

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1472

2007 HOUSE JUDICIARY

HB 1472

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1472

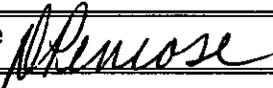
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/31/07

Recorder Job Number: 2346

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1472.

Rep. Don Clark: I am a sponsor of this bill. This bill is about making schools a safer place for children. This bill prohibits the sexual offender who has pled guilty or been found guilty of a class A misdemeanor or a felony sex offender against a minor from entering school property, unless certain conditions apply. The school board could adopt a policy allowing a sexual offender under certain circumstances. The offender must be a parent, a guardian, or a relative of a student in all cases. The offender must be there to participate in conferences with school personnel about the academic progress of the child, or other student issues concerning their child. Next, the offender has filed, with the school board, written permission from a probation officer allowing the offender's presence at school functions, where other adults or parents are there with students. The offender is not on supervised probation and has requested advance permission from the Superintendent or school board to allow offender's presence at school functions. Of course, a lot of voting booths are in the schools, so if the offender is there for the purpose of voting, that would be allowable. A violation of these conditions would be a class A misdemeanor. Since this bill is about making children and the school they attend, a safer place, I would ask that you give this a Do Pass.

Rep. Klemin: On page 1, line 10, it says you can't loiter near or enter upon the real property comprising the school. How would you define loiter near for purposes of this bill, how close can a person get.

Rep. Don Clark: I guess that's not defined very well. I think you can consider it loitering near, if they are just hanging around the school yard or premises.

Rep. Klemin: I guess my concern is that we don't want to have something here that is unconstitutionally vague, wouldn't it be better to specify a specific distance.

Rep. Don Clark: I wonder if there isn't another bill somewhere coming regarding that particular issue. I believe there is.

Chairman DeKrey: Thank you.

Rep. Rick Berg: Sponsor of the bill. This bill really has one primary objective. That is to develop a uniform policy as it relates to sex offenders and school property. This last summer/fall, we ran into a real fiasco in the Fargo school district. There was a situation where someone that's a registered offender was entering the school to pick up a stepchild. That created a tremendous uproar in the school, put a lot of pressure on the school board and created a lot of anxiety in parents that had children at that school. Obviously, as you in this committee know, that the first reaction is not necessarily appropriate and you have to really understand the whole sex offender statute to determine what would be appropriate. As we think about the 200 school districts across the state, many of them have multiple schools within their school district; the thought was that we should have some uniform policy that helps take some of the pressure off each school board. Section 1 basically says the person may not come on school property. Section 2 really gives the school board or the governing entity the ability to adopt policy that would allow exemptions to this for a, b, c, and d. I think it helps clarify for many of the school boards could have volunteer boards and part-time attorneys,

what parameters they would be under it. Someone is here from the AG's office that can speak more directly, my take on the loiter issue is that we can prevent someone from being on the property, but if there is someone on the sidewalk in front of school property, I think we run into constitutional problems on the sidewalks and on the streets. I think that is why the word loiter is there, it's simply to say if there is a problem, it would give some ability to ask this person to leave, but at the same time, it's vague enough that it doesn't create a constitutional issue.

Rep. Klemin: I guess my concern is about the word "near". How do you define that.

Rep. Rick Berg: Certainly I would support any clarity that you would like to put in this bill.

Chairman DeKrey: Thank you. Further testimony in support of HB 1472.

Bev Nielson, ND School Board Association: We are here in support of HB 1472. We had a couple of questions, one that has already been addressed and that was what "near" means. That might need some definition. Then I just wanted to point out, you may or may not have read the Senate bill, 2256, which also deals with this topic and just a couple of differences. One is in 1472 we're only addressing sex offenders who have offended against minors and the Senate bill is all sex offenders, it isn't restricted to offenses against minors. Here we have a class A misdemeanor, if they enter without permission and policy, in the Senate bill, it is a class C felony. I know that there are some issues that the committee might want to discuss. We don't necessarily have an opinion one way or another. One of the things that neither of the bills addresses, is juvenile offenders. If the law is very specific that no offender, who has offended against a minor, in the case of this bill, can be on school property and yet most of the juvenile offenders in their adjudication requires them to attend school. It causes an issue for us, we don't know whether to find alternative places for kids. In larger schools we may be able to do that, in small schools it might be a real problem. I don't have an exact answer for you, but I do believe that the way both bills are written, it doesn't address juvenile offenders.

