

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2018**

Bill/Resolution No.: HB 1076

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

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

No fiscal impact

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact

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

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

No fiscal impact

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

No fiscal impact

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No fiscal impact

**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 701-328-6135

**Date Prepared:** 12/27/2018

**2019 HOUSE JUDICIARY**

**HB 1076**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1076  
1/8/2019  
30541

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

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

A bill relating to placement of offenders at the North Dakota youth correctional center.

## Minutes:

1

**Chairman K. Koppelman:** Opened the hearing on HB 1076.

**Lisa Bjergaard, Director of North Dakota Department of Corrections and Rehabilitation Division of Juvenile Services:** We are asking you to remove a sentence in Chapter 12 that is not necessary. The sentence relates to youth who have been sentenced in an adult court. It states a youth could be moved into the prison before their 18<sup>th</sup> birthday and that is not practiced and is not allowable under Federal law. So we want that sentence stricken. The testimony in front of you is in related to the passage and implementation of the Prison Rape Elimination Act. (See Attachment #1)

**Representative Jones:** Is there ever a case where this is needed? What do you do with a 16 or 18-year-old when they are extremely violent if you can't move them into an area where they have more security?

**Lisa Bjergaard:** We manage those youth within the youth system.

**Representative Jones:** So you have not had a situation where you couldn't control a 16 or 18- year -old that was way beyond their year in their problems?

**Lisa Bjergaard:** I have amazing staff.

**Rep. McWilliams:** In relating to the age of 18 for technical purposes is that to the 18<sup>th</sup> birthday or is that to the 19<sup>th</sup>?

**Lisa Bjergaard:** North Dakota Law allows time until the age of 20 to keep them at the youth correctional facility. We then have plenty of time to accommodate a transition to the adult correctional system. The Prison Rape Elimination Act (PREA) says 18.

**Chairman K. Koppelman:** It's not uncommon for someone in State government to come to us and say the law says this but we don't do that. So we want to change the law. I understand to a certain degree. But if the law says something why isn't it ever practiced?

**Lisa Bjergaard:** The primary reason is these are kids still in high school. This is not a violation, the state law says you commit persons to Department of Corrections and we make a housing decision. We always assume people are to be released and they are better with an education.

**Chairman K. Koppelman:** What happens at the youth correctional center?

**Lisa Bjergaard:** The youth who come to us are usually felony level. It picks up cases at the point the parent is losing custody and we follow that. We treat them and rehabilitate them. The mission of the Department of Corrections (DOC) is to identify risk, manage risk, and minimize risk. Discussed how the youth program works.

**Chairman K. Koppelman:** What happens if in years in advance you and I are not here, you are asking us to remove the option?

**Lisa Bjergaard:** If Prison Rape Elimination Act (PREA) goes away you can do this. The reason we are asking you to get the language out of there is because of the PREA compliance is because it is for every jail and we are speaking specifically to the prison. All the facilities in North Dakota are required to have PREA audits. Part of what they check on is whether your language is lining up the with the Federal language. In this case we are not in compliance. It isn't going to impact practice. It will not put a hardship on the DOC.

**Rep. Paur:** That PREA law was enacted 16 years ago, you haven't been in compliance since?

**Lisa Bjergaard:** The PREA law was enacted in 2003 but it took them 10 years to develop their standards and another 2 years to see what the audits were going to look like. We could have brought this in the 2017-19 Legislature but I had other areas before this to focus on. One of the other areas is mandatory staffing ratios in youth facilities. When the audit requirements came out we had a lot of things to do. They tell us now how many staff we are allowed.

**Chairman K. Koppelman:** When they do the audits, are the requirements such that they tell you to go get your statute in compliance?

**Lisa Bjergaard:** Facilities are required to pay for their own audits. The auditors are very thorough and do make recommendations such as staffing and the facilities. You have to work around what is feasible.

**Rep. McWilliams:** What happens if an audit comes and this bill does not pass?

**Lisa Bjergaard:** They will tell us to fix it.

**Representative Magrum:** When you say we are cleaning this up, is there a committee you work for or how does that work?

**Lisa Bjergaard:** We don't have a formal committee within the DOC. We have a director who oversees the pre-audits and makes sure we are complying to all PREA standards both on the adult and youth side and make recommendations as well. Most of these recommendations are related to practice. We are saying this will make things easier for us when we are being audited.

**Rep. McWilliams:** Earlier I asked you about 18- year-olds and we find there is an overlap between them and 20 years, is that correct? Could there be a situation where an 18-year-old could be sent to a youth facility and it doesn't work out at all, then that person has to be moved, does the bill allow for that situation?

**Lisa Bjergaard:** The youth code allows youth to be with the DOC until the age of 20, that is through the 19<sup>th</sup> year and there is no prohibition on people over the age of 18 going to prison. The only way a youth can move to the prison is if it is an adult sentence in a district court.

**Representative Jones:** You must feel you can handle anything that is coming from these youth. If you get a very violent gang member that causes problems and is trying to rape, pillage, plunder in your structure, what you are saying is you can keep them in your structure or you have some way of dealing with him?

**Lisa Bjergaard:** We have those youth now. The kids we have are very aggressive and assaultive, and things happen, but we manage them. It is not an option.

