

Steve Porter  
1828 350<sup>th</sup> Ave  
Lake Bronson, MN 56734

March 18, 2025

Ref: Testimony for SF956

The following document (pages 2-6) is a memo/directive from DNR COL William C. Bernhjelm that was issued to all state Conservation Officers on December 17<sup>th</sup>, 2001. This memo was an order that was issued to all MN Conservation Officers as a result of *State v Krenz*, and it specifically orders Conservation Officers to stop barging into fish houses. It further states and directs Conservation Officers that they must either obtain a legal search warrant or legal consent to enter a fish house prior to entering a fish house.

I have worked in law enforcement for 29 years, and I am fully aware of the requirements of search warrants and consent being needed prior to entering a dwelling. I was also made aware of this memo/directive that was issued to reel in the unconstitutional behavior of wardens when the directive was issued back in 2001.

On January 12, 2021 I was ice fishing in a fish house with some friends and we were approached by CO Ben Huener. I had previously worked in law enforcement with CO Huener, and when he asked if he could come into our fish house, I said “absolutely not”, as I knew CO Huener as a former co-worker, I was aware of COL Bernhjelm order to CO’s, and I wanted to see CO Huener’s response to being told “No, he could not come inside”. My actions started as a way to have fun with CO Huener, but then CO Huener forcefully opened the door and stuck his foot in the door, and he would not allow me to close the door. CO Huener violated my U.S. Constitutional Rights **AND** he violated the direct order from COL Bernhjelm. I informed CO Huener that he was violating a direct order from COL Bernhjelm, and that I had a copy of this direct order. CO Huener responded to me that “Why would I (Steve Porter) have a copy of COL Bernhjelm’s order?”

The attached memo/order from COL Bernhjelm is proof that Conservation Officers are fully aware of proper procedure regarding search and seizure **AND** that Conservation Officers simply choose NOT to follow the direct order of COL Bernhjelm or the U.S. Constitution.

I do fully support SF956. I understand that there are already state and federal laws, **AND** a direct order from COL Bernhjelm that governs and encourages Conservation Officers in respecting the 4<sup>th</sup> Amendment of the Constitution. **However, there is no penalty clause built into of the above-mentioned restrictions; therefore, I firmly request that a specific penalty clause be built directly into SF956. Otherwise, if passed into law, it will just become another law or order with no teeth or consequences for Conservation Officers who violate the rights of Minnesota citizens.**

Thank you!  
Steve Porter

# NATURAL RESOURCES DIVISION OF ENFORCEMENT

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Date:

December 17, 2001

File: CO4-01

To: All Conservation Officers

From: Col. William C. Bernhjelm

Director  
Division of Enforcement

PHONE: 651-296-4828

SUBJECT: DIRECTOR'S MEMO: Enforcement of Angling/Shelter Laws during the 2001-02  
Winter Angling Season

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## INTRODUCTION

On October 2, 2001, the Minnesota Court of Appeals decided the case of *State v. Krenz*. In *Krenz*, the court equated fish houses to homes under the Fourth Amendment, concluding that people in a fish house have a reasonable expectation of privacy. This case means that many of our long-standing enforcement methods are no longer lawful. Yet at the same time, the enforcement of angling laws and protection of the fisheries resource are at the center of our mission. We will continue to enforce the law. But for this winter, we will need to use different methods to get the job done.

### We are implementing a three-part response to the Krenz decision:

1. We will need to conform our enforcement methods to the new restrictions on our authority announced in *Krenz*. This memorandum details permissible enforcement practices in view of the *Krenz* decision.
2. We will work toward using administrative inspection warrants on special regulations waters.
3. The Division is giving its support and assistance to the Rice County Attorney's Office as it works to reverse the result in *Krenz* through the appellate process.

## LEGAL OVERVIEW

**OUR TWO ROLES.** Minnesota Conservation Officers have both regulatory authority and criminal enforcement authority. Regulatory authority is basically our power to closely monitor people taking game and fish without any suspicion of wrongdoing. For instance, we may

We are committed to serve the people in Minnesota by protecting natural resources, the environment, and public safety. demand to inspect an angler's fish and fishing license without and reasonable suspicion of a violation. What triggers our inspection authority is not suspicion of wrongdoing, but the fact that an individual is taking or transporting wild animals. By contrast, criminal enforcement authority is triggered only when we observe a violation, or develop reasonable suspicion or probable cause to suspect one.

