

2013 SENATE HUMAN SERVICES

SB 2067

2013 SENATE STANDING COMMITTEE MINUTES

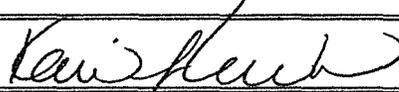
Senate Human Services Committee
Red River Room, State Capitol

SB 2067
1/14/2013

Job Recording Number: 17161

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to making reports confidential on providers and individuals applying for or receiving assistance or services under programs administered by the Department of Human Services.

Minutes:

You may make reference to "attached testimony."

Chairman Lee opens the hearing on SB 2067.

Jonathan Alm, an attorney with the Department of Human Services, is first to testify in support of SB 2067.

See attached testimony #1.

Floor is open for questions from the committee.

Chairman Lee asks for an example to help better understand the problem.

Mr. Alm explains two different examples to the committee.

Chairman Lee clarifies that under current law a person's name wouldn't be kept confidential, but what Mr. Alm is proposing would permit that person's name to be kept confidential.

Mr. Alm agrees with this statement.

Senator Dever asks what the penalty provided at the end of the Bill is.

Mr. Alm believes that it is a class B misdemeanor and that he can't really recall a time when a state's attorney has actually considered bringing charges against someone for breach of confidentiality.

Senator Dever is curious about the process with a family member's ability to seek mental evaluations.

Mr. Alm responds that the process would fall underneath Chapter 25 of the Century Code. Any individual can apply for a civil commitment procedure. The confidentiality will not apply to this.

No further questions from the committee for Mr. Alm.

John Mogren, a County Social Service Director with Eddy, Foster, and Wells Counties, testifies next in support for SB 2067. He did not prepare any testimony but wanted to state his strong support for the Bill and that it will be very helpful when working with families.

Floor is opened for questions from the committee.

Senator Anderson is concerned that when reports are made confidential, it's only advantageous if the department, social service worker, etc. does an adequate investigation to determine that the allegations really are true. Otherwise, it's possible that allegations made against somebody can negatively impact them without the claims being true because no one can counter it since the name is kept secret.

Mr. Mogren understands that this bill is going to allow access to information in the files. Currently, if a report is received and addresses are needed, he is restricted to obtaining that information. This bill will hopefully allow access to obtaining the information needed to locate people when children are at risk.

Mr. Alm steps back up to the podium to further address Senator Anderson's concern. He explains that this bill will allow the department or county to protect the identity until it is needed to be disclosed; however, they would still be able to disclose any concerns regarding the claim in detail to the public.

There are no further questions from the committee. There is no further testimony in either favor or opposition of SB 2067.

Chairman Lee closes the hearing on SB 2067.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2067

1/17/12

Recording Job Number: 17178

Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to making reports confidential on providers and individuals applying for or receiving assistance or services under programs administered by the department of human services.

Minutes:

You may make reference to "attached testimony."

Committee discussion on SB 2067.

Committee briefly discusses and clarifies the intent of the Bill.

Committee proceeds with action.

Senator Anderson motions a Do Pass.

Senator Larsen seconds.

No further discussion from committee.

Roll call votes: 5-0, Do Pass.

Senator Dever carries Bill to the floor.

Date: 1/14/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2067

Senate Human Services 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 Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

REPORT OF STANDING COMMITTEE

SB 2067: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2067 was placed on the Eleventh order on the calendar.

2013 HOUSE HUMAN SERVICES

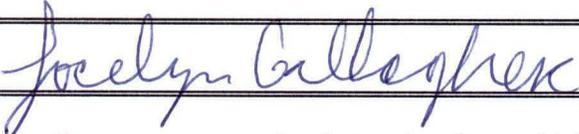
SB 2067

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2067
March 18, 2013
Job 20044

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to making reports confidential on providers and individuals applying for or receiving assistance.

Minutes:

Testimony 1

Chairman Weisz opened the hearing on SB 2067.

Jonathan Alm: Attorney with DHS testified in support of the bill. (See Testimony #1)

2:53

Chairman Weisz: In subsection B, are you saying the accused has the ability to receive the report just not the information of who gave the report?

Alm: Correct.

Chairman Weisz: If he gets into a legal proceeding then that identity has to be revealed, correct?

Alm: Correct.

Chairman Weisz: Further questions from the committee? The feeling was the language didn't go far enough in the confidentiality part.

