

2011 HOUSE JUDICIARY

HB 1155

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1155
January 17, 2011
12960

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1155.

Rep. Klemin: Sponsor, support, explained the bill. In the 2009 session, we also amended this same section of the law. At that time, the Dept of Human Services had introduced HB 1159. At that time, the reason for that bill, the Supreme Court had made some changes in the protocols and procedures that were being followed with regards to juvenile court records. The Dept of Human Services came to the Committee and said that this is going to cause a problem, and they gave various reasons for that relating to some of the things that they had to do. We made an exception in subsection 2 of section 1 to include, on line 12 all index references except those which may be made by the Attorney General. Originally this law only had an exception for the Dept of Transportation. So Dept of Human Services introduced this bill to include an exception for Dept. of Human Services. Then the Attorney General's office came to the committee hearing and said that we need an exception too, and they gave various reasons which we agreed were good reasons for including the Attorney General. Then Dept of Corrections and Rehabilitation came to the committee and they said the same thing; they had some files that they were not able or couldn't take out these index references as required. So we also agreed to include them, also the county Social Service Agencies were included at the request of Dept of Human Services. What we have here today in this bill is to include another exception to this destruction requirement; for law enforcement agencies of political subdivisions. Basically the law requires that juvenile court records must be retained and disposed of as established in accordance with the rules and policies of the ND Supreme Court. As I said, there had been some changes in 2008 or 2009 at the ND Supreme Court, which caused some issues; then subsection 2 says that on final destruction of a record, the juvenile court notifies all agencies that had a connection with the file, and then all the index references, with those exceptions from these agencies also had to be taken out. You will note on line 7 of the bill, it says except as otherwise required by section 25-03.304. Section 25-03.304, just for information purposes is a separate retention requirement which requires all adult and juvenile case files and court records of certain offenses to be retained for 50 years. All those records that are required to be retained for 50

years relate to sexual offenses. Basically the law enforcement agencies also have some reasons for asking to be included in the index reference exception from the destruction requirements. A representative of the Bismarck Police Dept., Kelly Broeckel, is here to explain the reasons why local law enforcement agencies should also be subject to this same exception.

Rep. Delmore: The bill certainly makes sense but would there ever be a situation where some of that file should be opened and someone would get a copy of everything for whatever reason because they couldn't separate it out.

Rep. Klemin: I don't believe this deals with the entire file. This only deals with index references.

Rep. Delmore: They talk about multiple incidents, so is it possible that I could find out about all the incidents, even though only part of it was supposed to be shown to me.

Rep. Klemin: I don't know the answer to that question; they are supposed to be destroyed except as otherwise provided. I don't know how that would work in practice. I don't think they are open, they are still confidential records (see attached testimony from Mike Reitan [who didn't testify] #1).

Kelly Broeckel, Records Section Manager for Bismarck Police Dept.: Support (see attached testimony 2,3,4).

Rep. Delmore: A lot of this makes sense, but as I looked at the Grand Forks Police Dept, I've got another question for you. Is there a possibility that someone could come in for a record on one of these people and because it wasn't destroyed, they have access and can get a copy of something they are not entitled to see.

Kelly Broeckel: Our agency, again, uses extreme caution in dissemination of juvenile records. We thoroughly go through them and make sure that any identifying information of a juvenile is redacted and taken out of the document. We also have a second pair of eyes that goes over the entire document to make sure that we don't inadvertently release identifying information of juveniles. All of our staff is trained in that area, they understand the importance of confidentiality.

Rep. Delmore: In the Grand Forks testimony that was offered, as they talk about these reports, past records, records to support current investigations, they often support doing another report. If that was to be destroyed, I should not have access to that report when I'm doing an investigation; because if it was to be destroyed and not to be on record anymore, I don't think that should aid me in an investigation.

Kelly Broeckel: With me today is Lt. Mike Arnold, with the Bismarck Police Dept. and from the investigative part of it, I certainly can have him come up here and address that.

Rep. Delmore: It says that police officers and criminal investigators routinely use past records and reports to support current investigations. If these records should have been destroyed, should I have access to those in my current investigation.

Kelly Broeckel: Our Dept maintains a database of incidents and offenses, to use that as an aide in current investigations, I'm not really sure where you are going with this. If the record is destroyed, the information would not be there. Again, at times it could be very important to have that information available to investigators.

Rep. Koppelman: You're asking for more than a technical change, which is what the bill appears to be on the face of it. We're also to make a policy decision that has to do with whether that information should be available. If it's there it's going to be used, and a law enforcement official probably would be remiss if she or he didn't use all the resources available when doing an investigation. So that's the piece of this as a Committee and legislators will have to struggle with. We've had requests in the past few years to sort of change the law in this regard, whether it is a juvenile record that was supposed to be destroyed or expunged, and we were asked a while back to take that word out. With the same line of reasoning you can't really expunge a record anymore because we have these computers and the file is somewhere. We decided not to do that, not to remove that language, because the point is, if the law/public policy, expunge the record and find a way to get that done. I don't think is just a technical issue, because microfilm is virtually impossible to erase, that's not a new phenomenon. Is this really just an issue that it's nice to have this around or a pain in the neck to get rid of it, or is it something that you really think that there is a good policy reason to have those records retained.

