

2013 SENATE JUDICIARY

SB 2323

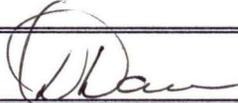
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2323
2/6/2013
Job #18426

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the reporting of abuse or neglect of a vulnerable adult

Senator David Hogue - Chairman

Senator Phil Murphy - District 20 - See written testimony - Proposes an amendment (1)

Senator Hogue - Ask for a definition of vulnerable adult

Senator Murphy - Doesn't have one but says you know it when you see it

Senator Sitte - Thinks there is a lot of gray areas and would like to see some safe-guards in place.

Senator Murphy - Reads from the code the definition of vulnerable adult

Cher Meyer - Thompson ND - Relates an example of an elderly person in her family. See written testimony (2)

Doug Wegh - Reads testimony from Kim Jacobson - See written testimony (3)

Mary Quintus - Retired Nurse- Member of Silver-haired Legislature - See written testimony (4)

John Langenfelder - Relates story about his family member.

Courtney Kobel - ND Medical Association - In support

Dr. Mike Booth - In support. He would like to see protection for the reporter. He says he has seen some cases of abuse in his practice.

Gretchen Dobervich - Alzheimer's Association - See written testimony (5)

Rick Clayburgh - ND Banker's Association - Gives a hand-out - (6) He would like to see banks exempt and thinks the amendment does that. He suggests that proper funding be put in place for the investigations of the elder or vulnerable adult.

Senator Hogue - Does that statute give immunity if you report in good faith.

Clayburgh - Replies it does.

Curtis Holmrast - EMS - Oaks ND - Relates he is an EMS educator and would like to see this pass.

Opposition

David Boeck - Lawyer for the Protection & Advocacy Project - See written testimony (7)

Bill Neumann - ND State Bar Association - See written testimony (8)

Senator Hogue - Asks if we exempt bankers and lawyers what is left?

Neumann - Mentions who would be left.

Senator Hogue - Maybe the clergy would like to be exempt

Senator Grabinger - Mentions it wouldn't preclude them to report some abuse

Neutral

Close the hearing

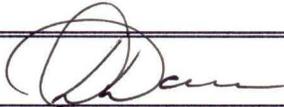
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2323
2/12/2013
Job #18819

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Senator Hogue explains the bill. Senator Lyson asks about the amendment removing attorneys. Senator Hogue says professions have a discretionary duty to report meaning if they do report the law provides them with immunity from claims that they are subject to civil claims for reporting. He mentions the fiscal note based on the supposition that if there is mandated reporting requirements there will be a necessity for more folks to deal with this. Dept. of Human Services is estimating 8 full time equivalents. The committee talks about all the amendments that are wanted. Senator Berry points out that it seems everyone is all for it if they are exempted.

Senator Sitte moves a do pass on the Murphy amendment 02003
Senator Armstrong

Discussion

Senator Hogue said the intent of this legislation is to protect this class of individuals that are unable to protect themselves and if that is the purpose then it shouldn't be watered down with this amendment.

Vote - 3 yes, 4 no
Amendment fails

Discussion

The committee discusses reasonable cause.

Senator Berry moves the Berry amendment (15:39) - Remove on page 1, line 10
reasonable cause to believe
Senator Armstrong seconded
Vote 3 yes, 4 no
Amendment fails

Senator Grabinger moves a do pass rerefer to Appropriations
Senator Nelson seconded
Vote 5 yes, 2 no
Senator Nelson will carry

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Bill/Resolution No.: SB 2323

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$1,611,771		\$1,577,179	
Appropriations			\$1,611,771		\$1,577,179	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill will require mandatory reporting of abuse or neglect of a vulnerable adult and provide a penalty.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 1 of the bill requires mandatory reporting by any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, financial service provider, attorney or caregiver having reasonable cause to believe a vulnerable adult has been subjected to abuse or neglect. Section 1 subsection 2 provides for voluntary reporting by any person not required to report under subsection 1. For the first four months of SFY 2013, 316 referrals have been received. It is estimated that under this bill, referrals would increase by 70%, based on similar legislation that was implemented in South Dakota. With a 70% increase, the estimated annual number of referrals could be 1,612. It is estimated that, at a minimum, this would require 1 FTE to be located in each of the eight regions of the state for a total of 8 FTE. The potential impact on State's Attorneys related to the provisions on failure to report is undeterminable since there is no way to estimate the number of the cases that would be prosecuted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The fiscal impact for the Department of Human Services for the 2013-15 biennium would be the cost for 8 FTE to handle the increased number of referrals that would be received. Salary and fringe for 8 FTE would total \$1,354,197. Operating costs for travel, rent, office supplies, communications would total \$217,574. IT costs for