Rep. Delmore: I share that concern with you as well. It seems that this bill still allows local school boards to draft rules or whatever that would cover that. I would think that if we can't find the wording in this committee, that could still be done at the local level.

Bev Nielson: Except that in 1472 that you're looking at, the exceptions are very specific and they all entail parents or guardians. The juvenile issue may not be something as simple as just saying that we can have a policy, because we're required to educate them according to the adjudication there and it might be something even for interim study.

Rep. Delmore: Is there any way that you can see that you could prevent somebody from being able to vote. Is that necessary to be in there.

Rep. Onstad: I don't recall that juvenile offenders can be charged with class A misdemeanor. They might sneak under that classification.

Bev Nielson: 12.1-32-15, section 12, juvenile offenders are required to register under the same law. Now whether they are adjudicated under the same types of things. But they are required to register the same as adults.

Rep. Koppelman: How do the schools deal with circumstances like you're describing. If there is a juvenile offender, the court adjudicates that case and part of that ongoing probation requires the student to attend school. Does the school segregate the offender from the other students, being concerned about reoffending.

Bev Nielson: That is a problem. It is a newer issue. We haven't really dealt with this before. It has occurred. There was one student in West Fargo, I believe, who was adjudicated back into the school, alongside the victim, and so it's uncomfortable for everybody. In a larger district you may be able to put them in an alternative setting; I would hope that the law would allow you to do that if you had that policy. In small schools, it's more of an issue. I wish I had an answer.

Chairman DeKrey: Thank you. Further testimony in support.

Doug Johnson, ND Council Educational leaders: We are in support of HB 1472. We do have the same concerns that were addressed by Ms. Nielson and her testimony. I did visit with superintendents at the conference we just had and two questions did come up; the juvenile offenders and I've had, as a principal, have had juvenile offenders in my building. The loitering near, that definition particularly for small communities is going to be difficult. Some of the small communities might have 3 or 4 blocks total surrounding the school, what is that "near"; that could even stop that person from coming into town. That needs to be clarified as well.

Rep. Koppelman: How did you handle this.

Doug Johnson: We monitored those students very closely and worked with the juvenile court systems. Many times those students may be in special education programs, including the ITP process, that those were monitored. It is not uncommon to have children that are even in grade school that are charged with this too. That can happen as well. You have to be quite cautious, trying to protect the students around that particular individual, as well as the right of that student too, to have an education and be safe in our schools.

Chairman DeKrey: Thank you. Further testimony in support of HB 1472.

Jack McDonald, State Association of Non-Public Schools: We support the bill and support the intent behind it. We do see a couple of problems that may need to be addressed. One of them would be the other public events in the school. Things like basketball games, meals, breakfast, dinners, events like this; especially at non-public school who rent out our facilities on weekends for these events. I'm not sure how that will fit in, if they are coming to a basketball game, for instance, would they be facing arrest or a fine. The other thing is that we need to look at places of public worship during the time when the time when the worship is

being conducted. Many of our schools are in conjunction with various churches. They are on church property certainly. This again would have some problems during the times of service, the bill is written too broadly to prevent some people from being present at worship services, so you could have problems with freedom of religion issues. We certainly support the bill and we would certainly work with any subcommittee you might have to try and iron out these details. This is a similar problem that is facing the Senate committee that had the Senate bill.

Rep. Koppelman: What is a definition of a non-public school, it is a private school or more than that.

Jack McDonald: I'm not sure if there is a strict definition. I guess it's just not a public school. We do get approved or accredited by the Dept of Public Instruction. They have a list of schools.

Rep. Koppelman: Are home schools classified as schools in ND, would the bill apply to them? How would someone know if there is a home school in a particular house.

Jack McDonald: I don't speak as an expert in home schooling. This does talk about school property, I don't believe that a home school is defined under current law as a school as such. The students certainly are qualified and get degrees from the different schools but private homes are not considered school property in ND law.

