

FISCAL NOTE
Requested by Legislative Council
12/26/2018

Bill/Resolution No.: SB 2087

- 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
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$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
Counties			
Cities			
School Districts			
Townships			

- 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: 01/03/2018

2019 SENATE JUDICIARY

SB 2087

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2087
1/7/2019
#30446 (33:26)

- 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 25-03.3-04 of the North Dakota Century Code, relating to record retention of civil commitment of sexually dangerous individuals.

Minutes:

3 Attachments

Chair Larson opened the hearing on SB 2087.

Ken Sorenson, Special Assistant Attorney General, testifies in favor of bill (see Attachment #1)

Sorenson: This proposes an amendment to one of our records retention statutes in the Civil Commitment of Sexually Dangerous Individual chapter. When that chapter was enacted in 1997, the retention part of it set up that case files and court documents be retained for a period of 50 years. Since that time another statute was enacted relating to this chapter requiring the Department of Corrections to assess sex offenders while within 6 months prior to the expiration of their sentence. Most cases that are handled currently for referrals are handled within that time period. In addition to that 50-year retention period, it didn't provide any guidance as to what constituted a case file. When the people who had drafted the legislation were asked, we were basically told "everything". In an inmate's case file, that can be incredibly extensive. Everything about that offender's incarceration is chronicled one way or another. These files would include things like financial accounts, commissary purchases, visitors, telephone list, mail rejection, housing assignments, employment, education history, etc. However, when it comes time to do the actual assessment, it will simply be limited to the behavioral side- treatment, medical, psychological and disciplinary history. In addition, it didn't exclude anyone's records. We've had a number of sex offenders who have died in custody. In current statute we're required to retain those records for 50 years and there's absolutely no purpose to that retention.

(4:10) (see attachment #2)

Sorenson: These pictures reflect all of the hardcopy files that the DOCR has retained. Each picture is a separate set- there is no duplication of the content of these records. Again they're

going to have everything included, and this goes back to 1997 when we starting saving records. Starting at about 2005 they started going electronic, so everything about that inmate will be stored either by document or by case note in a number of different mediums in the electronic system.

As of Friday we had over 4,000 files that we're saving electronically in addition to all of the paper copies. We had 2,495 on committee supervision, parole and probation, and we had 2,325 for sex offenders that had been in custody. On the division of juvenile services side, we had a total of 344 case files, a considerably smaller number for the smaller population. Many records are saved for a very long time sometimes unnecessarily. DOC IT Department are concerned about how much longer they will be able to electronically store the volume of records they are storing for sex offenders.

The question is- why did we originally pick 50 years? The legislative history in 1997 doesn't provide any explanation. A normal file retention is going to be 6 years after the expiration of the offender's parole, probation or incarceration-whichever event occurs later. For juveniles the normal retention is up to their 25th birthday. In comparison the court system also retains its records for sex offenders for 50 years, but the normal retention beyond that for felony offenses I think is 21 years; misdemeanors is 7 years; juvenile delinquents is 10 years. We are saving records for a very considerable period of time. A lot of it simply will have no relevance to the ultimate assessment of this individual as to whether or not they are indeed a sexual predator who warrants civil commitment.

In 2018 we had a total of 2 actual petitions of civil commitment filed in North Dakota. Those were based on referrals from the DOC that are conducted based on the 6-month end of sentence review.

(8:30) Chair Larson: Are these files just the prison files?

Sorenson: Yes, the Department of Corrections records. Law enforcement officers are required to save these for 50 years to be basically their criminal investigation records and anybody that would have these records in their system.

Senator Myrdal: For prison records, isn't even 25 years a long time?

Sorenson: Yes, it's a long time. There is no explanation for the original 50-year retention.

Senator Luick: In a court case where they go back and want information regarding this client, how often do they go back and refer to these records?

Sorenson: For the DOC which is primarily responsible for the assessments for these offenders, they will have all of the judicial records already. If by chance they need find out if there's more in the court record, which is not likely, those records would be available. The statute requires the retention of all files for sex offenders for violations of 12.1-20, which is the sex offender part of the code. Everyone that is convicted as a sex offender in that chapter has to be retained for 50 years regardless of the severity and risk level of that offense.

(12:00) Senator Bakke: If they're dead what would be the point of retaining their file? What are the purpose of these files?

Sorenson: The files are used in the DOCR whenever they do the end of sentence assessment for evaluation for civil commitment as a sexually dangerous individual. Parole and Probation will also have access to those records. In 2018 they had 125 release assessments. That means a lot of cases are still sitting on the file.

With regard to the deceased offender, I'll give an example. We had an offender charged with gross sexual imposition and a really dangerous person who probably would have been referred for civil commitment at the expiration of the sentence. He was serving a 34-year sentence as a sex offender, but died of cancer. There is no reason to keep these records. We still need to keep files for some retention period because sometimes things do come up such as a litigation hold or questions. Our normal retention is 6 years after expiration of everything to do with the Criminal Justice system. A person may be in the system, go out on probation or parole and then get revoked and come back into the system. We would create another file, retained for the same 50-year period.