maintenance of database reporting system would total \$40,000. Total cost for the 2013-15 biennium would total \$1,611,771. The fiscal impact for DHS for the 2015-2017 biennium would be \$1,577,179. This reflects the removal of one-time costs for office furniture and equipment that would occur in 2013-15 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The funding needed to perform the requirements provided for in SB 2323 are not included in the Department of Human Services appropriation bill (HB 1012), therefore DHS would need a general fund appropriation of \$1,611,771 for the 2013-15 biennium and \$1,577,179 for the 2015-17 biennium.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/05/2013

Date: 2-12-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2323**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number Murphy Amendment .02003

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

Motion Made By S Sitte Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue		X	Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger		X
Senator Stanley Lyson	X				
Senator Spencer Berry		X			
Senator Kelly Armstrong	X				

Total (Yes) 3 No 4

Absent amend fails

Floor Assignment _____

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

Date: 2/12/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2323

Senate JUDICIARY Committee

Check here for Conference Committee ^{Remove "OR reasonable cause to believe - page 1, line 10"}

Legislative Council Amendment Number Berry Amendment

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

Motion Made By S Berry Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte		X	Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 3 No 4

Absent _____

Floor Assignment Fold

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

Date: 2/12/13
 Roll Call Vote #: 3

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2323**

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 S Grabinger Seconded By S Nelson

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong		X			

Total (Yes) 5 No 2

Absent _____

Floor Assignment S Nelson

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

REPORT OF STANDING COMMITTEE

SB 2323: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2323 was rereferred to the Appropriations Committee.

2013 SENATE APPROPRIATIONS

SB 2323

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2323
02-18-2013
Job # 19118

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Reporting of abuse or neglect of a vulnerable adult

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Monday, February 18, 2013 at 2:45 pm In reference to SB 2323 Brittani Reim from Legislative Council and Tammy R. Dolan , OMB were also present.

Senator Phil Murphy, District 20 (3.00) introduced the bill and shared what the bill is about is meeting the standard for mandatory reporting for vulnerable adults. He submitted proposed amendment #13.0803.02004. He stated the amendments would have some effect on the fiscal note and I am of two minds on the fiscal note and stated he is not so sure about the fiscal note on this bill. (5.12)

Chairman Holmberg We need to work through the fiscal note.

Senator Warner: had questions on who would be responsible for the vulnerable adult who is neglected.

Senator Murphy: I am not sure how all of this gets handled. When you know that someone is being abused you report it. This isn't going to fix everything, but it will get some things going so we can fix it. I can't begin to focus my mind on the answer to your question.

Chairman Holmberg: asked how many were here to testify for or against the bill and stated he needed to provide enough time for both sides.

Senator Mathern: I know that there is exhaustive list of persons that would be asked to make a report, I note the term congregate care personnel in page 2, so that would cover facilities that provide assistant living services. An elder care facility -would that be correct?

Senator Murphy: That would be correct. Our long term care folks have a good handle on this.

Chip Amermum, Director of Cass County Social Services testified in support of SB 2323 and provided Testimony attached #2 of Kim Jacobson, Director- Traill County Social Services in support of SB 2323 and he stated he supports her description that she provided in her testimony. He stated he is in favor of the mandatory reporting laws. He talked about the involvement of Cass County and Region 5 regarding service programs for vulnerable adults and there are about 280 to 300 cases filed in Cass County.

There was a question about what happens during the course of that assessment. Once we receive the report, the Department of Human Services have definitions of what is in a report, and also definitions and guidelines on what actions should take place. It is different than child protection because the state and the court system has the ability to remove that child until the court can see that. In adult cases we don't have the ability to do that. We do have the authority to bring it to Human Services to see if that person can make decisions for themselves; we have the ability to bring it to the states attorney if there is criminal action.. There is one concern I do have, if there is no funding for this bill it does lie directly with the Department or it's designees, which again filters down to the counties. There is insufficient funding for this service at this point (13.54)

He submitted Testimony attached # 3 by Dr. Booth, President of ND Medical Association asking for a Do Pass on SB 2323.