Rep. Griffin: Do you find that subsection 2 where it says that a school district do not adopt a policy, it says it does not apply if a school board adopts this policy. If the school board doesn't adopt a policy, then a person would not be able to go onto school property, do you find that to be an issue.

Jack McDonald: The way I read the bill, the section does not apply to the Class A misdemeanor if the school board adopts a policy that allows them on the property under these certain circumstances outlined in the bill, a,b,c, and d. If the school board did this policy, then

there wouldn't be a violation of a class A misdemeanor if he was on the property for those reasons. The other reasons I listed are not listed as reasons under that bill. Of course, if the school board just didn't do a policy, then they would all be liable for a class A misdemeanor, even if they came in to vote under this bill.

Rep. Griffin: Is that constitutional if not adopted.

Jack McDonald: It's hard to say if it is constitutional. I find it hard to believe that you could have somebody charged for a class A misdemeanor for voting. I just don't think you could do that and make it constitutional. I doubt it.

Chairman DeKrey: Thank you. Further testimony in support.

Nancy Sand, ND Education Association: We too are in support of the bill and we share the concern about the word "near", that word needs a little greater definition. We would hope that school boards would indeed, adopt policy so that when our school employees see people in the building that they know that those people are indeed rightfully there. It takes away all questions of suspicion.

Tom Trenbeath, AG's office: I agree with a lot of the concerns that have been expressed here today. We have had some involvement in drafting certain portions of this legislation and certain portions we weren't involved in. The language regarding "near" is problematic and there may be a suggestion to track language in other sections, such as the solicitation of a minor section or the indecent exposure section that speaks in terms of 50 ft. It's clear that we need to do something with respect to this. The AG's office likes the language in this bill that allows some flexibility for local control. We would back that. We are also cognizant of the fact that SB 2256 is out there, another good bill. We think there ought to be one bill that comes out of this session. We would be happy to work to bring the two bills together. There were also some concerns raised with respect to juveniles and their place in this scheme. We would

suggest language as an additional sub (e) under 2, that says the school board can adopt in their own policy, to extend that to include the sexual offender who is a student at the school. Also with respect to section 1, sub 1, where we talked about where juveniles fit into the definition of persons who have pled guilty or been found guilty of a class A misdemeanor. There is a possibility, if the committee, chose to insert language that also included, "been adjudicated a delinquent" with respect to that code section, to include that class of persons not only who have been adjudicated as adults but remain a minor, but have been adjudicated as a delinquent and now have reached their majority.

Rep. Wolf: In section 1 where you are talking about entering the real property of a public or private elementary or high school. Does that include your middle schools and alternative schools as well.

Tom Trenbeath: It certainly would include what's commonly known as a middle school. I don't know that an alternative school necessarily is. If that were found to be a concern, of course, that could be adopted in any amendment that would be suggested by the committee, as well.

Rep. Koppelman: If the school district is put in a position of being responsible for making policy for allowing a juvenile offender to be in the school and that juvenile offender were to reoffend, would there be a liability exposure for the school board.

Tom Trenbeath: As a broad statement, there is almost always an exposure for liability in most situations, not only situations involving previously agreed upon dangerous people. That's always there. Of course, there is always insurance, once insurance companies start excluding activities and decision making that involves those sorts of people, most school districts would be covered.

Rep. Klemin: Subsection 1 of this, if the school board doesn't have a policy or not have any of these exceptions, then the subsection 1 applies. In regard to some of the other activities such as voting or going to church, in the situation where the school board hasn't adopted a policy covering these exceptions, how would we handle this situation.

Tom Trenbeath: I believe the first question is a basic distinction between the two situations. There is only place to vote that I know of. So the infringement of the right to vote is a constitutional issue. Freedom of religion I don't think is addressed by not being able to go to a particular church building you want to go to. So that may be of a lesser question. In the end, however, I shared a concern with respect to voting certainly and possibly there is some room for a language change in that respect. I can't speak practically and think of a well informed school board saying that they are going to deny a person his constitutional right to vote, when this is the only place where he or she can vote.

Rep. Klemin: Whether the school board does or doesn't do this, we've got a law that says this is a default rule. Unless the school board does something, you can't vote.