**Chairman K. Koppelman:** What you are telling us is that you can't do that under PREA. Is that true?

**Lisa Bjergaard:** Yes that is true, if a youth commits a crime while they are at our center; then we figure out ways to manage them.

**Representative Jones:** Thank you for what you do and if you are comfortable that you can handle this then I am going to support getting rid of this language. I just want to make very sure we weren't taking away a tool you might need to have.

**Lisa Bjergaard:** It is not me. It is some really talented well trained staff.

**Chairman K. Koppelman:** Any further support? Seeing none.

**Opposition:** Seeing none.

Closed the hearing on HB 1076.

**Representative Satrom:** Do Pass Motion on HB 1076.

**Representative Vetter:** Seconded.

**Chairman K. Koppelman:** Any discussion on the motion?

**Rep. McWilliams:** I don't see any reason to take away an option, and if there is no consequence for leaving it there. Why would we take away an option.

**Chairman K. Koppelman:** My sense is what we heard that it makes the audits better and more in compliance. I am concerned also but we meet every two years also.

**Roll Call Vote:** Do pass on HB 1076: **Yes:** 8 **No:** 6 **Absent:** 0. Motion Carried.

**Representative Hanson:** Will carry the bill.

Hearing closed.

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1076**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Satrom Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		X	Rep. Buffalo		X
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams		X			
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Hanson

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

**REPORT OF STANDING COMMITTEE**

**HB 1076: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS**  
(8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1076 was placed on the  
Eleventh order on the calendar.

**2019 SENATE JUDICIARY**

**HB 1076**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1076  
2/5/2019  
Job #32145 (05:46)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to amend and reenact section 12-46-13 of the North Dakota Century Code, relating to placement of offenders at the North Dakota youth correctional center.

## **Minutes:**

1 Attachment

**Chair Larson** opens the hearing on HB 1076. Senator Luick is temporarily absent.

**Lisa Bjergaard, Director of the Division of Juvenile Services, testifies in favor (see attachment #1)**

**Senator Myrdal: Moves for a Do Pass.**  
**Vice Chairman Dwyer: Seconds.**

**A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion passes.**

**Chair Larson:** We will wait for Senator Luick so he can vote.

**Senator Luick:** I have read through this and I am okay to vote a Do Pass.

**A unanimous do pass vote is reported.**

**Senator Bakke will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1076**

Senate   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:     Adopt Amendment  
                            Do Pass     Do Not Pass     Without Committee Recommendation  
                            As Amended                             Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:         Reconsider                             \_\_\_\_\_

Motion Made By   Senator Myrdal   Seconded By   Vice Chairman Dwyer  

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total    (Yes)   6                              No   0  

Absent   0  

Floor Assignment   Senator Bakke  

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

**REPORT OF STANDING COMMITTEE**

**HB 1076: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1076 was placed on the  
Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1076**

HOUSE JUDICIARY COMMITTEE  
Representative Kim Koppelman, Chair  
January 08, 2019

#1  
HB1076  
1-8-19  
p.1.

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North Dakota Department of Corrections and Rehabilitation  
Division of Juvenile Services

Lisa Bjergaard, Director  
Presented Testimony concerning House Bill 1076

For the record, I am Lisa Bjergaard, Director of the Division of Juvenile Services and I present this testimony in support of HB 1076.

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The Prison Rape Elimination Act of 2003 (PREA, P.L. 108-79) was enacted by Congress to address the problem of sexual abuse of persons in the custody of U.S. federal and state correctional agencies.

The Act applies to all public and private institutions that house adult or juvenile offenders and also applies to community-based agencies in which placement is mandatory, e.g., a halfway house and the offender does not have the option of leaving the facility. The Act addresses both inmate-on-inmate sexual abuse and staff sexual misconduct.

On June 23, 2009, the National Prison Rape Elimination Commission released and forwarded to the U.S. Attorney General its final report and proposed standards to prevent, detect, respond to and monitor sexual abuse of incarcerated and detained individuals. Based on the Attorney General's independent judgment, a final rule was published to the Federal Register on June 20, 2012.

PREA Standard 115.14 applies to youthful inmates. "Youthful inmate" means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

The Standard reads as follows:

#1  
HB1076  
P. 2  
1-8-19

115.14 Youthful inmates

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

(1) maintain sight and sound separation between youthful inmates and adult inmates, or

(2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

Because the practice of detaining persons under the age of 18 in an adult prison or jail is prohibited by federal law, the language in lines 12-16 of N.D.C.C. § 12-46-13 must be removed.

Removing this language will not impact North Dakota Department of Corrections and Rehabilitation (ND DOCR) practice, as internal policy and procedure does not allow persons under the age of 18 who have been sentenced as an adult to be imprisoned in a state correctional facility.

Instead, those persons are detained at the North Dakota Youth Correctional Center until they reach the age of 18, at which time they may be transferred to an adult facility.

Therefore, the ND DOCR through its Division of Juvenile Services respectfully requests favorable consideration and passage of House Bill 1076.

#1  
HB 1076  
2-5-19

**SENATE JUDICIARY COMMITTEE**  
**Senator Diane Larson, Chair**  
**February 5, 2019**

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**Division of Juvenile Services**

**Lisa Bjergaard, Director**  
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# 1  
HB 1076  
2-5-19

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