Chairman Holmberg: stated because there is no money in this bill and we pass this bill, and we got the budget for Human services and didn't put money in that would create some additional problems. He asked for further testimony for either for or against the bill.

Bill Neumann, State Bar Association: testified in opposition to SB 2323 and provided Testimony attached # 4. We have no problem with the general idea of mandatory reporting of adult abuse but we strongly oppose the inclusion of attorneys as mandated reporters. If this bill becomes law with the word "attorney" in line 9, I will be forced to report confidential information. Everyone knows that information between an attorney and his client is confidential. This bill requires a breach of attorney-client relationship. (18.03)

Senator Mathern: Was this issue brought to the policy committee?

Bill Neumann: this issue was not only brought to the policy committee but the primary sponsor, Senator Murphy moved such an amendment to the policy committee for reasons that escape me. That committee rejected this and many other amendments that you are going to hear about from other people. (34.25)

Marilyn Foss, ND Banker's Association testified in opposition of SB 2323 and explained their reasons for opposing the bill. In the policy committee we testified we would support the bill with Murphy's amendments, one additional amendment which he chose not to propose this morning was to take banks and credit unions out of the bill and the reason for that is that we do voluntary reporting under another section of law. NDBA sponsored a bill more than 10 years ago. It's codified at 32.03.55 to permit financial institutions to report suspected abusive elderly and vulnerable adults and we also had changes at that time to our financial privacy law to permit us to do that reporting. We oppose this bill and think our current systems are working well already. (24.16)

Chairman Holmberg: asked if they would object if the legislators would consider a legislative study on this bill. He was told no, they wouldn't oppose a study.

Jeff Olson, Credit Union Association of ND stated that we oppose the bill and would like to be exempt from the bill. (27.26)

John Brown, Executive Vice President of Independent Community Banks of ND testified in opposition of the bill in it's current form. He submitted Testimony attached #5 asking that "financial institutions" be not included in this bill and Testimony attached # 6- an article from Department of the Treasury Financial Crimes Enforcement Network regarding elder financial exploitation. Under this act we are required to report suspected activities that would include elder financial exploitation. (29.30)

Dana Bohn, Executive Director for ND Farm Credit Council: Asked for a do not pass on this bill. We were in support of the amendments that were not adopted.

Christopher Dotson, ND Catholic Conference: stated we oppose SB 2323. The bill in it's current form is unacceptable. The issue regarding us is the line regarding clergy and the need for confidentiality. This is a serious matter for us.

Chairman Holmberg: I hope you understand, we may as a committee find it awkward to attach amendments presented in a policy committee. It is much more our role at that stage to say we don't like the bill for whatever the reasons are because the policy committee had those issues before it and chose not to. Thank you for your testimony. We will close the hearing on 2323.

Vice Chairman Grindberg Moved a Do Not Pass. 2nd by Senator Wanzek.

Chairman Holmberg: Discussion. Call the roll on a DO NOT PASS on SB 2323.

A Roll Call vote was taken. Yea: 8 Nay: 4 Absent 1. Chairman Holmberg will carry the bill. The hearing was closed on SB 2323.

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Bill/Resolution No.: SB 2323

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$1,611,771		\$1,577,179	
Appropriations			\$1,611,771		\$1,577,179	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill will require mandatory reporting of abuse or neglect of a vulnerable adult and provide a penalty.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 1 of the bill requires mandatory reporting by any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, financial service provider, attorney or caregiver having reasonable cause to believe a vulnerable adult has been subjected to abuse or neglect. Section 1 subsection 2 provides for voluntary reporting by any person not required to report under subsection 1. For the first four months of SFY 2013, 316 referrals have been received. It is estimated that under this bill, referrals would increase by 70%, based on similar legislation that was implemented in South Dakota. With a 70% increase, the estimated annual number of referrals could be 1,612. It is estimated that, at a minimum, this would require 1 FTE to be located in each of the eight regions of the state for a total of 8 FTE. The potential impact on State's Attorneys related to the provisions on failure to report is undeterminable since there is no way to estimate the number of the cases that would be prosecuted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The fiscal impact for the Department of Human Services for the 2013-15 biennium would be the cost for 8 FTE to handle the increased number of referrals that would be received. Salary and fringe for 8 FTE would total \$1,354,197. Operating costs for travel, rent, office supplies, communications would total \$217,574. IT costs for