Tom Trenbeath: I'm suggesting that with respect to subsection 1, the specifically stated exception, for purposes of voting, would make some sense.

Rep. Meyer: Last session Rep. Froelich brought forward a piece of legislation that banned sexual offender within a 1,000 ft of a school. We were told that there was no way that law enforcement could enforce that. I was wondering if that was why it was left to be "near", because they couldn't enforce the 1,000 ft rule. Is that why under subsection 1, why that is left vague like that.

Tom Trenbeath: I can only speculate as to why the language is there. It's not language that emanated from our office. I expect that it is in response to the concerns that were raised about distance issues. Distance issues become less as they become smaller; 1,000 ft is all kinds of

things about you measure and from where, etc. The 50 ft rule, although there may be some disputes in certain instances of what constitutes 50 ft and from what start point, at least it doesn't have a constitutionally vague question, where near does.

Rep. Meyer: Under your juvenile offenders in this section, like two boys get into a fist fight, are they separated out in this section of the code, 32-15 or are they in the same section as the sexual offender.

Tom Trenbeath: I don't have that section in front of me, but my understanding of this bill, is that it relates only to sexual offenders.

Rep. Meyer: They fall into a different classification, okay.

Rep. Delmore: However, do we have anything about minors in possession/child pornography.

We passed a bill out of here, but I don't know if there is anything in there, we increased the penalties for that. Do you know where that would fall. Would that be an example of a sex offense against a minor, or does the code react differently to that.

Tom Trenbeath: I have no idea. However, Jon Byers is in the audience and he may have that answer.

Rep. Boehning: If the school board makes a policy that says sex offenders cannot come onto the school property and that happens to be a voting precinct that he goes to, are we violating his rights or can he go to the courthouse and vote.

Tom Trenbeath: It seems that language needs some tweaking because to my knowledge there are no alternative places to vote. If you live in a precinct there is probably only one voting place. If that happens to be a school and you happen to be excluded because of your sex offender status, I think that raises, at least from the beginning, a constitutional question.

Rep. Boehning: I guess you do have alternatives, you can do an absentee ballot or go to the courthouse and vote.

Tom Trenbeath: You may well have a point; however, I think it is an issue that a court will decide.

Chairman DeKrey: Thank you. Further testimony in support of HB 1472.

Rep. Rick Berg: I'd just like to respond to the comment that was made, that maybe "near" was a distance of 50 ft. My only concern with that, is I know we have public streets and public roads. I think we would run into the same potential constitutional issue, so if we would be more appropriate as long as we are just starting down this road to say on school property rather than trying to define a distance.

Jonathan Byers, Asst. AG: I think I can answer some of the questions that were asked during the previous question from the other people who provided testimony. First of all, Rep. Klemin asked the question about the potential civil liability for a school board that either adopted or didn't adopt the policy. I want to read the paragraph from the registration statute, which addresses this, that would be easy to make an amendment to. The registration statute is 12.1-32-15, subsection 14 of that statute says that a state officer, law enforcement agency, or school district or any appointee officer or employee of those entities is not subject to civil or criminal liability for making risk determinations or for disclosing or failing to disclose information as permitted by this section. It would be very easy to add language saying "or for adopting or not adopting a policy as provided by the section dealing with this provision". Rep. Delmore asked a question about juveniles who are in possession of child pornography. They could conceivably be adjudicated for a juvenile offense because that's in child pornography that would require them to register as a sexual offender but, as Mr. Trenbeath indicated, it's possible to include those juveniles who are adjudicated for offenses once they become an adult, because you could have somebody who is 26 years old that had a juvenile offense that

you'd want to keep from a school, and yet except those juvenile offenders who are still students at the school. That could be addressed.

Rep. Koppelman: I think you testified yesterday on another bill, that the child pornography section is separate from the sex offender statute. I asked whether they were considered sex offenders, would that not be a distinction.

Jonathan Byers: I think the question that was asked by you in the other hearing was a different question and it didn't deal with whether they have to register or not. In the definition of those that commit a sex offense, it says a sexual offender means a person who has pled guilty or been found guilty of a violation of, and it lists a number of sections in that chapter 12.1-27.2 which is the child pornography.