Kelly Broeckel: Part of our issues lie with when we receive the list from juvenile court, with the juvenile's name and date of birth; we interpret the law to destroy the specific record that was adjudicated in the court. We don't have any other information that's given to us by juvenile court to know which record to destroy. One instance was that we had received a list and I happened to recognize a name on there, of a registered sex offender. Any sexual offenses in regard to that subject are protected for 50 years. If I wouldn't have known that, I could have inadvertently destroyed that record. That wouldn't be a good thing.

Rep. Koppelman: We're sympathetic to that. I would suspect that we all want to make sure that things like that that need to be retained are retained; but this is another example of where this becomes problematic. I've heard from people in our part of the state that there have been instances where people have, and I don't know if it were a juvenile record or whether it was an adult record where someone had a probationary sentence and said if you keep your nose clean for a couple of years, this will be expunged from your record. We hear that in court cases frequently, as you know that is done in courts routinely. I've heard of cases where people have applied for a job and all of a sudden this criminal record pops up and maybe they don't get the job because of that and they say, where'd that come from, that was

supposed to be gone. I'm not saying that people shouldn't be responsible for their actions, but if our court system says if you jump through these hoops, it's as if the blackboard is erased and we're not erasing it, and somehow that information is getting out and being used in some cases in ways that would be detrimental to these folks who are trying to get another chance. Theoretically they have done the right thing after making a mistake. How do we avoid that.

Kelly Broeckel: The statute, 27-20-52 protects that information. If we ever have requests on a specific person, we reply that no record exists; all of our staff are trained to follow that procedure.

Rep. Koppelman: I understand and respect that, I'm not accusing any one or any entity of doing something inappropriate, but the fact of the matter is, this information is getting out there somehow, whether there is something notorious involved, or just simply sloppy recordkeeping, or something doesn't get erased. By continuing to put things in law saying gee, what we told you to get rid of before you don't need to get rid of anymore, seems to exacerbates that problem, so pretty soon their record is floating all over and the ones that we really do want removed, really don't get removed and the likelihood of that information being out there when that was not the intent of the court or law enforcement at the time of the incident.

Rep. Klemin: This bill relates to index references and the files also. Secondly, from a practical standpoint, if this was taken literally and you were required to destroy records that contained any juvenile name and also contained names of other people that you were required to keep, in order to comply with one statute where it says you are to destroy records, you would also be violating another statute where it requires you to keep records, like on an adult for example. Without this kind of language in the bill, how would you resolve the conflict between those two statutes. Is there a way?

Kelly Broeckel: Currently, we do have our juvenile files and in the case where we have an adult and a juvenile arrested on the same report, we would not be able to destroy the record, as though it never occurred because of the fact that the adult name is listed on there and we are required to keep that. The only way around that, at this point, is through redaction. If there is a request for the report, we would have to redact all of the juvenile information and identifying information. That's how we would deal with that today.

Rep. Klemin: Redact means to take out or obliterate or remove.

Kelly Broeckel: That's correct.

Chairman DeKrey: Thank you. Further testimony in support.

John Olson, ND peace Officers Association: Support of the bill, but we would also ask you to consider amending it to drop the category of political subdivisions and

relate if to every law enforcement agency, particularly Game and Fish, and Highway Patrol. They say they have the same kinds of considerations that are considered for the political subdivision issues you've already heard about.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

Rep. Delmore: Did they assure us that the records would not be accessible. When they exist in any form, I am worried about the temptation that this is a bad seed, and he's been a seed for a while, I'm really concerned that those records are there, even though you can say I won't be using them because when they should be destroyed, I think they should be destroyed.

Rep. Klemin: I think the problem comes in when there are records that relate to a juvenile and adult. On one hand, the juvenile records are supposed to be destroyed, on the other hand the adult records are supposed to be retained. So we've got a legal contradiction now when those records have got the names of both a juvenile and an adult on them. They have a technical problem in that how can you delete one and keep the other when they are on the same record.

Rep. Delmore: I understand that, I understand the reason for this bill coming forward. But when those are never taken off or erased, I think we're bypassing the legal process that we've set up that says some of these records, at a certain time, need to be destroyed so there's not access to them. If they're still there, they're still there. You can't just ignore the fact that someone could have access to those records, which should not be accessible, that's my problem.

Rep. Klemin: Just to respond to that, we were given a copy of 27-20-52. This is another statute that provides for the confidentiality and then lists those specific persons are entitled to review or inspect the records. As I understood the testimony, notwithstanding that the agencies would be exempt from destruction, it would still be required by 27-20-52 to not make this an open record.