(14:55) **Lisa Peterson**, Clinical Director, testifies in favor for bill (see attachment #3)

Peterson: We look at whether there is evidence to suggest that the person would meet the 4 things that the court is going to focus on. Those are:

1. a congenital or acquired deficient which means a psychological diagnosis that would have some sort of nexus with sex offender risk.
2. The person showing a risk for future offense that is higher than the average sex offender
3. Whether the person has displayed sexual predatory conduct, information found within the criminal history and police reports
4. Determining whether the person has significant difficulty controlling their behavior- an intersection of the 3 things previously discussed.

In my testimony I list the types of documents that we look at. There is overlap in these categories, but we generally look at diagnostic information, records regarding any attempts of treating that diagnosis, whether the person complied with the recommendations, whether the treatment was successful, whether that be a mental illness or a sex offender treatment specifically, etc. Normally we rely on summary documents. Usually by the time somebody comes to us, there have been other types of summary documents that have been created. As far as the offenses in custody records, we really just focus on the incident reports if a person has been in prison and has had behavioral problems in prison. Beyond that we are looking specifically at those that are sexually related. We're really only looking at case notes, and usually those summarize the person's overall functioning in the system. As far as criminal records, we usually only rely on the police reports, particularly the victim's and alleged perpetrator's or perpetrator's account of the behavior.

(19:10) **Senator Osland:** Are you endorsing the 25 or 50 years?

Peterson: I am endorsing the 25 years. I'm particularly endorsing the definition of what would constitute the adult and juvenile case files. There is a vast array of information that is superfluous for us when we're looking at these types of risk assessments.

Chair Larson: Is there anyone here who can address why there is a Fiscal Note attached?

Sorenson: I talked to the Director of Administration. He said he did it because he was asked to.

(20:40) Senator Bakke: How often do they pull these files?

Peterson: There are few points in time we look at the file. One is if the person is arriving to prison on a new sentence of some sort, whether it's a probation revocation or a new offense. Another would be when a person is arriving to probation on a new type of case file. The main one would be the evaluation we do 6 months prior to release to make a recommendation to the State's Attorney as to the whether they should look at the case for potential civil commitment.

Senator Myrdal: Do any of these touch on Marcy's Law and victim's rights?

Sorenson: Under Marcy's Law if a person will be referred for civil commitment, then we are required to provide notice to the victim that that process has been engaged. While parts of the process for civil commitment are confidential, the final disposition is an open record. They are supposed to be getting notice at that point. The records will be also accessed if a person goes out on parole and supervised probation. If they are already out in the community on parole or probation and looking at transferring to another state, then those records would go under what is called the interstate compact for adult offender supervision. It's not uncommon that we have offenders who we transfer to other states or to the Federal Bureau Prisons for various reasons. In those cases, we will also make those records available to the receiving correctional facility.

(23:25) Vice Chair Dwyer: When somebody is assessed for civil commitment, what are the court's options?

Sorenson: The initial referral letter from the DOC by statute goes to the State's Attorney of the appropriate jurisdiction, typically the jurisdiction where the individual had been prosecuted for the sex offense. Then it's up to that State's Attorney to make a decision whether or not to proceed with a petition. Sometimes they'll do some initial review. Sometimes they'll ask the state hospital to look at the case. It's pretty much totally within the province of the State's Attorney's office to determine whether or not to bring a petition. If they determine to bring the petition, then the petition gets filed and documents related to that. Then the offender will come in for a probable cause hearing to determine if the case should in fact pursue, then the judiciary becomes involved in the case.

Vice Chair Dwyer: What are the court's options?

Sorenson: If a petition is brought, the court issues an order that the defendant be taken into custody in whatever jurisdiction. Hypothetically it's Cass County. The court will issue an order for the Cass County Sheriff to transport the offender and hold him in custody. Then after the probable cause hearing, if the court does determine there is probable cause to proceed, the person will be referred to the State Hospital for an evaluation which by statute is supposed to be completed within 60 days. Typically, we see a longer process because these evaluations are very complex. Then the person subject to the petition will be advised up front of many rights including the right to counsel. Then they can either get their own counsel or

hire counsel and also the respondent will be entitled to his or her own expert to review the proceedings. Then at that point it will go to court for a full evidentiary hearing akin to a bench trial for a hearing on the petition as to whether or not the person should be committed.

(26:25) Senator Luick: The judiciary system already keeps records. Isn't 10 years long enough rather than 25 years as proposed?