Rep. Charging: Do you know, would this apply to higher education institutions as schools, such as colleges.

Jonathan Byers: As I understand the testimony in the Senate bill, which is similar to this, the term elementary or high school would include middle schools. So that is covered. In regard to colleges, there are some special provisions in the sex offender registration statute that requires that if a student is attending a college that has a sexual offense, they are required to give notice of that to law enforcement and law enforcement in turn, has a right to notify the administration of the college. So they will have notice that a registered offender is there, and they can make decisions about whether that is appropriate or not.

Rep. Charging: Could this ever be used.

Jonathan Byers: As I understand the reading of this, this would not be used to prohibit somebody from attending college.

Rep. Koppelman: Under current law, if this bill passed or not, do schools whether they are colleges or elementary –high schools, do they have any ability to make policy that would govern this area, or would that be challenged based on some other infringement.

Jonathan Byers: Of course, we always advise schools to consult with their own attorneys when they ask those kinds of questions, but a pat response to that is that the typical violation of someone's constitutional rights that they have a claim for, as it relates to gender, ethnic background, race, religious preference, there really is nothing that we are aware of that prohibits a school or a landlord, or an employer from making decisions for their business or school, based on the safety of students being a sex offender is not a protected class.

Rep. Koppelman: Then is this bill really necessary, or can schools do this through policy.

Jonathan Byers: I believe in the Fargo situation, they did do it by policy, but the question is that it will leave it up to the various school districts to do that within the state and when an offender moves from place to place, the policy that he might or might not be faced with will always be different. That just leaves the possibility out there that the offender is never going to quite understand what is expected of him and will always have to go and find out what the policy is.

Rep. Koppelman: Doesn't the bill also do that, because it says if the school adopts the policy.

Jonathan Byers: Both this bill and the Senate bill require adoption of the policy. That one doesn't specify what the policy should say. This is more specific as to the particular exemptions that the school policy would allow somebody to go to the school to do.

Rep. Delmore: Is it possible to put teeth into this and say, school boards will adopt.

Jonathan Byers: I think that is what the other bill does say, that they shall adopt the policy. The other question was about the issue of loitering. In fact, I was the one that suggested that there is still a problem that is not addressed if you only deal with the sex offender entering on

the school property. There was a case a couple of years ago in Bismarck, at a school just east of here, where a sex offender, who was previously convicted, pulled up in a van on the street next to the middle school. He called girls over to the van and then was masturbating, sitting in his van next to the school. He did solicit one of the girls to get in his van and she did that. He wound up engaging in sexual acts with this 12 or 13 year girl. Simply preventing them from entering on to school property, wouldn't fix that problem. Mr. Trenbeath suggested that we could have increased penalties for people who solicit minors or who expose themselves to minors if they do so within 50 ft of a school. That would be just like the ND laws that increase the penalties if you sell drugs within a certain ft. of a school. That's concrete. It's a 50 ft distance. If you would expose yourself or solicit you would be subject to more increased penalties. Then we would take out the loitering "near" language.

Chairman DeKrey: Thank you. Further testimony in support of HB 1472. Testimony in opposition. We will close the hearing. I will appoint a subcommittee of Rep. Dahl, Rep. Kingsbury, and Rep. Griffin.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1472

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/5/07

Recorder Job Number: 2837

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1472.

Rep. Griffin: Explained the amendments made by the subcommittee. The first change is that there was concern about keeping it near the school, what constituted loitering near. We changed that. Added section 2 and section 3 and amendment to section 4. As you will see in line 12 and 13, we removed that portion. These exceptions would become the norm, school districts wouldn't have to adopt them. These would be the law. These would be mandatory.

Chairman DeKrey: Have the amendments redrawn up and bring back in tomorrow. We will close for now.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1472

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/6/07

Recorder Job Number: 2906

Committee Clerk Signature

A. Amose

Minutes:

Chairman DeKrey: We will take a look at HB 1472.