Alm: We've received numerous complaints and open records requests. During that we look at the law currently had, what the open law record was and the problem was in some situations the law didn't cover those reports. We either had to disclose them after our investigation period ended but if the report was received on an individual receiving assistance, that would already be confidential, but if received on a Medicaid provider, that information was not confidential. This was going to help with that.

Vice-Chair Hofstad: Give me a time span of a complaint filed and when it ends up in court?

Alm: It could take six months.

House Human Services Committee

SB 2067

March 18, 2013

Page 2

Rep. Fehr: Is there any concern that this might increase misuse of the system?

Alm: I don't think it will.

Rep. Mooney: If the process goes to court, it does become public knowledge as to who is making the claim, correct?

Alm: Correct.

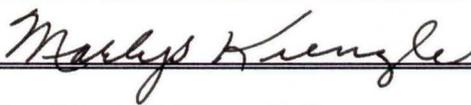
Chairman Weisz: Closed hearing on SB 2067

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2067
March 19, 2013
JOB # 20135

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to making reports confidential on providers and individuals applying or receiving assistance

Minutes:

Chairman Weisz: Let's take up 2067.

Rep. Porter: Is there a process that in some point time that would go to the courts to open these records up?

Chairman Weisz: In subsection B, page 2 it states any administrative or legal proceedings at the point of a court order it would then the reporter would be public.

Rep. Porter: How are they handling those situations where it was a retaliatory type complaint?

Chairman Weisz: I have concerns about that.

Rep. Porter: Is that a leap of faith on our part?

Chairman Weisz: I must say I am skeptical in this area.

Rep. Mooney: There could be circumstances misconstrued or blown out of proportion with individuals accusing others and the accuser is clouded behind protection and there is no options besides court to clear yourself.

Chairman Weisz: I agree with some of that.

Rep. Fehr: What you are stating about reports of terms of child abuse are already confidential.

Rep. Porter: Would it work then to put language in there that it is confidential during the investigation faze?

Chairman Weisz: This is extending the same confidentiality to Medicaid assistance as we are doing for the child abuse reporting.

Rep. Porter: Because if this is going into the Medicaid component, I'm concerned about the false reports or that retaliation. We could put in this bill that it is only confidential during the investigation or it is confidential during the investigation and if it is found to be credible would remain confidential. Any others not found credible will then be open records.

Chairman Weisz: We won't take this up now. If Rep. Porter wants to go to LC with amendment to be drafted or anyone else work on this to state what the bill should be.

Rep. Porter: I would take it to the level where the committee feels comfortable with it.

Rep. Oversen: I agree with most of that. My concern is the case of domestic violence, where you have the investigation and the victim. In that case the victim isn't going to come out and the claim won't be warranted.

Rep. Porter: What does that have to do with Medicaid? These claims are already confidential. This is just medical assistance. This is strictly about someone abusing an assistance program or services provided by the state of North Dakota.

Rep. Porter: I would support adding the second piece to this bill.

Rep. Silbernagel: I'd support that second part.

Rep. Fehr: The many time use the terms good faith report. It doesn't mean it is a valid report but it was in good faith.

Rep. Porter: On line 18 could we just use Rep Fehr statement and say if the report was made in good faith it would be confidential if not it will be open records.

Rep. Porter: I would move that SB 2067 page 2 line 18 after the word confidential to insert the words if the report is made in good faith,

Rep Damschen: Seconded the motion.

Motion passed the amendment.

Rep Fehr: Made a motion of do pass as amended. Seconded by Rep Looyen.

Yes 12 No 0 Absent 1 Carrier Rep Mooney

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Adopted by the Human Services Committee

March 19, 2013

V/R
3/19/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2067

Page 2, line 18, after "confidential" insert "if the report is made in good faith."

Renumber accordingly

Date: 3-19-13
 Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2067

House Human Services 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 Porter Seconded By Damschen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*pg 2 line 18 after "Confidential" insert if the report
 Confidential if the report is made in good faith
 Voice Vote
 Motion Carried*

Date: 3-19-13
 Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2067

House Human Services 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 Rep. Fehr Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA	✓	
REP. ANDERSON	✓		REP. OVERSEN	✓	
REP. DAMSCHEN	✓				
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING	✓				
REP. LOOYSEN	✓				
REP. PORTER	✓				
REP. SILBERNAGEL	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Mooney

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

REPORT OF STANDING COMMITTEE

SB 2067: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2067 was placed on the Sixth order on the calendar.