Sorenson: We're looking at expiration of sentence, parole or probation as when we start that retention period. With the court's I think it's 21 years for felonies, 7 years for misdemeanors, but certain cases may get archived. Yes, it's a long time and we're proposing taking it down to 25 years as a point of discussion. This was the suggestion that came from our IT director because he is concerned of all the records that are taking up a lot of electronic space. With the paper retention system, whatever effective date for retention whether it's 25 years or whatever, DOC would go back and look at those files from the expiration of one of those 3 dates- probation, parole or incarceration. If they had met that 25-year mark, they're going to start looking at disposing those files.

I worked in the Attorney General's office for many years and handled a lot of cases in federal court. We had a lot of challenges with both civil commitment and criminal convictions. The cases I had handled are being archived for 50 years.

Senator Luick: What's the downside of changing this to 10 years?

Sorenson: We want to make sure we didn't miss anybody. We have a number of civilly committed at the state hospital. They came out as referrals from the DOC. Some of these guys have birthdays going back to the 30s and 40s. That was part of the reason for the very extensive, original date- to catch those people; However, we haven't seen that, we catch them while their still in custody.

Senator Osland: Should we suggest that they reexamine the 25 years?

Chair Larson: We need to debate the merits of this bill.

Senator Myrdal: Moved a Do Pass.

Senator Luick: Seconded.

Senator Bakke: Perhaps we should investigate doing less than 25 years.

Senator Myrdal: It seemed they were hesitant in decreasing to 10 years.

Vice Chairman Dwyer: If felonies are 21 years, I was going to suggest that we go to 21 so that we have some consistency, but 25 is pretty close.

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Senator Myrdal will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2087**

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 Senator Luick

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 Myrdal

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

REPORT OF STANDING COMMITTEE

SB 2087: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2087 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2087

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2087
3/18/2019
33890

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek	By: Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to record retention of civil commitment of sexually dangerous individuals.

Minutes:

Attachments: 1,2

Chairman Koppelman: Opened the hearing on SB 2087.

Ken Sorenson, Special Assistant to the Attorney General: (Attachment #1) Went over testimony. Stopped 8:50 in support, Saving records for 50 years for offenders.

Rep. Paur: Why are you bringing this? Are you the Counsel for the Department of Corrections and Rehabilitation (DOCR)?

Ken Sorenson: Yes, I am legal counsel for the Department of Corrections?

Rep. Paur: Why don't you digitize those records?

Ken Sorenson: In 2005 they went digital; it was a very expensive set of records.

Rep. Paur: Can't all the records in the pictures (attachment 1) be digitized?

Ken Sorenson: I don't think they included that in our appropriations bill. The person that came forward with this is our IT guy; he was concerned that we have over 4,800 electronic files.

Chairman K. Koppelman: So if this became a 25-year window with this bill then you would just be moving up to this? Would the intent be to start throwing things away systematically beginning at that time, then going year by year, or what is the plan?

Ken Sorenson: We started with the 50-year retention in 1997. We would have to go through them by date, based on the 25-year retention plus 6 years.

Chairman K. Koppelman: How do these files work. If you had someone committed in 1997 but they had a criminal file prior to that, do you destroy portions of the file or hold the whole file until it's ready to be disposed of? There might be people where there is good cause to retain a record longer. How does that work?

Ken Sorenson: These are questions for our record keeper. There will always be criminal background records. The records that are retained by the FBI will be the criminal history, not their psychological profile. The records we normally save are 6 years after expiration of the sentence.

Rep. Jones: Explain death retention?

Ken Sorenson: It would be 6 years from the date of death.

Rep. McWilliams: Is there a data base that shows the name and last action taken on the offender?

Ken Sorenson: The Department of Corrections does maintain a number of data bases where this information does occur.

Michelle Lindster, Manager of Records, for the Department of Corrections: After a six-year retention; for a regular individual the whole record goes. With this bill, after 6 years, we would like to keep only a portion of a sex offenders file, because we realize we don't need to know phone time and the commissary food they bought & etc. Then we would keep this for 25 years.

Chairman K. Koppelman: After a 25-year window; then you have a file that has maybe ten percent that is older than 25 years. How do you deal with that?

Michelle Lindster: We keep the whole record.

Rep. Paur: The records must be retained for 50 years and made available to States Attorneys. How often do you get requests from States Attorneys, and if you do why?

Michelle Lindster: I am not sure how often. But we do get requests for records.

Ken Sorenson: When a state's attorney is looking at a case they will request the records. Sometimes what is happened is that in the process, of the States Attorney indicating that they will bring a petition, the records will a lot of times go to the North Dakota State Hospital. They will have more records than the Department of Corrections has.

Lisa Peterson, PhD, DOCR: (Attachment #2). In Support; About 6 months prior to a person's release from prison we gather as a committee, made up of DOCR staff, and look at the case history and how they are doing. We are not recommending anything, we are suggesting the States Attorney look at the case further, and consider initiating civil commitment proceedings for those who could potentially be identified as sexually dangerous individuals.28:42

Chairman K. Koppelman: The clock starts running at the date of their release? How does that work if they are in prison or civil commitment? We are talking about the 25 or 50 years.