Rep. Koppelman: I would like to visit with some of the law enforcement folks about this.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1155
January 24, 2011
13285

Conference Committee

Committee Clerk Signature

DeKrey

Minutes:

Chairman DeKrey: We will take a look at HB 1155. Where are we at on that one.

Rep. Klemin: Well, there is no subcommittee on this. I'm the prime sponsor and I introduced this at the request of law enforcement agencies of political subdivisions which is why it says political subdivisions there. At the hearing, John Olson, of the Peace Officers Association asked us to amend it and delete out political subdivisions so that some other state agencies, which are having the same problems with records, would also be exempt from this destruction requirement. Other than that, there isn't anything pending, other than that proposed amendment, which came up in testimony.

Rep. Koppelman: I really have some problem with this bill and I would have even more problems with the amended bill because, while I understand the difficulty, and I guess I've been remiss on this because I did talk to the Supreme Court Chief Justice and asked for the opportunity to visit with him and he has agreed to that. I just haven't had a chance to get up there and do it. He was gone a couple of days. The whole issue, really, is court records and how they keep the records in this regard; of course, it's law enforcement records as well. As you recall in testimony on this bill, we discussed the struggle we had in last session, and I believe one of the now retired district court judges brought a bill in to get rid of the section that referred to expunging records, and he wanted the word expunged deleted from the century code. The discussion was the same, we have computers and the information doesn't really go away. In the testimony on this bill, we heard one individual talk about the fact that this isn't a new problem because they've had microfilm for years; and it's virtually impossible to cut out a portion of the microfilm, saying we're going to get rid of this piece of record. I think we should be discussing this as a public policy question, not a technologic question. I realize that they need to go hand in hand and that's why I wanted to visit with the Chief. I think if we decide that these records or other records should be expunged or deleted that they should be. If you get to the point where, in law, we are exempting every agency that deals with them, why have the law. I want to visit with the court and see what the court would view as a solution.

Rep. Klemin: I think we also need to look at this bill as being a couple of distinct parts in here. One has to do with index references and that's the first part of subsection 2, and that's really the technologic part where you can't get index references relating to one minor deleted because it's part of a record that contains other names of people who you don't want to delete. I think in response to Rep. Koppelman's reference to microfiche, this issue really didn't come up until the Supreme Court did something about their records destruction requirement sometime prior to the 2009 session. I don't know how many places actually microfilm anymore. So we go on to the second part of this that talks about files and records. That's different from the index reference filings. I think that really the other references are just kind of procedural matters about what happens. It's really when you talk about a policy matter, I think one is the technology provision in the first part in here, and the other is about destroying all files, records, and references. Here, one thing that the police department said, it would be helpful to be able to retain those so that they can look at the methodology or something if they have an unsolved crime. They're not going to be using that juvenile record to convict anybody, can't be used as evidence, the past conduct can't be used either. Really, they are about trying to solve crimes, so if we're going to give them some impediment to solving crimes, I don't think that's in the public interest.

Rep. Koppelman: I actually did visit with our Asst Police Chief in West Fargo, Mike Reiten, who wasn't here but did send written testimony on this supporting it, and I asked him what the real issue was, and he hearkened back to the technological issue, and the difficulty you mentioned earlier about how they will get a message from the court, saying delete the records on Sally Jones. Well, what records? She was arrested for shoplifting at one point, arrested for driving under the influence, which record are you talking about. It's not a complete request, so that's one of the things I want to talk to the Chief about here, to see if there is a way to solve this without exempting everybody.

Chairman DeKrey: Get back to us as soon as possible.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1155
January 31, 2011
13704

Conference Committee

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1155. Where are we at on HB 1155?

Rep. Delmore: I think the intent of this bill is all that the people involved want. I still think that when we are told that something needs to be destroyed, that's the intent of the law; not to cleverly tuck the file away somewhere where accidentally it could fall into someone's hands that don't need it. I move a Do Not Pass on HB 1155.

Rep. Boehning: Second the motion.

Rep. Koppelman: I had a meeting scheduled with the Chief Justice and it didn't happen; I will still try to get with him today. I wanted to discuss this with him. I was hoping to find out additional information relating to these records on a broader plain as well, with regard to court records. I share Rep. Delmore's concern. Whether that means killing the bill or if there is a way to amend it to make it work.

** A Do Not Pass was proposed and seconded, but then discovered that additional time was necessary to talk with the Chief Justice of the ND Supreme Court, and all motions were withdrawn.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1155
February 14, 2011
14511

Conference Committee

Committee Clerk Signature *D. Penrose*

Minutes:

Chairman DeKrey: We will take a look at HB 1155.