maintenance of database reporting system would total \$40,000. Total cost for the 2013-15 biennium would total \$1,611,771. The fiscal impact for DHS for the 2015-2017 biennium would be \$1,577,179. This reflects the removal of one-time costs for office furniture and equipment that would occur in 2013-15 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The funding needed to perform the requirements provided for in SB 2323 are not included in the Department of Human Services appropriation bill (HB 1012), therefore DHS would need a general fund appropriation of \$1,611,771 for the 2013-15 biennium and \$1,577,179 for the 2015-17 biennium.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/05/2013

Date: 2-18-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2323

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT pass

Motion Made By Grindberg Seconded By Wanzek

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern		✓
Co-Vice Chairman Bill Bowman			Senator David O'Connell		✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson		✓
Senator Ralph Kilzer	✓		Senator John Warner		✓
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 8 No 4

Absent 1

Floor Assignment Holmberg

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

REPORT OF STANDING COMMITTEE

SB 2323: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO NOT PASS (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2323 was placed on the Eleventh order on the calendar.

2013 HOUSE JUDICIARY

SB 2323

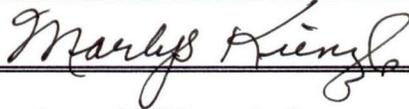
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2323
March 20, 2013
Job # 20248

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the reporting of abuse or neglect of a vulnerable adult; and to provide a penalty.

Minutes:

Testimony 1, 2,3,4

Chairman Kim Koppelman: Opens the hearing on SB 2323.

Senator Murphy District 20: Testimony and amendment #1(including testimony handouts from Ron Guggisberg and Cher Meyer also includes a proposed amendment): Time on tape 1:35 to 8:06.

Rep. Gary Paur: Was there an interim study for this specific neglect of vulnerable adults?

Senator Murphy: Not to my knowledge.

Rep. Gary Paur: Why in the bill do you have the definitions of financial service provider and medical mental health professional in section 3 when the definitions in 50.25.2-02, when the definitions are in 01?

Senator Murphy: I was not able to amend this out yet but there a proposed amendment attached.

Vice Chairman Larry Klemin: This is to protect the elderly and provide immunity for those who report. Is this immunity in some other part of the law? Definition of vulnerable adult is that somewhere else?

Senator Murphy: Yes I believe it is but I am unsure as to where it is.

Vice Chairman Larry Klemin: It doesn't say vulnerable elderly adults but only vulnerable adults.

Senator Murphy: Yes it is endangerment of vulnerable adult's penalty under 12.1-31-07.

Vice Chairman Larry Klemin: This does not have elderly adult, only adult, so it is you intention that this would apply to other vulnerable adults in the definition?

Senator Murphy: From the definition in 12.1-31-07 I would say that it is all vulnerable adults.

Rep. Diane Larson: I am more familiar with child abuse and neglect reports and there is a child protection team that people can report to and do investigation along with law enforcements. Do you know is this reported abuse just investigated by police or is there a vulnerable team going to be developed?

Senator Murphy: I am not familiar with all of the tools that North Dakota has for protecting or investigating. There is a fiscal note and the reason behind this fiscal note is that it would provide some FTE's in each of the eight Human Services Regions.

Vice Chairman Larry Klemin: To follow up on what I was asking about vulnerable adult, the definition the substantial mental or functual impairment are also defined in 50.25.2-02.

Chairman Kim Koppelman: Is caregiver defined and what would caregiver include?

Senator Murphy: From any kind of caregiver any abuse should be reported.

Chairman Kim Koppelman: So caregiver could mean anyone.

Senator Murphy: When you know you need to report that. Knowing that you need to report it helps a lot.

Chairman Kim Koppelman: What is Congregate Care Personal?

Senator Murphy: It would be someone who works in long term care facility.

Chairman Kim Koppelman: As I look through the list of these people, I think most of these people I think would have a professional obligation to report this abuse.

Senator Murphy: A lot of these folks thought this was part of code already.

Chairman Kim Koppelman: If you are in any of these professions you are already have to follow a set of ethical procedures or are you aware of any problem of this abuse in North Dakota by these professional people?