Ken Sorenson: If they have been civilly committed, right now, it is going to be expiration above that civil commitment, this does happen more often than people realize.

Chairman K. Koppelman: Walk through how this civil process works? 29:58

Ken Sorenson: When North Dakota started looking at civil commitment of sexually dangerous individuals, it was first addressed in 1995. It needed more work so in 1997 they did a lot more research and study so they had more information. It was a slow process because a lot of the States Attorneys didn't appreciate the additional case load on top of all of their criminal prosecutions. Yet they were charged with the process of initiating the civil commitment. In 2001, when the DOCR completes an assessment and sends a letter to the States Attorney advising of its consideration of assessment of this person, then sometimes the States Attorney would ask the State Hospital to review it, to determine, because at that point it requires two experts, on the part of the state to conclude a personal predatory assessment. The state hospital will gather a lot of records and review the case just to help the States Attorney make a determination whether or not to initiate the civil commitment process. If they did bring a petition they would file it with the court, typically where the originating sentence occurred. Once the petition is filed they will get a court order to take the person into custody in that jurisdiction, the person will be advised of their rights, including their right to council. Then there is a preliminary, or probable cause hearing, whether or not the person meets the criteria that Dr. Peterson outlined. When the district court makes the determination of probable cause then the matter will be referred back to the State Hospital for a full blown assessment. If an expert makes a decision that the person meets the 4 points of the criteria, (attachment 2) then typically it will go back to the respondent and the respondent's council will get their own experts engaged on the person's side, then it will go to trial. It is a trial where the standard of evidence is less than criminal standard but more than a civil standard, it is what's called a modified clear and convincing evidence standard. If the court makes the determination that the person meets all of the four criteria for a sexually dangerous individual, then the court will commit the person. At that point the person will be entitled to an annual review. If the court determines that this person does not meet the criteria for a sexually dangerous individual the case will be dismissed.

Rep. Satrom: You talked about the annual review and what happens if there is an expert of the state and the expert of the respondents right? Do we keep data on when those two experts disagree and the judge lets the person go?

Ken Sorenson: Once they have been taken into custody from the DOCR; we usually don't have any data, unless they have committed a crime. It is up to the trial judge to determine the expert's credibility.

Rep. Satrom: How are the judges selected?

Ken Sorenson: That is a very difficult question. It is handled through the court administrator and the presiding judge in that judicial district. Quite often we will see attempts to disqualify a judge. That just leaves removal for cause, which is very difficult. 41:28

Chairman K. Koppelman: Initially when this was put into law; typically, a person convicted of these crimes serves his sentence, now they are being confined again, is that even constitutional? But here in North Dakota we have weathered that storm.

Ken Sorenson: The actuarial process has evolved over the years, the MN sex offender screening tool became the MN sex offender screening tool revised, and it was eventually

validated for our North Dakota population. We are now using different actuaries now. In terms of these double jeopardy's we have dealt with these over the years.

Chairman K. Koppelman: The state of ND has prevailed?

Ken Sorenson: We still have one pending law suit going on right now. We are keeping our fingers crossed because the A circuit confirmed a dismissal of a law suit involving the state of MN. 44:16

Chairman K. Koppelman: Dr. Peterson, can you shed any light of the psychological side of evaluating these folks once they are committed, and the treatment they receive, how does that work?44:37

Lisa Peterson: My role is specific to the Department of Corrections, so that program for civilly committed folks is operated by the Department of Human Services. I do have some knowledge of what happens. I think that the risk assessment and the treatment has improved a lot over time. There are fewer people that would meet the all of the sex offender 4 prong criteria.

Chairman K. Koppelman: Once the sex offenders are released from the sex offender treatment program they are monitoring or trying to prevent recidivism is what that is all about correct?

Lisa Peterson: Right.

Chairman K. Koppelman: Opposition: None Neutral: None
Hearing closed on SB 2087

Chairman K. Koppelman: What are the wishes of the committee?

Rep. Satrom: made a motion for a Do Pass on SB 2087

Rep. Roers Jones: Seconded

A roll call vote was taken: Yes 13 No 1 Absent 0

Do Pass carries for SB 2087

Rep Simons will carry SB 2087

Meeting adjourned.

Date: 3-18-19
 Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2087

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 Satrom Seconded By Roers Jones

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

Total (Yes) 13 No 1

Absent 0

Floor Assignment Simons

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

REPORT OF STANDING COMMITTEE

SB 2087: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2087 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2087

|
SB 2087
1/7/19

SENATE BILL 2087
SENATE JUDICIARY COMMITTEE
JANUARY 7, 2019

TO: Diane Larson, Chair, Senate Judiciary Committee, and Members of the Senate Judiciary Committee.