*Krenz* does not directly attack our inspection authority. CO's still have regulatory authority to inspect the licenses and catch of people who are taking, even people in fish houses. But *Krenz* complicates how we go about checking anglers by equating fish houses with homes. The occupants of a fish house remain subject to our regulatory inspection authority, but for now they have a reasonable expectation of privacy.

**THE BASIC RULE.** The basic rule announced in *Krenz* is that fish houses must be treated like homes under the Fourth Amendment. This means we cannot enter a fish house without: (1) consent, (2) a warrant, or (3) an exception to the warrant requirement. Entry based on consent, warrants and exceptions are discussed below. But first, it's important to take stock of the tools that are still at our disposal after *Krenz*, and to point out that there is a constitutional difference between seeing into a fish house and stepping into a fish house.

**SEEING VERSUS STEPPING.** What a person knowingly exposes to public view is not protected from observation by the Fourth Amendment. This principle applies with full force to the ice fishing scenario. What is knowingly exposed to the public view and is observed from a lawful vantage point is not covered by a reasonable expectation of privacy. Consider the following example:

An officer is working on the frozen surface of a public water  
The officer is walking in the vicinity of a fish house  
There are two tip-ups on the ice near the house  
Tracks in the snow lead back and forth from the tip-ups to the fish house but no place else  
The fish house has a window  
The officer looks through the window  
There is one person inside fishing with a jiggle stick

*In the criminal realm*, the observations may be used to prove that the angler inside the house is fishing with an extra line. But these observations do not authorize the officer to enter the fish house. *In the regulatory realm*, these observations establish that the angler is engaging in a regulated activity. This triggers the officer's authority to demand to inspect the angler's license and catch. But once again, these observations do not authorize the officer to enter the fish house.

In sum:

A court is not likely to consider the frozen surface of a lake as an extension of the home (i.e. Curtilage)  
While standing outside on the frozen surface of a lake, you may direct your attention to what lies beyond the windows and open doors  
You can also use aided view (binoculars/spotting scope.etc.) to look through a window  
You can use these observations as evidence of a crime, or as a basis for invoking your regulatory authority to inspect licenses and wild animals  
If relying on such observations, include sufficient details in your report to document that

what you saw, and where you were when you saw it  
**SEEKING CONSENT TO ENTER.** Conservation officers should routinely ask for permission to enter fish houses to conduct inspections of licenses and fish. There will undoubtedly be some people who refuse consent and it will be tough to be told no. But it is their constitutional right to do so. Some strategies are identified below for dealing with refusals.

For consent to be effective, it must be given freely and voluntarily. It cannot be a product of coercion. Cases decided in the Minnesota courts demonstrate that word choice in seeking consent is important. The words used must be purely a request for permission and cannot contain any suggestions that compliance is expected. Statements like Do you mind if I come in, and do you have a problem with me coming in are not valid requests for consent.

Knock and identify yourself as a CO

If someone responds by saying come in, then valid permission has been granted

Examples of appropriate requests include: Can I come in to check your license and

License check, can I come in? and we're asking everyone's cooperation to

Protect the resource, would it be ok if I came in to check your licenses and catch?

**ANGLERS REFUSING INSECTION.** A person angling inside of a fish house is obligated to permit Inspection of his or her license and fish upon demand by a Conservation Officer. But at the same time, a person angling inside of a fish house enjoys a reasonable expectation of privacy. We cannot force ourselves into a fish house to check a fishing license. We cannot force an angler to come out of the house to present his or her license. The bottom line is that: (1) if we can prove that a person inside of a fish house is angling, and (2) the person refuses to present his license and catch for inspection upon demand, then (3) the person is guilty of refusing to permit inspection under 97A.251, subd. 1(2). Thus, the following scenario:

A fish house has a window

A CO sees someone angling through the window

The CO knocks on the door and demands to see the individual's license

The individual refuses to come to the door or show his/her license

The angler is subject to charges for violation of 97A.251 (refusal to permit inspection)