Rep. Klemin: I would amend HB 1155, to delete the words "of political subdivisions", there are four places where these words appear in the bill; page 1, line 15, 18 and 23, and on page 2, line 5.

Rep. Steiner: Second the motion.

Rep. Koppelman: One of the discussions we're having on this, and this is why I hope we have the opportunity to hear back from the AG's office. I have discussed it with the Chief Justice of the ND Supreme Court. I have a report that I will share with the committee when I'm ready to give all the information out. I also am waiting to hear back from the AG's office. I'm going to resist the amendment only because I think it broadens the scope even more. The real question before us in this bill is do we want to do this. As you recall, the request was for law enforcement agencies to be able to be absolved of the requirement of getting rid of juvenile records. There were two reasons given, the main one was that they are hard to get rid of. They say that with computer files they say they will always exist, they are hard to expunge, etc. Our response to that, at least in some of the deliberation during the committee hearing, was that yes, but when we say expunge or delete, we mean expunge or delete. It might be tough but do your best. The additional testimony that came out that was intriguing to me was when the Bismarck Police Dept that testified that having difficulty getting rid of old records was nothing new, because they've had microfilm for decades and that's hard to get rid of. I was talking with someone in LC and they said that they used to go in with marker or white-out to redact that record. The other reason that law enforcement wants this burden under law removed, is because they want these files that are supposed to be expunged for people who were juveniles when they committed a crime and they want to be able to use that as investigatory information later in life. So if somebody did something when they were 15, and now they're 30, law enforcement is basically telling us, we want to know that. That's going to affect our investigation. Well, I go back to the question, should they know that. That's the broader question with the bill. With regard to the

amendment proposed by Rep. Klemin it just broadens that scope. It says entities like Game and Fish, Highway Patrol, are also cast in this net that we're ever widening. I'm not sure that is wise.

Rep. Klemin: Just to respond to that, first of all this is not exactly like microfilm or microfiche that we're talking about. We are talking about computer documents now and I don't know that anybody uses those other methods any longer, but this destruction of records, the problem just came up in the last session. A number of agencies had difficulty, including the Attorney General. If the Attorney General is going to have kind of opinion that it shouldn't apply to law enforcement agencies when they are the chief law enforcement agency and are already exempt from this requirement, maybe we ought to add the AG back in. The point is, it's not a simple matter of going in and whiting out a computer record that contains names of juveniles and adults. Those records can't be used for anything relating to that juvenile or later when that juvenile becomes an adult. It's just that we're asking them to do something that does not appear to be technologically possible in this statute. The second point is whether they should be able to go back and look at those files if they see a pattern of or a method of operation that they've seen before, and they can't remember who did it, but they know they've seen it. They can't go back to a juvenile record and use any evidence against that person to prosecute a new crime, but that would only give them a lead in doing it. Let's not lose sight of the fact that we are still talking about criminals. If you're a criminal at 17, you're a criminal at 19; in the example you used 15 and 30, I think is a little more remote than maybe the 17 and 19 is. So they can't go back and use those file for anything as part of the prosecution or whatever. It just may be something that they saw, they remember the situation, but now they can go back and look at it and get a name and follow up on that lead. That basically is all it amounts to as far as the investigation. I think they ought to be able to do that. We hear about protecting victims all the time; these people are not victims, they were criminals when they were juveniles, they are still criminals, let's put them behind bars if that's what we need to do.

Chairman DeKrey: I'm inclined to support the amendment. I talked with law enforcement after the hearing and they admitted that they hadn't done a really job in front of the committee because they really hadn't expected any opposition. So I asked them what is the incentive for you not to use this information. First, if we do it wrong, they are going to throw our case out of court and then we have nothing. Secondly, if we use the information wrong, and something comes from it and harms an individual because this was wrongly released, we are going to get sued. He said that those are two pretty important reasons for us to do this the way we're supposed to do it.

Rep. Delmore: Some of these records that are expunged are from people who were found not guilty of a crime as well, are they not. Am I misreading this.

Rep. Klemin: You are misreading it, in fact the word expunged is not being used here. In the situation you're talking about, the defendant has been conditionally

sentenced, found guilty of something and if you're good for a year, then they'll expunge the record. We had a bill on that in earlier session. That means to take it out, as though it never existed. This is someone who was found guilty as a juvenile of doing some crime and that's a different situation. Here, the Supreme Court is notifying or the Juvenile Court is notifying the agencies to destroy the index references, which is the tough part, and the other files, records and references and not to expunge them. There is a distinction between those two kinds of things. On the one hand, one person was a criminal but was able to wipe the slate clean under the kind of situation you described and the second is, the person is a criminal and he's still a criminal.

Rep. Delmore: This just covers the criminal, they've still been found guilty. The rest of it they would destroy it because they were ordered to, correct.

Rep. Klemin: They were ordered to destroy them because they were juveniles when they committed the crime.

