fontaine describes a case of hers in which a person who was civilly committed as a sexually dangerous individual committed a criminal offense while at the North Dakota State Hospital and was charged with a felony and sentenced to the penitentiary. While he was in the penitentiary, this person continued to request the annual review hearing on whether he continued to be a person in need of treatment as a sexually dangerous individual. The goal of the bill is to clarify that if a person committed as a sexually dangerous individual is incarcerated, those review hearings are suspended, at least until that person is released from incarceration. While Judge Fontaine describes the example of a person having committed a new criminal offense after civil commitment, it could also happen that a person had committed the criminal offense previously but was sentenced after the civil commitment had taken place. The bill was amended in the Senate (page 2, lines 14-15) to additionally clarify that the place of incarceration could also be a county jail or regional corrections facility.

Thank you for considering these comments.

**From:** Fontaine, Laurie  
**Sent:** Friday, March 22, 2013 3:04 PM  
**To:** Ganje, Jim  
**Cc:** Sandstrom, Justice Dale V.  
**Subject:** RE: Senate Bill 2198

Jim- Monday is always my master calendar day so I will not be able to attend

My comments would be as follows;

I recommended these legislative changes to fix what I believe to be two very obvious problems.

The first issue was that the statute anticipated criminal defendants being committed to the State Hospital for competency evaluations for about thirty days and required the report to be filed within 3 days of the defendants release. This is what used to happen. The process has changed so now the evaluation is commonly completed in a one day assessment which lasts from 9-5. It is simply not realistic for the psychiatrist, psychologist to analyze the tests, dictate and have typed a report in three days. They usually complete this in 25 days but 30 days would be the time allowed.

The second issue arose for me with a sexually dangerous offender who under the law is entitled to annual reviews of the civil commitment. The problem arises when they commit a criminal offense while civilly committed or are sentenced to the penitentiary on a new criminal case so that they are no longer at the Jamestown State Hospital under civil commitment. I think it should be clear that if they are incarcerated on criminal offense their right to the civil commitment hearing is stayed until their release. It did not make sense to me to have a hearing to possibly say they should no longer be committed by the civil order if they were incarcerated in prison for the next two years anyway. That seemed like a waste of resources and the medical staff at Jamestown State Hospital are very busy.

I appreciate the work of the legislative committee and the legislators in considering these issues.

Judge Laurie Fontaine