Rep. Griffin: Explained the amendments. The two new sections were added because one dealt with indecent exposure and one is for solicitation of a minor. They put these in that section, so when you look up indecent exposure you will see that if you do it near a school, then it's a stiffer penalty; E and F were added, one allows the offender if it is a current student, they can still go to school, and then we made an exemption for religious services in schools. I move the amendments.

Rep. Delmore: Second.

Rep. Klemin: On the voting issue, how was that resolved.

Rep. Griffin: We made it so that these exceptions are going to be mandatory, so every school district, this will be mandatory exemption.

Rep. Klemin: So they don't have to adopt the policy.

Rep. Griffin: They don't have to adopt the policy. They could adopt stricter policies.

Rep. Klemin: Does that say that anywhere in here.

Rep. Griffin: No, it was just in discussing it with the AG's office, they wouldn't be able to charge it under this chapter, but they could put stricter policies in place.

Rep. Delmore: So we have a stronger bill than we did before.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Rep. Wolf: I move a Do Pass as amended.

Rep. Dahl: Second.

13 YES 0 NO 1 ABSENT DO PASS AS AMEND CARRIER: Rep. Griffin

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1472

Page 1, line 1, after "12.1-20" insert ", a new subsection to section 12.1-20-05, and a new subsection to section 12.1-20-12.1"

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to liability of school officials;"

Page 1, line 9, after "of" insert "or has been adjudicated delinquent or", replace "sex" with "sexual", and after "minor" insert "or is required to register under section 12.1-32-15 or equivalent law of another state"

Page 1, line 10, replace "loiter near or" with "knowingly"

Page 1, line 11, after "school" insert ", except as provided in this section"

Page 1, line 13, remove "if the school board of a public school or the governing entity"

Page 1, remove line 14

Page 2, after line 8, insert:

e. The offender is a student at the school.

f. The offender is attending a religious service at the school while the school is not in session.

SECTION 2. A new subsection to section 12.1-20-05 of the North Dakota Century Code is created and enacted as follows:

An adult who commits a violation of ^{Section} subsection 1 within fifty feet of or on the real property comprising a public or private elementary or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet of or on the real property comprising a public or private elementary or high school is guilty of a class B felony.

SECTION 3. A new subsection to section 12.1-20-12.1 of the North Dakota Century Code is created and enacted as follows:

A person who commits a violation of subsection 1 within fifty feet of or on the real property comprising a public or private elementary or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet of or on the real property comprising a public or private elementary or high school is guilty of a class B felony.

SECTION 4. AMENDMENT. Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or school district or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend

a school function under section 1 of this Act, or for disclosing or for failing to disclose information as permitted by this section."

Renumber accordingly

Date: 2/6/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1472

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Wolf Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. DeImore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	—	—			
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Guffin

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

REPORT OF STANDING COMMITTEE

HB 1472: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1472 was placed on the Sixth order on the calendar.

Page 1, line 1, after "12.1-20" insert ", a new subsection to section 12.1-20-05, and a new subsection to section 12.1-20-12.1"

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to liability of school officials;"

Page 1, line 9, after "of" insert "or has been adjudicated delinquent of", replace "sex" with "sexual", and after "minor" insert "or is required to register under section 12.1-32-15 or equivalent law of another state"

Page 1, line 10, replace "loiter near or" with "knowingly"

Page 1, line 11, after "school" insert ", except as provided in this section"

Page 1, line 13, remove "if the school board of a public school or the governing entity"

Page 1, remove line 14

Page 2, after line 8, insert:

"e. The offender is a student at the school.

f. The offender is attending a religious service at the school while the school is not in session.

SECTION 2. A new subsection to section 12.1-20-05 of the North Dakota Century Code is created and enacted as follows:

An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or private elementary or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or private elementary or high school is guilty of a class B felony.

SECTION 3. A new subsection to section 12.1-20-12.1 of the North Dakota Century Code is created and enacted as follows:

A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or private elementary or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or private elementary or high school is guilty of a class B felony.

SECTION 4. AMENDMENT. Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or school district or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender

to attend a school function under section 1 of this Act, or for disclosing or for failing to disclose information as permitted by this section."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1472

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1472

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 13, 2007

Recorder Job Number: 4959 & 4960

Committee Clerk Signature *Maria L. Solby*

Minutes: Relating to liability of school officials.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Rep. Don Clark, Dist. #44 introduced the bill and gave his testimony – Att. #1

Sen. Nelson asked what he did different (amended) to the bill? He stated that it was to define “near” and give it a distance.