Senator Murphy: No I do not have any knowledge of this problem but have study what other states have intact.

Mike Reitan, Assistant Chief West Fargo Police Department: (19:23 to 23:23.) Testimony #2. Law enforcement frequently becomes involved.

On Page 1 line 14 and 15 talks about the caregiver. Does law enforcement report abuse in my agency we prepare a report about suspected abuse and send it to the County Adult Social Service Program.

Vice Chairman Larry Klemin: A question on liability part of this. There is a penalty being added to the person who is required to report and willfully fails to report will be guilty of an infraction. There is also that someone make a willfully false report is liable in Civil action for damages. We are adding a mandatory reporting requirement and if they don't report something that is infraction but what are you thought were if a person who willfully fails to report, would that person be liable for Civil Actions?

Mike Reitan: I don't have a response for that. I don't know how that would play out in court.

Chairman Kim Koppelman: The congregate care personal, do you know who that would be?

Mike Reitan: Meals on Wheels personal or other people who check on regular bases the welfare of an adult.

Chairman Kim Koppelman: You gave an example of financial abuse and yet we are being asked to remove financial professionals. How do you feel about that?

Mike Reitan: I do have some concern about the amendment removing financial professionals. What I am finding is that we have to correct these issues in stages and this is possibly a good start.

Chairman Kim Koppelman: Are people willing to report things they see this abuse?

Mike Reitan: We still suffer North Dakota nice and many didn't call because it wasn't there place. There is an education process also. We do not want to have tough enforcement for not bringing information forward without working with them.

Chairman Kim Koppelman: So with this bill do you feel you would have the discretion to do that?

Mike Reitan: We would make a report.

Mike Booth, President of the North Dakota Medical Association and practicing cardiovascular and thoracic surgeon: Testimony #3, see attached. Time on tape is 32:55 to 36:22.

Rep. Lois Delmore: You don't see this as an added burden to put on the list as far as the medical people that you know and is probably already.

Mike Booth: It is an additional responsibility in terms of the requirements but do think it is appropriate.

Rep. Lois Delmore: I see the first FN on the South Dakota law. Are you familiar at all with the medical side of the reporting of that bill?

Mike Booth: My only familiarity is what was given at the first hearing.

Kim Jacobson, Director of Traill County Social Services: Testimony #4. Time on tape 40:03 to 45:20.

Rep. Diane Larson: What is the process at how and who it gets reported to? Could the same forms work that are used in child abuse for children? Will these same reports be going to County Social Services, or to the DHS?

Kim Jacobson: We are already receiving reports of suspected abuse. Right now our resources are very limited as far as who is qualified and charged with this duty.

Rep. Kathy Hogan: Isn't it true in all regions with the exception of region 5 that the reports go to the Human Service Centers and not to the counties?

Kim Jacobson: That is correct.

Chairman Kim Koppelman: You state that the North Dakota Century Code clearly defines that the State is responsible for vulnerable adult protection, where is that in the century code?

Kim Jacobson: I don't have that with me but can give you follow up to you.

Chairman Kim Koppelman: There is a fiscal note but there is not funding in the bill, do you know what the funding is? And it asks for 8 FTE's. How would you calculate your change in work load in terms of the reporting?

Rep. Diane Larson: It big part is the education of the reporting piece. We have definitely seen an upward climb as far as the reporting since we began doing stats on what has been reported. As with child abuse we can report it to Law Enforcement or Social Services. If there has been a crime committed, they are arrested at that time. If there is an investigation to happen it would be turned over to Social Service.

Rick Clayberg, President and of North Dakota Bankers Association: Time on tape 58:04 to 1:02:50. In support of SB 2323 as it left the Senate. We also are in support of the amendment Senator Murphy has brought forth. I would like to offer some clarification as there has been some miss information on the financial exploitation. There is in statue now, chapter 50, the financial institutions now have the ability to voluntarily report financial exploitation. The North Dakota Bankers Association participates in a program of training our front line tellers and employees who deal with customers, on dealing with and recognizing financial exploitation.

Chairman Kim Koppelman: The bill still has financial services in it but the amendment will remove that language on the first page.