This frames up the following options for the officer:

Wait out the angler and issue charges when the angler leaves the shelter

Seek information to identify the angler, issue charges through the mail or in person later on

Try to talk to the person into compliance

Enlist the help of a supervisor or partner in procuring a warrant

**DOCUMENTING ANGLING ACTIVITIES.** To charge an individual with refusal to permit inspection, an officer must first be able to establish that the individual was engaged in a regulated activity (fishing) inside the fish house. Some indications that the officers should look for and document in a refusal case include:

Fish, dead fish, or blood present

Tip-ups and footprints from tip-ups to house

Holes, augers, chisels, skimmers, etc.

Minnows, dead minnows, and buckets

Lack of ice-skating rink (shelter is being used for angling, not as a warming house)

Number of vehicles present  
A known fishing area  
Presence of other people in the area who are fishing  
Type of shelter (portable, etc.; people probably don't go to a portable to play cards or watch a football game)  
Time of the day (peak fishing times, etc.)  
Sounds (rattle reels, etc.)  
Conversations

## QUESTIONS AND ANSWERS

1. *Question.* Does the law still require anglers to leave the doors on their fish houses unlocked? Should we issue charges for violating this law?

*Answer.* The law requiring anglers to leave the doors on their fish houses unlocked still remains in effect. The court did not invalidate this law. However, this law was passed for a particular purpose: To make it easier for Conservation Officers to quickly make unobstructed entry into a fish house to carry out their inspection duties. The decision takes away our authority to enter fish houses at will. As a result, the purpose behind this law has been suspended, and we will not be issuing summons or warnings for violation of unlocked door law this season.

2. *Question.* People can quickly dump illegal fish and equipment down one of the holes in their fish house. Can I make a warrantless entry to prevent the destruction of evidence?

*Answer.* No. An exception to the warrant requirement has been recognized where an immediate entry is necessary to prevent the destruction of evidence. But the courts have indicated that this exception does not generally apply in non-felony cases.

3. *Question.* A person is standing near some tip-ups on the ice when an officer approaches. The officer asks to see a license. The person turns and runs into a fish house. The officer yells stop. May the officer follow the person into the fish house?

*Answer.* Yes. The officer demanded to inspect the angler's license. The angler committed a violation in the officer's presence by refusing inspection. The officer can follow the person into the fish house to complete the arrest for this violation.

4. *Question.* Will we be taking enforcement action with respect to unlicensed fish houses?

*Answer.* Yes. But remember the elements of the violation. There is no violation for leaving a fish house on the ice without a license. The violation consists of angling from an unlicensed shelter.

5. *Question.* An angler is inside a fish house and I have knocked on the door. How long should I give the angler to show his license and fish before I charge the individual with refusing to permit inspection under 97A.251, subd. 1 (2)?

*Answer.* Section 97A.251 does not specify how long a person has to show his license and harvest to an enforcement officer. The apparent intent of this law is to guard against illegal harvest and to ensure that the anglers have obtained a license. In view of the purpose behind the statute, a judge will likely key in on the length of delay in answering the door and what happened during that period of time.

Near-immediate response. The angler is in compliance.

Delayed response. Documented observations and interviews will be vital. How long Was the delay? More importantly, was there evidence that the angler used the delay to dispose of illegal fish or hide illegal activities? Does the angler's explanation for the delay square with what the officer heard from outside the door? What is observed when the angler opens the door? The bottom line is that the judge will likely want to be convinced that the angler successfully used the period of delay to avoid being caught for another violation.

6. *Question.* An angler is leaving the lake with a portable fish house in the back of his pickup (or is towing a fish house on wheels). Is this fish house still a "home" under the Fourth Amendment?

*Answer.* No. A collapsed portable in the back of a vehicle is part of the vehicle. A fish house with wheels being towed off of the ise is also more like a vehicle than a home. Minn. Statute 97A.251, subd. Authorizes the inspection of motor vehicles being used to take or transport wild animals. To inspect, the officer must (1) lawfully establish contact with the driver of the vehicle, and (2) establish that the vehicle is being used to take or transport fish.

Please contact your supervisor with any questions you may have.

WCB/WJE:pkn