Ken Sorenson, Special Assistant Attorney General, submits this written testimony in support of Senate Bill 2087 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

Senate Bill 2087 was submitted at the request of the ND DOCR to amend N.D.C.C. § 25-03.3-04, which is the section of the Civil Commitment of Sexually Dangerous Individuals chapter that requires the retention of all adult and juvenile case files and court records of an alleged offense under N.D.C.C. chapters 12.1-20 and 12.1-27.2 of the North Dakota Century Code (N.D.C.C.).

N.D.C.C. § 25-03.3-04 in its current version provides:

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

The explanation in the legislative record for this section is as follows:

Under current law, juvenile records are only retained for a period of 11 years and adult criminal records are retained for a period 30 years. Because juvenile records may be critical in a showing the individual has engaged in sexually predatory conduct, these records should not be destroyed. With regard to adult conduct, this section ensures that the totality of prior acts committed by a respondent can be brought before the court.

Section by Section Analysis, House Bill 1047, 55th Legislative Assembly, January 14, 1997.

N.D.C.C. chapter 12.1-20 includes as sex offenses gross sexual imposition, continuous sexual abuse of a child, sexual imposition, corruption or solicitation of minors, luring minors by computer or other electronic means, sexual abuse of wards, sexual exploitation by a therapist, sexual assault, fornication, adultery, incest, deviate sexual act, indecent exposure, surreptitious intrusion, bigamy and transfer of body fluids that may contain the human immunodeficiency virus, facilitation of sexual acts in public, and sex offender presence at elementary, middle or high school.

N.D.C.C. chapter 12.1-27.2 includes as offenses sexual performances by children under North Dakota Law, including use of a minor in a sexual performance, promoting or directing an obscene sexual performance by a minor, promoting a sexual performance by a minor, and possession of any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

CASE FILE RETENTION

The ND DOCR's general retention schedule for adult offender records is to retain offenders' files for six years after expiration of sentence, termination of probation, or termination of parole, whichever occurs last. The ND DOCR maintains the files for adult sex offenders for fifty years after expiration of sentence, termination of probation, or termination of parole, whichever occurs last.

The ND DOCR's Division of Juvenile Services general retention schedule for juvenile offender records is to retain the juvenile offenders' files until the juvenile's twenty-fifth birthday. The Division of Juvenile Services maintains the files for juvenile sex offenders for fifty years after expiration of the juvenile court's order for custody.

The ND DOCR began electronically storing its case files in 2005. As of the present date, the ND DOCR has 2,495 adult community supervision (Probation and Parole) files for sex offenders dating back to 2005 and 2,325 adult prison files for sex offenders dating back to 2005. Sex offender case files prior to 2005 are manually stored and no effort was made to count them because of the sheer volume of cases; instead, the ND DOCR provides photographs of the manually stored sex offender records.

On the juvenile side, the ND DOCR's Division of Juvenile Services has a total of 344 case files for juvenile sex offenders, of which 316 files are closed files and 28 files are open files.

CONTENTS OF CASE FILES

The ND DOCR had inquired back in 1997 what records it had to retain from its adult and juvenile case files, which can be very extensive. The ND DOCR was advised to the effect it must maintain every record in its case files. Since the effective date of the statute in 1997, the Adult Services Division, which includes Probation and Parole and the state prison facilities, has done just that – it has maintained the entire institutional record and supervision record of every adult in custody or under supervision for an offense subject to N.D.C.C. § 25-03.3-04. The Division of Juvenile Services has done the same

for every juvenile placed in its custody for an offense subject to N.D.C.C. § 25-03.3-04.

An adult offender's case file will include three general categories of records: (1) case history records, which includes offender disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, offender financial accounts under section 12-48-15, and protective management cases (N.D.C.C. § 12-47-36(1)); (2) medical, psychological, and treatment records (N.D.C.C. § 12-47-36(2)); and (3) records of the offender's identity, location, legal files except records under court seal, criminal convictions, and projected date of release (N.D.C.C. § 12-47-36(4)). A juvenile offender's file will be similar, although not with the same statutory categories as an adult offender.

Every offender's case file become extensive and the extent of the case file increases as the period of incarceration or supervision increases.

SEX OFFENDER ASSESSMENTS

N.D.C.C. § 25-03.3-03.1, which was not part of the original legislation for the civil commitment of sexually dangerous individuals – it was enacted in 2001, requires the ND DOCR to conduct an assessment of an adult sex offender approximately six months prior to expiration of the offender's sentence. If the ND DOCR treatment staff determine the offender may meet the definition of a sexually dangerous individual, the ND DOCR shall refer the offender to the state's attorney of the appropriate county for consideration whether to bring civil commitment proceedings.