Rick Clayberg: Our understanding was that Senator Murphy an amendment to address all of it, he inadvertently grabbed the amendment when he did a scan amendments. Financial providers could mean a bank or credit union or not. But it is saying specifically Accountant, Stock broker, financial advisor

Rep. Lois Delmore: I understand the complications. Do you have a numbers of who you have actually turned in to the authorities when you thought there was financial exploitation? Did you turn it over to Law Enforcement or Human Service?

Rick Clayberg: I can provide you with some information, some of it we do not know all the time when our bank has this information. I had not intended to testify today or I would have the training manual available to you as I did for the Senate.

Rep. Lois Delmore: You certainly would follow up however on large withdrawals from anyone's account do you not?

Rick Clayberg: That does occur, but not so much as the size of the withdrawal, but the triggers that are in place that check activities in customers' accounts.

Chairman Kim Koppelman: Does the voluntarily reporting protect the customers you serve or do we still have the apprehension of not getting involved?

Rick Clayberg: This will assure immunity when reporting.

Bill Shalhoob, Greater North Dakota Chamber: Time on tape 1:09:56 to 1:11:15. We are supporting the amendments of the bill without the amendment we are in opposition of the bill.

Greg Tschider, Credit Unions of the Dakotas: Time on tape 1:11:29 to 1:19:16. I speak in favor of the bill as amended. He then discussed the difficult of monitoring of accounts.

Steve Becker, Executive Director of Professional Insurance Agencies of North Dakota: Time on tape 1:20:58 to 1:22:07. I represent about 300 independent agencies and over 1000 agents in the state. We support the bill with the amendment. Our agencies would not know many of the abuses that are going on, as they see their client once a year.

recess

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2323
March 27, 2013
Job # 20564

Conference Committee

Carmen Hickel

Explanation or reason for introduction of bill/resolution:

Relating to the reporting of abuse or neglect of a vulnerable adult; and to provide a penalty.

Minutes:

Testimony and handout 1,2

Chairman Kim Koppelman: Reopens the hearing on SB 2323.

David Boeck, Attorney for Protection and Advocacy: Testimony #1, see attached. Time on tape :03 to 1:12.

Vice Chairman Larry Klemin: Could you explain the proposed amendment?

David Boeck: Inaudible. Is required to report to P&A, the person making that report would not also have to report to the Vulnerable Adult Program so there are no duplicate requirements. Providers of services would provide training on reporting requirements.

Vice Chairman Larry Klemin: If that report is made to P&A do the others get a copy of that?

David Boeck: Not in writing, if appropriate we make a report to Vulnerable Adult Program. We are all working together so there is not duplication of effort. Only one program responses and people only need to report to one program. We also work with law enforcement as does the Vulnerable Adult Program. Police Officers often make reports to us.

Rep. Lois Delmore: Why would you want everybody to go through when Human Service or the Police might be the best and first place to report?

David Boeck: We coordinate with the Vulnerable Adult Program so there wouldn't be disagreement over how this would work. The reporting requirement for anyone would satisfy the requirement for reporting to the Vulnerable Adult Program and if we receive a report that isn't appropriately sent to us then we forward that to them. Law enforcement already reports to P&A, and that is a requirement in the statute.

Rep. Kathy Hogan: I know you do the mandatory reporting with developmental disabilities but the mental illness side is a little grayer. Particularly individuals with Alzheimer's and dementia do you get many reports on those kinds of individuals? Would you see yourself as the primary reporting entity for those individuals?

David Boeck: I agree. We would investigate a report of abuse or neglect of a person with Alzheimer's or dementia. I'm advised that in the aging world dementia and Alzheimer's are not considered mental illnesses. So a report went to the Vulnerable Adult Program, they would forward it to us if it was appropriate for them.

Rep. Kathy Hogan: The whole issues of self-neglect do you have capacity to do investigations on self-neglect? Do you do many reports on self-neglect?

David Boeck: Our statutes specifically addresses self-neglect. We do receive reports and do investigate them. I can't tell you what the number is.

Rep. Kathy Hogan: Asked to have the Department of Human Services Adult Protection staff to testify?

Vice Chairman Larry Klemin: We can.

Jan Engen Director of Aging Services Division: Handout #2, see attached.

Rep. Kathy Hogan: Would you describe for the committee the current voluntary reporting structure and the staffing patterns as they exist now and if this bill becomes mandatory how will the current structure be modified?