Rep. Koppelman: Just a couple comments. First, I wasn't using the example of microfilm to say that that's how they still do it. I was using an example based upon what the testimony we heard in committee indicated that the idea of having a file that is difficult to remove is not new. Yes, it's true that they're computer files now and they're saying that's hard to get rid of because of the nature of the beast, because of the way computer and electronic files work. The point was that that had been troublesome for a long time, because even in the days when they used microfilm, it was difficult. Secondly, with regard to the issue of whether it's good for law enforcement entities, other than political subdivisions whether it's good for them to have this for investigatory purposes or not to have any burden to get rid of it when we tell them to do it. That is part of the discussion. Thirdly, I visited with our Asst. Police Chief in my district, whom originally came in testifying for this bill and had asked for it. When I asked what seems to be the problem here, he answered that one of the problems is that the requests that they get from the Courts. It might say delete all the records regarding Jane Smith, is that the DUI or the shoplifting charge when she was 15, or the disorderly conduct we just booked her on last week. What are you referring to. Apparently, according to them, they are getting unclear information from the Court. That was one of the reasons I've been discussing this, at length with the Supreme Court. I wasn't going to get into this entire dialog at this point, until we had more to discuss on the bill. Then the question is what are they getting from the court, should that be clearer, and the answer is yes. Hopefully we are going to make some progress to make sure that happens. The issue, here, really is I think, should we have things in law where we say records should be expunged, deleted or not considered in the future, redacted if we want to use that term. There are several terms used in the law. I am all for law enforcement, I am all for getting tough on crime, and I'm all for people paying the price for their actions. However, we have certain circumstances, some are with suspended sentences and probation for adults. I know that this bill doesn't deal with that. Another are cases of juvenile court, where we as legislators, have said we are going to allow people to

have a 2nd chance here. We're going to allow their slate to be wiped clean. What we're doing with bills like this in their current form, and even more so, if it's amended, as suggested, is saying we really mean it, but we really kind of don't. The question is, if we really mean it, then let's do it. Even though it might be difficult, let's ask them to do their best to do what we're asking them to do. To say, that we want you to do this but with a wink and a nod we really don't mean it, we're going to let you use the information anyway. Why have it? If we really want kids who may make a mistake when they're young, to have a better shot at things when they are older; that's why we have juvenile court and juvenile records, then let's do that. The same is true with adults, even though that's not addressed in the bill.

Rep. Klemin: This by no means makes those records available to anyone other than these agencies, does not make them public, no one gets to come in and look at them. If those juveniles have wiped their slate clean and did not commit another crime, that was exactly like the one they committed when they were juvenile, then they have nothing to worry about. If they're just going to say okay, I'm clean to go out and do it all over again, that's not right.

Rep. Koppelman: I have to respond, I have had complaints from constituents over the last year or two, over this issue who are adults now; who are out in the job market looking for work. They have come into employment interviews and had prospective employers say, oh, I see by looking at the information I've been able to gather, doing a background check on you, that you had a brush with the law. The people have said that that wasn't supposed to be there, because it was supposed to have been expunged or redacted or removed. The point is, if you leave these records floating around, it's tough enough to remove them as we've heard, but if you leave them floating around and you broaden the net of the entities that can keep them floating around, you're increasing the likelihood that that kind of thing can happen. In my discussion with the Chief Justice, that's one of his concerns; because he said that we can get rid of them, but what about Google, what if they're out there somewhere. The only way we try to draw any kind of ring around that, let's limit as much as we can the amount and the frequency with which they are circulated or kept. That's why I think this is going down the wrong road.

Rep. Onstad: I understand the difficulty in getting rid of those records, because one record includes many of other names that they don't want to remove. We have this statement, innocent until proven guilty. It seems like we also have this association of guilt. If some of those records were not removed, maybe they should be or maybe they shouldn't be, but I guess this kind of clouds the issue; not investigating on the merit of that particular crime that's before them or whatever they have. That's my thoughts on it.

Rep. Klemin: Law enforcement does have to investigate on the merits of the crime that's before them. They have to prove guilt beyond a reasonable doubt on the crime that's before them. All we're talking about here is looking at records that are supposed to be confidential, how they could ever get on Google, I have no idea.

This is simply that they can go back and look at these files to say, give me a lead, as to where I should go on trying to solve a crime that's been unsolved.

Chairman DeKrey: Clerk will call the roll on the Klemin amendment to HB 1155.

13 YES 1 NO 0 ABSENT

MOTION CARRIED

Chairman DeKrey: We now have the bill before us as amended. What are the committee's wishes.

Rep. Koppelman: I would still appreciate an opportunity to get some more information.

Chairman DeKrey: We've had this bill since January 17, 2011, and it's time to get it out of committee.

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

Rep. Kingsbury: Second the motion.

Rep. Delmore: I have some of the same concerns as Rep. Koppelman, but there is another House that will look at it. I think there comes a time when you move on. I will support the bill.