The following is the ND DOCR Division of Adult Services most recent assessment and referral information under N.D.C.C. § 25-03.3-03.1:

2018

Sex offender pre-release assessments	125
Civil Commitment Recommendation Letters Sent	6
Petitions for Civil Commitment	2

2017

Sex offender pre-release assessments	122
Civil Commitment Recommendation Letters Sent	11
Petitions for Civil Commitment	2

2016

Sex offender pre-release assessments	135
Civil Commitment Recommendation Letters Sent	6
Petitions for Civil Commitment	5

2015

Sex offender pre-release assessments	134
Civil Commitment Recommendation Letters Sent	10
Petitions for Civil Commitment	Not available

2014

Sex offender pre-release assessments	118
Civil Commitment Recommendation Letters Sent	15
Petitions to Transfer Offenders to NDSH	Not available

2013

Sex offender pre-release assessments	121
Civil Commitment Recommendation Letters Sent	10
Petitions to Transfer Offenders to NDSH	Not available

Section 25-03.3-03.1 only applies to adult offenders who have been convicted of a sexually predatory offense and does not include juvenile offenders who have been adjudicated delinquent of a sexually predatory offense; therefore, the ND DOCR does not have records of referrals. The ND DOCR is aware that there have been juveniles who have been civilly committed for sexually predatory behavior upon expiration of the juvenile court's orders placing custody of the juveniles with the Division of Juvenile Services, and to the best of the Division's information, there have been seven juveniles who were civilly committed after expiration of the Juvenile Court's custody order.

When the treatment professionals conduct the assessment required by Section 25-03.3-03.1, they use the records that are set forth in Senate Bill 2087, namely "the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records [which include disciplinary as well as positive behavior reports]; case notes [which include comments on behavioral and conduct issues]; and criminal investigation reports and records." The treatment professionals will also rely on the criminal history records, which include the court records, including the criminal information and criminal sentence and judgement.

Many of the offender records that appear in the case file are not relevant to, and are not used in, the pre-release assessment to determine whether the offender is a sexual predator, including the inmate's visitation and telephone records, housing assignments, grievances relating to day to day institutional matters such as food quantity and quality, offender job assignments, money

sent to the offender's spending account by family and relatives, financial obligations such as restitution, court fees and fines, and child support. Yet the physical files for cases that includes these records take a great deal of space to physically store, and for the records that are electronically stored, a great deal of electronic space. Given the ongoing advent of changing technology, it is reasonably anticipated that the electronic storage mediums now used will be obsolete at some point in the near future, just as electronic storage has replaced physical storage.

DECEASED SEX OFFENDERS

Finally, another category of offender case files that does not warrant lengthy retention are the case files of sex offenders who have died, sometimes long before the expiration of expiration of the current retention period. As an example, there have been two sex offenders who died recently while in the custody of the ND DOCR. There is no reason to retain their complete case files beyond the normal retention period the ND DOCR uses for other offenders.

CONCLUSION

The current retention provisions of Section 25-03.3-04 have become unwieldy, sex offender assessments are typically conducted while the offender is still in custody, civil commitment proceedings are commenced long before any fifty-year period could ever run, and except for the records that are actually used to assess sex offenders as sexually dangerous individuals, the retained records are unnecessary for civil commitment proceedings.

Therefore, the ND DOCR respectfully requests favorable consideration and passage of Senate Bill 2087.

2 pg 1
SB 208
1/7/19



2992
SB 2087
1/7/19



2 pg 3
SB 2087
1/7



2pg 4
SB 2087
1/7



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#2 pg 5
SB 2087
1/7

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2997
SB 2087
1/7



2 pg 8
SB 2087





2 pg 9
SRB 2087
1/7

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SB 2087
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3
SB 2087
1/7/2019

Senate Judiciary Committee
Senator Diane Larson, Chairman

Lisa Peterson, PhD
Clinical Director
North Dakota Department of Corrections and Rehabilitation
Testimony Regarding Senate Bill 2087
January 7, 2019

My name is Dr. Lisa Peterson. I am a licensed psychologist and Clinical Director with the Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the DOCR to provide testimony regarding Senate Bill 2087. The scope of my testimony is limited to providing information about the types of records that DOCR staff review when determining whether to send a letter to the applicable State's Attorney recommending that they consider initiating civil commitment proceedings for individuals who could potentially be identified as Sexually Dangerous Individuals. I will provide more detail regarding the types of records reviewed pursuant to each broader category of records specifically referenced in Senate Bill 2087.

Medical: Diagnostic information including the presence of any chronic or acute medical conditions; psychiatric treatment information including progress note; medication prescription and administration information if applicable

Psychological: Diagnostic information; general psychological evaluations including any formal assessment results; recommendations provided by psychologists; individual or group therapy documentation including case notes, treatment plans, and discharge summaries; psychological evaluations conducted as part of a Pre-Sentence Investigation and any related assessment results

Treatment: Clinical assessments related to substance use, mental health status, suicide risk assessment, and those conducted for the purpose of making treatment recommendations; group and individual therapy progress notes; treatment plans; discharge summaries; the results of formal assessment tools such as the Static-99R or STABLE-2007; and information regarding previous treatment history

Offenses in Custody Records: Incident reports, particularly those that relate to sexual behaviors

Case Notes: Case notes that reflect the person's overall functioning and behavior during incarceration or during previous terms of community supervision

Criminal Investigation Reports and Records: Police reports, particularly the victim's account of the events as well as information regarding the perpetrator's account of the events

Thank you. I am happy to respond to any questions you may have.