Sen. Fiebiger (meter 3:14) asked in section B and C, in attending a function, and it is not the school of there child. For example, the perpetrators child was playing in a basketball gave at another school; with the language in the bill this is not clear. **Rep. Clark** responded that this is would be addressed by the school boards them selves. **Sen. Fiebiger** stated do you give the school board limited authority or all authority to establish the exceptions, continuing with questions section 2 and 3 is new, why did this go in? **Rep. Clark** was not at the original hearing and did not know why.

Deb Nielson, School Board Assoc. (meter 5:40) spoke of her concerns stating that this bill does not give us (School Board) the ability to make there own policy one way or another. In

section 2-states no exception at all. We have suggestions for an amendment. The SB 2256 that you passed was clearer and contains the correct language.

Jack McDonald, State Association of Non-Public Schools (SANS) gave his testimony – Att. #2 with a proposed amendment.

Sen. Fiebiger asked if he thought a high risk verses a low risk offender be identified. **Mr. McDonald** stated that to we should keep the bill in its simplest form, “categories” can be complicated. Most people view a sex offender as a sex offender.

Jonathan Byers, ND Assistant Attorney General Office (meter 11:24) spoke to answered some of the earlier raised questions and reviewed the history of the original bill. He spoke of the police Department concerns with the enforcement of State Law verses the School Board making the decision. Section 2 and 3 was new to prevent the loitering issues

Mary Wahl ND Council of Education (meter 15:39) gave her testimony Att. #3.

Testimony in Opposition of the Bill

None

Testimony Neutral to the Bill

None

Senator David Nething, Chairman closed the hearing.

Recorder Job #: 4960

Senator David Nething, Chairman reopened the hearing.

Sen. Tim Flackoll, Dist. #44 spoke in support of the bill. He spoke to page 2 and what to do with sex offenders that are students. He would like time spent to address this and suggested a template type of form for the schools to work with. Sen. Fiebiger asked (meter 3:20) if he would open to have language allowing the school districts to make policies and Sen. Flackoll was in agreement of this..

The Chairmen put a sub committee together to address the amendments.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1472

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 21, 2007

Recorder Job Number: 5362

Committee Clerk Signature

Mina L Solberg

Minutes: Relating to liability of school officials.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Fiebiger reviewed the new proposed amendments for the committee stating that the groups that met tried to make the amendments acceptable to both. He stated that, the groups will as put together, they liked SB 2256 and was not very comfortable with this bill and did the best they could with the amendments to bring them together.

Sen. Olafson made the motion to Do Pass Amendment – Att. #1 from today and **Sen. Lyson** seconded the motion.

Discussion: Sen. Nelson asked in the first part, referring to school board policy, you start off saying “except for the purpose of voting or attending open meetings”, if school board policy states they can’t attend, and need to find alternate ways to vote; i.e. by mail, and they can not come to meetings at the school. What would prevail state law or school policy? State law.

Sen. Nething called the question, all members were in favor, except for Sen. Fiebiger and the motion passes on the amendment.

Sen. Olafson made the motion to Do Pass HB 1472 as amended and **Sen. Lyson** seconded the motion.

Discussion: **Sen. Nelson** asked if the two bills were compatible and would they work? **Sen. Nething** stated that they would work that out in conference committee. They discussed the status of the other bill. **Sen. Fiebiger** stated that law enforcement came and spoke on the Senate bill, not the house and the school board assoc. was also against the house bill. All members were in favor, except for **Sen. Fiebiger** and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1472

Page 1, line 10, replace "A" with "Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a"

Page 1, line 14, replace "private" with "nonpublic", after "elementary" insert ", middle.", and replace "except as" with "unless allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school."

Page 1, remove line 15

Page 1, line 16, remove "This"

Page 1, remove lines 17 through 23

Page 2, remove lines 1 through 14

Page 2, line 18, replace "private" with "nonpublic" and after "elementary" insert ", middle."