Page 2, line 18, after "confidential" insert "if the report is made in good faith,"

Renumber accordingly

2013 TESTIMONY

SB 2067

Testimony
Senate Bill Number 2067 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 14, 2013

Chairman Lee, members of the Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I am here today in support of Senate Bill 2067, which was introduced at the request of the Department.

This bill amends North Dakota Century Code section 50-06-15 to allow the Department to keep confidential certain reports and other information obtained about an applicant, a client, or a provider under any Department program. The Department may disclose the report or other information if otherwise permitted or required by law. This amendment proposes language similar to North Dakota Century Code section 50-25.1-11, regarding the confidentiality of child abuse and neglect reports.

Individuals who wish to file a report with, or provide information to, the Department, generally of suspected wrong-doing by an applicant, client, or provider, express concerns about doing so because they fear retaliation. In these cases, the individual frequently requests that his or her identity and the information being provided be kept confidential. In some situations the individuals want to remain anonymous because they were calling to report that a member of their own family was not providing good care to a parent or grandparent. Wherein another, the individual was a member of a very small community and was afraid that by speaking out publicly by filing a report, there would be retaliation or consequences in the community. The Department proposes this change

to address these concerns by protecting the identity of individuals who make a report to the Department.

These reports and information may be disclosed under certain specific circumstances. Some of the specific circumstances are set forth beginning on page 2, line 19: which says the Department may disclose the reports and information to:

1. Authorized staff of the Department and its agents who can further disclose information to persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interest, and who need to know the contents of the records to assure the well-being and interests of the adults or children concerned;
2. Any person who is the subject of the report; provided, however, that the identity of the persons reporting or supplying information is protected until the identity is needed for use in a legal proceeding arising out of the report;
3. Public officials and their agents who require the information in connection with the discharge of their official duties;
4. A court, including an administrative hearing officer, when the court determines the information is necessary for the determination of an issue before the court; and
5. A person engaged in a bona fide research purpose.

This bill will provide some assurance to an individual wishing to report suspected wrongdoing that the information the individual provides can be kept confidential and would increase the likelihood that concerned individuals will report an abusive situation or a concern, regardless of

whether it involves family members, someone known in the community, or someone that is part of an agency or provider.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

#1

Testimony
Senate Bill Number 2067 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 18, 2013

Chairman Weisz, members of the Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I am here today in support of Senate Bill 2067, which was introduced at the request of the Department.

This bill amends North Dakota Century Code section 50-06-15 to allow the Department to keep confidential certain reports and other information obtained about an applicant, a client, or a provider under any Department program. The Department may disclose the report or other information if otherwise permitted or required by law.

Individuals who wish to file a report with, or provide information to, the Department, generally of suspected wrong-doing by an applicant, client, or provider, express concerns about doing so because they fear retaliation. In these cases, the individual frequently requests that his or her identity and the information being provided be kept confidential. In some situations the individuals want to remain anonymous because they are calling to report that a member of their own family is not providing good care to a parent or grandparent. In one situation, the individual was a member of a very small community and was afraid that by speaking out publicly by filing a report, there would be retaliation or consequences in the community. The Department proposes this change to address these concerns by protecting the identity of individuals who make a report to the Department.

These reports and information may be disclosed under certain specific circumstances as set forth beginning on page 2, line 19, which says the Department may disclose the reports and information to:

1. Authorized staff of the Department and its agents who can further disclose information to persons who have a definite interest in the well-being of the individuals concerned, who are in a position to serve their interest, and who need to know the contents of the records to assure the well-being and interests of the individuals concerned;
2. Any person who is the subject of the report; however, the identity of the persons reporting or supplying information is protected until needed for use in a legal proceeding arising out of the report;
3. Public officials and their agents who require the information in connection with the discharge of their official duties;
4. A court, including an administrative hearing officer, when the court determines the information is necessary for the determination of an issue before the court; and
5. A person engaged in a bona fide research purpose.

This bill will provide some assurance to an individual wishing to report suspected wrongdoing that the information the individual provides can be kept confidential. This will increase the likelihood that concerned individuals will report an abusive situation or other concern, regardless of whether it involves family members, someone known in the community, or someone that is part of an agency or provider.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.