Chairman DeKrey: Clerk will call the roll on a Do Pass as amended motion.

10 YES 4 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

February 14, 2011

VR
2/14/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1155

Page 1, line 15, remove "of political subdivisions"

Page 1, line 18, remove "of political subdivisions"

Page 1, line 23, remove "of political subdivisions"

Page 2, line 5, remove "of political subdivisions"

Renumber accordingly

Date: 2/14/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1155

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number Klemin Amendment

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

Motion Made By Rep. Klemin Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment _____

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

Motion Carried

Date: 2/14/11
 Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1155

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11. 0379. 61001 02000

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

Motion Made By Rep. Maragos Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning		✓	Rep. Onstad		✓
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner		✓			

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1155: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1155 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "of political subdivisions"

Page 1, line 18, remove "of political subdivisions"

Page 1, line 23, remove "of political subdivisions"

Page 2, line 5, remove "of political subdivisions"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1155

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1155
3/29/11
Job #16137

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to agencies exempt from the court –ordered destruction of juvenile court records

Minutes:

There is attached testimony

Senator Nething – Chairman

Representative L. Klemin – District 47 – Introduces the bill – see written testimony.

Senator Sitte – Relates a story of a friend of hers who's son's juvenile record would not let him in Canada. She said she thought that it would have been destroyed.

Rep. Klemin – Said he knows that when the Juvenile Court Act was revised in 2007 the Dept. of Transportation was the only agency that was specifically exempted from the destruction requirement. He speculates there may be some international agreement between countries that allows other countries to look at these kinds of things.

Senator Olafson – Questions the 3rd paragraph, the technological difficulty in removing the name from an electronic record or a microfilm record.

Rep. Klemin – He said they are trying to delete something out of an electronic record not the electronic record itself. He goes on to explain.

Senator Lyson – Adds this is strictly a bill to add law enforcement agencies in to the right to retain information.

Senator Sitte – Wonders if we need an amendment.

Rep. Klemin – Explains how it works and that any agencies retain their records until they receive an order from the juvenile court saying you must delete this. He says the Dept. of Transportation have been exempt all along.

Kelly Broeckel – Records Section Manager for the Bismarck Police Dept. – See written testimony.

Senator Sitte – Asks the same question, why would her friend's son still have trouble with this.

Broeckel – Thinks it is a Dept. of Transportation record.

Senator Olafson – Says he knows that Canada prevents entry if you have a DUI on your record. Says he is still curious why they can't just delete a name.

Broeckel – Responds that they do not want to alter the original physical report image.

Senator Sitte – Asks if a juvenile dui is there forever.

Broeckel – Tries to say what may have happened.

Opposition – 0

Neutral – 0

Close the hearing on 1155

Committee discussion

Senator Sitte is concerned that the juvenile records will not be exempt with this bill.

Senator Olafson speculates that the record Canada would have been accessing is a Dept. of Transportation record.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1155
3/30/11
Job #16191

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to agencies exempt from the court-ordered destruction of juvenile court records

Minutes:

Senator Nething – Chairman

Committee work

Senator Sitte says she has no further information on the incident with her friend's son.

Senator Olafson moves a do pass

Senator Lyson seconded

Roll call vote – 6 yes, 0 no

Senator Lyson will carry

Date: 3/30/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1155

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Lyson

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

REPORT OF STANDING COMMITTEE

HB 1155, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1155 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1155



Request your support of HB1155

Michael D. Reitan [Michael.Reitan@westfargond.gov]

Sent: Sunday, January 16, 2011 5:43 PM

To: DeKrey, Duane L.; Klemin, Lawrence R.

Cc: Beadle, Thomas R.; Boehning, Randy G.; Brabandt, Roger L.; Delmore, Lois M.; Guggisberg, Ron L.; Hogan, Kathy L.; Kingsbury, Joyce M.; Koppelman, Kim A.; Kretschmar, William E.; Maragos, Andrew G.; Onstad, Kenton B.; Steiner, Vicky L.

Committee Chair DeKrey, Vice Chair Klemin

My name is Mike Reitan, Assistant Chief, West Fargo Police Department. I respectfully ask for your support of HB1155 relating to agencies exempt from the court-ordered destruction of juvenile court records. I believe Section 27-20-54 of the North Dakota Century Code should be amended to further reflect the current data practices of law enforcement agencies.

At one time a paper file was the only record relating to an incident. There was little or no association with any other file or person other than those directly related to that one incident. An order of destruction involved shredding the paper file.

With current electronic file practices a juvenile's name could be associated with numerous names or separate incidents. The ability to extract only that information related to the incident for which destruction was order would be extremely difficult. In addition the limited nature of the information returned to the department relating to which file to destroy further impacts an agency's ability to fulfill the destruction order.