Page 2, line 20, replace "private" with "nonpublic"

Page 2, line 21, after "elementary" insert ", middle."

Page 2, line 25, replace "private" with "nonpublic" and after "elementary" insert ", middle."

Page 2, line 27, replace "private" with "nonpublic"

Page 2, line 28, after "elementary" insert ", middle."

Page 3, line 1, after the first "or" insert "public" and after "district" insert "or governing body of a nonpublic school"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1472, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1472 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "A" with "Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a"

Page 1, line 14, replace "private" with "nonpublic", after "elementary" insert ", middle.", and replace "except as" with "unless allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school."

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Page 3, line 1, after the first "or" insert "public" and after "district" insert "or governing body of a nonpublic school"

Renumber accordingly

2007 TESTIMONY

HB 1472

Att # 1
3-13-07

HB 1472

Chairman Nething

Members of the committee. *FOR THE RECORD*

HB 1472 is about making schools a safer place for children. This bill prohibits a sexual offender who has pled guilty or been found guilty of a Class A misdemeanor or felony sex offense against a minor from entering school property unless

1. The school board has adopted a policy allowing a sexual offender on school property under certain circumstances as follows.
2. The offender must be a parent, guardian or relative of a student in all cases.
3. The offender must be there to participate in conferences with school personnel about the academic progress of a child of theirs or other student issues concerning their child.
4. The offender has filed with the school board written permission from a probation officer allowing the offenders presence at school functions where other adults are present with students.
5. The offender is not on supervised probation and has requested advance permission from the superintendent or school board to allow the offenders presence at school functions.
6. the offender is present for the purpose of voting in a school building that is a public polling place.

A violation would be a class A misdemeanor. What this bill does is provide a roadmap for a school board trying do deal with a sexual offender that may have a legitimate reason to visit a school.

Since this is a bill about making children and the schools they attend safer I ask that you give this bill a do pass.

Chairman Nething and members of the committee this concludes my introduction of this bill. Are there any questions?

AA #2
3-13-07

March 13, 2007

SENATE JUDICIARY COMMITTEE
HB 1472

SENATOR NETHING AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the State Association of Non-Public Schools (SANS). We support HB 1472 but ask that you consider combining some of the specific exceptions outlined in subsection 2 of section 1 along with the provisions of SB 2256 that allow the various school boards more leeway in adopting policies.

We also ask that you amend HB 1472 to allow an exception for attending religious services on the property at any time, not just when school is in session. In many of our instances, the schools are a part of the church property.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL 1472

On page 2, line 13, remove "at the school while the school"

On page 2, line 13, remove "not in session" and insert "on school property"

Re-number accordingly

Testimony of Mary Wahl – NDCEL

March 13, 2007

We signed in yesterday in support of 2256

Today we rise on the opposition side of 1472.

We frankly believe that either bill can be amended to address the issue of sex offenders on school property.

So why do we prefer 2256?

The fundamental difference between the two bills is that 2256 clearly allows school boards to develop policy with regard to the conditions under which high risk offenders and other registered sexual offenders may enter on school property.

If local boards are able to develop their own policies with regard to these offenders then we believe those policies will reflect that district's comfort level with the restrictions.

Larger schools may have concerns that are not concerns of smaller schools. Perhaps a larger school is less comfortable giving a high risk offender the right to attend conferences at the school. Depending on the student those conferences as provided for in Section 1 Subsection 2 a could be quite frequent.

Perhaps some larger schools would not be comfortable allowing a high risk offender parent to attend school functions. A high risk offender who is the parent of a basketball player could, for example, be at the school frequently during basketball season.

So, what do we trade off for giving school districts the authority to develop policies.

We, of course, trade off one state policy as provided for in law for individual policies.

Will this affect enforcement? We expect that most of the enforcement will be the school district contacting law enforcement when their policy is violated and at that point the specific violation would become apparent.

The sponsors of 2256 have stated in testimony that the attorney general has agreed to develop some template policies for schools to consider. The school boards association would likely also be involved in this policy development.

We believe that the involvement of these two entities will result in quite uniform policies around the state while at the same time allowing for school district flexibility in developing policies that work for their individual districts.