#1
SB2087
3-18-19
P.1

**SENATE BILL 2087
HOUSE JUDICIARY COMMITTEE
MARCH 18, 2019**

TO: Representative Kim Koppelman, Chair, House Judiciary Committee, and Members of the House Judiciary Committee.

Ken Sorenson, Special Assistant Attorney General, submits this written testimony in support of Senate Bill 2087 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

Senate Bill 2087 was submitted at the request of the ND DOCR to amend N.D.C.C. § 25-03.3-04, which is the section of the Civil Commitment of Sexually Dangerous Individuals chapter that requires the retention of all adult and juvenile case files and court records of an alleged offense under N.D.C.C. chapters 12.1-20 and 12.1-27.2 of the North Dakota Century Code (N.D.C.C.).

N.D.C.C. § 25-03.3-04 in its current version provides:

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

The explanation in the legislative record for this section is as follows:

Under current law, juvenile records are only retained for a period of 11 years and adult criminal records are retained for a period 30 years. Because juvenile records may be critical in a showing the individual has engaged in sexually predatory conduct, these records should not be destroyed. With regard to adult conduct, this section ensures that the totality of prior acts committed by a respondent can be brought before the court.

Section by Section Analysis, House Bill 1047, 55th Legislative Assembly, January 14, 1997.

N.D.C.C. chapter 12.1-20 includes as sex offenses gross sexual imposition, continuous sexual abuse of a child, sexual imposition, corruption or solicitation of minors, luring minors by computer or other electronic means, sexual abuse of wards, sexual exploitation by a therapist, sexual assault, fornication, adultery, incest, deviate sexual act, indecent exposure, surreptitious intrusion, bigamy and transfer of body fluids that may contain the human immunodeficiency virus, facilitation of sexual acts in public, and sex offender presence at elementary, middle or high school.

N.D.C.C. chapter 12.1-27.2 includes as offenses sexual performances by children under North Dakota Law, including use of a minor in a sexual performance,

#1
582087
3-18-19

promoting or directing an obscene sexual performance by a minor, promoting a sexual performance by a minor, and possession of any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

CASE FILE RETENTION

The ND DOCR's general retention schedule for adult offender records is to retain offenders' files for six years after expiration of sentence, termination of probation, or termination of parole, whichever occurs last. The ND DOCR maintains the files for adult sex offenders for fifty years after expiration of sentence, termination of probation, or termination of parole, whichever occurs last.

The ND DOCR's Division of Juvenile Services general retention schedule for juvenile offender records is to retain the juvenile offenders' files until the juvenile's twenty-fifth birthday. The Division of Juvenile Services maintains the files for juvenile sex offenders for fifty years after expiration of the juvenile court's order for custody.

The ND DOCR began electronically storing its case files in 2005. As of the present date, the ND DOCR has 2,495 adult community supervision (Probation and Parole) files for sex offenders dating back to 2005 and 2,325 adult prison files for sex offenders dating back to 2005. Sex offender case files prior to 2005 are manually stored and no effort was made to count them because of the sheer volume of cases; instead, the ND DOCR provides photographs of the manually stored sex offender records.

On the juvenile side, the ND DOCR's Division of Juvenile Services has a total of 344 case files for juvenile sex offenders, of which 316 files are closed files and 28 files are open files.

CONTENTS OF CASE FILES

The ND DOCR had inquired back in 1997 as to what records it had to retain from its adult and juvenile case files, which can be very extensive, in order to comply with HB 1047. The ND DOCR was advised to the effect it must maintain every record in its case files. After the effective date of the statute in 1997, the DOCR's Adult Services Division, which includes Probation and Parole and the state prison facilities, has done just that – it has maintained the entire institutional record and supervision record of every adult in custody or under supervision for an offense subject to N.D.C.C. § 25-03.3-04. The Division of Juvenile Services has done the same for every juvenile placed in its custody for an offense subject to N.D.C.C. § 25-03.3-04.

An adult offender's case file will include three general categories of records: (1) case history records, which includes offender disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, offender financial accounts under section 12-48-15, and protective management cases (N.D.C.C. § 12-

#1
582087
3-18-19

47-36(1); (2) medical, psychological, and treatment records (N.D.C.C. § 12-47-36(2)); and (3) records of the offender's identity, location, legal files except records under court seal, criminal convictions, and projected date of release (N.D.C.C. § 12-47-36(4)). A juvenile offender's file will be similar, although not with the same statutory categories as an adult offender.