Presently the information held in law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection under section 27-20-52. The juvenile is those afforded the protections that would otherwise be provided through destruction of the actual record.

I respectfully request that you please forward HB1155 with a do pass recommendation. Thank you for your attention to this matter.

Michael D. Reitan
Assistant Chief
West Fargo Police Department

Please be aware that all emails sent and received by a City of West Fargo E-mail address are subject to North Dakota's Century Code (44-04) Open Records law and are considered Public Record which are available for public disclosure.

TESTIMONY—HB1155
BY KELLY BROECKEL
RECORDS SECTION MANAGER, BISMARCK POLICE DEPARTMENT

Chairman and Members of the Judiciary Committee, my name is Kelly Broeckel. I am the Records Section Manager for the Bismarck Police Department. Today, I am here to testify in support of House Bill 1155, reference the destruction of juvenile records requirement.

One reason we request that law enforcement be added to the exception is due to electronic storage of data through our computer software system. It is difficult and, in some instances, impossible to destroy these records upon request of Juvenile Court. Currently, the process consists of Juvenile Court sending us a request letter, a copy of the current law, and a list of juvenile names with their dates of births. The name list we receive from our district does not include any case information to aid us in locating the specific case records that were adjudicated. We have instances where one juvenile could have several different contacts and case reports on file and without specific case information; we do not know what record to destroy. Specific case information could include sex related crimes and sex offender registration which is protected from destruction for 50 years by ND Century Code. There are also instances where we may have one juvenile arrested along with other juveniles or there is also an adult arrest involved. For example, officers respond to a loud party call and end up arresting several juveniles and several young adults (under 21) for liquor offenses. We cannot destroy the record as though it never occurred because this is one incident where there are other people involved. Our department exercises extreme caution in dissemination of this type of report information and upon public request of this information, all juvenile information is redacted to protect the identities of those juveniles involved.

A different statute, 27-20-52 currently restricts the release of juvenile records. As a result, we do not release any information for public inspection relating to juvenile apprehension, detention and referral to juvenile court or to the disposition made by juvenile court. If anyone requests this type of information we refer them to juvenile court.

There is also an issue we have to deal with in regard to microfilmed and scanned images of the physical paper reports. Once a report is on microfilm, our department has no means to pull that image from the microfilm tape and destroy it. Also, if we have a report that involves several juveniles or juveniles and adults, we can never alter the original image of the report by trying to remove specific information with electronic means. This would affect the integrity of our record keeping system.

A second reason law enforcement should be exempted from destruction is for purposes of law enforcement investigations. Officers use past records and reports for current investigations. These reports may contain associates the subject deals with and methods of operations for certain crimes. When we have to destroy the records of the juvenile that juvenile court sends down, we lose that information that could be used to aid in future investigations.

In my discussions with other record section supervisors around our State, they encounter the same problems that we do in regard to destruction of juvenile records.

Thank you for giving me the opportunity to testify in support of House Bill 1155 reference the Destruction of Juvenile Records requirement. I would be happy to answer any questions you might have.



— Police Department

122 South Fifth Street • P.O. Box 5548 • Grand Forks, ND 58206-5548

Michael Kirby, Captain
Admin. Division Commander

Phone: (701) 787-8002
Fax: (701) 780-8253

January 14th, 2011

Representative Duane DeKrey
Chairman, Judiciary Committee
House of Representative
Legislative Assembly of North Dakota

Representative DeKrey,

The Grand Forks Police Department respectfully offers its support for House Bill 1155. We also support the testimony, anticipated before your committee on January 17th, of Kelly Broeckel in her capacity as the Records Section Manager serving the Bismarck Police Department.

The Bill for an Act to amend and reenact section 27-20-54 of the North Dakota Century Code would add "law enforcement agencies of political subdivisions" to the currently listed agencies exempt from the court-ordered destruction of juvenile records. This change to 27-20-54 would be beneficial to the investigative activities of the Grand Forks Police Department and support local records management protocols necessary to ensure availability of detailed past criminal activity information for reference by officers and investigators in current and future cases.

Police officers and criminal investigators routinely use past records and reports to support current investigations. These reports often contain associates, methods of operations, and other detailed information of value in current cases. Destruction of these records may adversely impact the efficiency and effectiveness of these investigations.

NDCC 27-20-52 restricts the release of juvenile records. In accordance with 27-20-52, the Grand Forks Police Department does not release any information for public inspection relating to juvenile apprehension, detention, referral to juvenile court, or the disposition of cases by juvenile court. Requests for this information are referred to juvenile court.

Thank you for your service to the State of North Dakota and your consideration of this offer of support for House Bill 1155.

Respectfully,

Michael Kirby, Captain
Administration Division Commander

who has escaped or left without authorization from a secure facility may be released by law enforcement, the division of juvenile services, or the juvenile court for purposes of apprehending the juvenile.

27-20-52. Law enforcement and correctional facility records.

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection; but inspection of these records and files is permitted by:
 - a. A juvenile court having the child before it in any proceeding;
 - b. Counsel for a party to the proceeding;
 - c. The officers of public institutions or agencies to whom the child is or may be committed;
 - d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
 - e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
 - f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
 - g. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.
2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, this section does not limit the release of general information that does not identify the identity of the child.

27-20-52.1. Law enforcement data base. Repealed by S.L. 1999, ch. 131, § 2.

27-20-53. Children's fingerprints, photographs.

1. No child under fourteen years of age may be fingerprinted in the investigation of a crime except as provided in this section. Fingerprints of a child who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, and unlawful possession or use of a handgun.
2. Fingerprint files of children must be kept separate from those of adults. Copies of fingerprints known to be those of a child may be maintained locally and copies may be sent to a central state depository but may not be sent to a federal depository unless needed in the interest of national security.
3. Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be

HOUSE BILL NO. 1155
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 29, 2011

Mr. Chairman and members of the Senate Judiciary Committee, I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill 1155.

House Bill 1155 relates to the destruction of juvenile court records. The Juvenile Court Act in Chapter 27-20 was extensively revised in 2007. Prior to 2007, Section 27-20-54 required all juvenile court records to be maintained in accordance with rules and policies established by the North Dakota Supreme Court. In 2007, the section was amended to provide that all juvenile court records must be retained and disposed of pursuant to Supreme Court rules and policies. In addition, the section provided that upon receipt of notice from the juvenile court of the destruction of a juvenile court record, each agency, except the Department of Transportation, was required to destroy all files, records and references to the juvenile.

In 2009, several agencies, including the Attorney General, the Department of Human Services, the Department of Corrections and Rehabilitation, and the county social service agencies, requested an exemption from the destruction requirement for various reasons, including the technological difficulty or impossibility of removing the name of a juvenile from an electronic record or a microfilmed record, especially where the record also contained the names of adults who were involved in an incident. The record relating to the juvenile couldn't be destroyed without also destroying the record of an adult, which was required to be maintained. In addition, there were other statutory provisions which required the juvenile record at an agency to be retained for various reasons.

This year, law enforcement agencies have also requested an exemption from the record destruction requirement for the same reasons. It is difficult or impossible to destroy these records. In addition, the records are useful for investigative purposes, especially where a crime committed by an adult is similar to the method of operation for a crime that was committed by a juvenile. That information is useful for catching criminals and solving crimes.

Therefore, House Bill 1155 includes law enforcement agencies among the agencies that are exempt from the records destruction requirement. It should be noted that while the records would not be destroyed, they would still be kept confidential and not open to public inspection because of Section 27-20-52, which contains restrictions on inspection of juvenile records.

Mr. Chairman and members of the committee, I urge your support for House Bill 1155.

25-03.3-04. Retention of records. [commitment of sexually dangerous persons]

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, or 12.1-20-07 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

27-20-52. Law enforcement and correctional facility records. [Juvenile Court Act]

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection; but inspection of these records and files is permitted by:

- a. A juvenile court having the child before it in any proceeding;
- b. Counsel for a party to the proceeding;
- c. The officers of public institutions or agencies to whom the child is or may be committed;
- d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
- e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
- f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
- g. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, this section does not limit the release of general information that does not identify the identity of the child.

TESTIMONY—HB1155
Senate JUDICIARY COMMITTEE

March 29TH, 2011

BY KELLY BROECKEL
RECORDS SECTION MANAGER, BISMARCK POLICE DEPARTMENT

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I would be happy to answer any questions you might have.



— Police Department

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March 25, 2011

Senator Dave Nething
Chairman, Judiciary Committee
North Dakota Senate
Legislative Assembly of North Dakota

Senator Nething,

The Grand Forks Police Department respectfully supports House Bill 1155 and the testimony anticipated before your committee on March 29 by Kelly Broeckel in her capacity as the Records Section Manager serving the Bismarck Police Department.

The Bill for an Act to amend and re-enact section 27-20-54 of the North Dakota Century Code would add law enforcement agencies to the currently listed agencies exempt from the court-ordered destruction of juvenile records. This change to 27-20-54 would be beneficial to the investigative activities of the Grand Forks Police Department and support local records management protocols necessary to ensure availability of detailed past criminal activity information for reference by officers and investigators in current and future cases.

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Thank you for your service to the State of North Dakota and your consideration of this letter in support for House Bill 1155.

Respectfully,

Michael Kirby, Captain
Administration Division Commander

Law Enforcement Agencies in Support of HB 1155

- 1) Burleigh County Sheriff's Department
- 2) Morton County Sheriff's Department
- 3) Walsh County Sheriff's Department
- 4) Cass County Sheriff's Department
- 5) Grand Forks Police Department
- 6) West Fargo Police Department
- 7) Williston Police Department