Every offender's case file becomes extensive, and the extent of the case file increases as the period of incarceration or supervision increases.

SEX OFFENDER ASSESSMENTS

N.D.C.C. § 25-03.3-03.1, which was not part of the original legislation for the civil commitment of sexually dangerous individuals – it was enacted in 2001, requires the ND DOCR to conduct an assessment of an adult sex offender approximately six months prior to expiration of the offender's sentence. If the ND DOCR treatment staff determine the offender may meet the definition of a sexually dangerous individual, the ND DOCR shall refer the offender to the state's attorney of the appropriate county for consideration whether to bring civil commitment proceedings.

The following is the ND DOCR Division of Adult Services most recent assessment and referral information under N.D.C.C. § 25-03.3-03.1:

2018

Sex offender pre-release assessments	125
Civil Commitment Recommendation Letters Sent	6
Petitions for Civil Commitment	2

2017

Sex offender pre-release assessments	122
Civil Commitment Recommendation Letters Sent	11
Petitions for Civil Commitment	2

2016

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#1
582087
3-18-19

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When the treatment professionals conduct the assessment required by Section 25-03.3-03.1, they use the records that are set forth in Senate Bill 2087, namely "the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records [which include disciplinary as well as positive behavior reports]; case notes [which include comments on behavioral and conduct issues]; and criminal investigation reports and records." The treatment professionals will also rely on the criminal history records, which include the court records, including the criminal information and criminal sentence and judgement.

Many of the offender records that appear in the case file are not relevant to, and are not used in, the pre-release assessment to determine whether the offender is a sexual predator, including the inmate's visitation and telephone records, housing assignments, grievances relating to day to day institutional matters such as food quantity and quality, offender job assignments, money sent to the offender's spending account by family and relatives, financial obligations such as restitution, court fees and fines, and child support. Yet the physical files for cases that includes these records take a great deal of space to physically store, and for the records that are electronically stored, a great deal of electronic space. Given the ongoing advent of changing technology, it is reasonably anticipated that the electronic storage mediums now used will be obsolete at some point in the near future, just as electronic storage has replaced physical storage.

#1
SB 2087
3-18-19

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CONCLUSION

The current retention provisions of Section 25-03.3-04 have become unwieldy, sex offender assessments are typically conducted while the offender is still in custody, civil commitment proceedings are commenced long before any fifty-year period could ever run, and except for the records that are actually used to assess sex offenders as sexually dangerous individuals, the retained records are unnecessary for civil commitment proceedings.

Therefore, the ND DOCR respectfully requests favorable consideration and passage of Senate Bill 2087.

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6

#1
SB 2087
3-18-19



P. 7

1
582087
3-18-19



P.8

#1 582087
3-18-19



#1 SB2087
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#1 SB 2087 3-18-19



#1 5B 2087 - 3-18-19



12

#1 SB 2087

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#1 5B 2087 3-18-18

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SB 2087

3-18-19



15

#2
502087
3-18-19
P. 1

House Judiciary Committee
Representative Kim Koppelman, Chairman

Lisa Peterson, PhD
Clinical Director
North Dakota Department of Corrections and Rehabilitation
Testimony Regarding Senate Bill 2087

My name is Dr. Lisa Peterson. I am a licensed psychologist and Clinical Director with the Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the DOCR to provide testimony regarding Senate Bill 2087. I will focus on the types of records that DOCR staff review when determining whether to send a letter to the applicable State's Attorney recommending that they consider initiating civil commitment proceedings for individuals who could potentially be identified as Sexually Dangerous Individuals. I will also provide some statistics regarding sexual offender recidivism over time.

Medical: Diagnostic information including the presence of any chronic or acute medical conditions; psychiatric treatment information including progress notes; medication prescription and administration information if applicable

Psychological: Diagnostic information; general psychological evaluations including any formal assessment results; recommendations provided by psychologists; individual or group therapy documentation including case notes, treatment plans, and discharge summaries; psychological evaluations conducted as part of a Pre-Sentence Investigation and any related assessment results

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Criminal Investigation Reports and Records: Police reports, particularly the victim's account of the events as well as information regarding the perpetrator's account of the events

Karl Hanson and colleagues performed a meta-analysis in 2014 that examined 21 different studies and including an aggregate sample of 7,740 sexual offenders. Results indicated that the risk for sexual re-offense for high risk sex offenders who had remained at liberty for at least 10 years was only 4.2 percent. For offenders in the moderate risk category, the rate of re-offense after 10 years at liberty was just 2 percent. Recidivism rates for low risk offenders remained consistently low over time (for example, a 5% risk within the first year is likely to reduce to a 1% risk after at least 10 years at liberty). We can conclude, then, that the number of individuals who might reoffend sexually after 25 years of no involvement with the criminal justice system is extremely low.