Jan Engen: Currently Aging Services Division administers the voluntary adult protective services in the state of North Dakota. We have placed across the state dividing the state into the regional Human Service Center geography's. We have designated eight areas and for the most part the staff person that is employed at the Human Service Center in the aging unit will have job responsibility or a part of it that addresses vulnerable adult protective services. Prior to October 1, 2012 we had seven different methods of interpreting how reports were to be made. October 1, 2012 we implemented a new data collection system that has more standardized the reports. So much of the information I will provide you is based on that. Our current staff is composed of Region one we have .5 FTE, this individual has other duties as well. In Region three we have a .25 FTE. In Region four we have .6FTE, which is a temporary position. In Region five, the dollars that are made available are contracted with Cass County and they provide vulnerable adult protective services and they have 3.25 staff to do that.

Rep. Diane Larson: The information we got from Kim Jacobson, she told us this is being supplemented with county funds even though it is a state responsibility, is the state not fully funding that portion of services in Cass County but it is elsewhere?

Jan Engen: I will come back to that. In Region six we have a .25 position. In Region seven we have a full time position. In Region eight we have a .5 position. Funding that is made available from the Division is a combination of Title 7 dollars, which is from the Older

Americans Act, and these are designated specifically for prevention and we combine that with some Title B money from the Older Americans Act. The total amount we have available is \$260,000. So if you look at Rep. Larson's question we have a total of \$80,000 that we contract to Cass County to provide those services which is supplemented with county money from Cass County and some of other counties in that region. I think there budget is \$300,000. We do not have adequate funding currently.

Rep. Diane Larson: In the other areas aren't contracting with County Social Services how is that then funded?

Jan Engen: The Division makes money available ranging from \$7,000 up to \$80,000 in each of those geographic regions. That is supported in part by general funds through the Human Service Center budget. What happens if somebody identifies or has knowledge of and chooses to make a voluntary report they are going to call the number that is advertised for that region or they may call our office also. Those individuals would take the call and made the determination of whether an assessment is going to be done or not. I have compared the years from 2010 to the first months in 2013. We range in intakes from the old system of 395 to 687 with an average of 561. Compared to the first five months of the federal fiscal year for 2013 we have 504 calls. Annually we will have about 1200 calls. The new system has provides us better data.

Rep. Randy Boehning: How are we going to train all those that are involved including the volunteers? Am I going to have to answer questions if I have weapons in my home, do I feel sad today to my doctor, Chiropractor, and Pharmacists?

Jan Engen: I am not sure how that would be implemented but when you talk about the training part that is a part under the funding we receive from the Older American's Act is to provide training and awareness to the community. Funding availability makes that very difficult when your staff is doing more than one function in the community in addressing the number of intakes.

Rep. Randy Boehning: How are we going to train all the volunteers, there are thousands and how are we going to pay for this. It is not reflected in a fiscal note? Why do they include everybody in there?

Jan Engen: In my experience working in the Aging system for over 30 years, abuse training is essential in the community and through public relation information releases I know those APS workers have good relationships with law enforcement and medical community as an aging network. We rely on County Social Services entities to provide some of the support. I believe training will happen over time and will firm up our responsibilities.

Rep. Lois Delmore: In needs to be a priority and you have a fiscal note on here and I understand there will be a need for people to be hired. I believe it is two FTE's and some other things in the fiscal note. Have you been that under reported in North Dakota? Do you think this is going to drive our numbers up substantially?

Jan Engen: Based on the information that we have currently and my discussions across the state, adding mandatory reporting, and yes I do think that will happen. All we can do is compare with the similar system that was in South Dakota. We have workers in the county system and Human Service Centers system that are not reporting currently. The information we received in recent years came through the medical community.

Rep. Gary Paur: Do you have an opinion on just having the reports go to Protection and Advocacy instead a couple of agencies?

Jan Engen: We attempt to work together for the most part. When reports come in for developmental disabilities and mental illness area we do not classify Alzheimer's and dementia as mental illness. If we were to get a call and it was identified and relating to developmental disability or seriously mental ill consumer we would make the transfer to P&A. If it were a family member calling, or from a licensed nursing home or board and care facility or assisted living facility those investigations would go to the Ombudsman Program as is in Century Code. We are already doing those things.

Rep. Kathy Hogan: So you have seen the proposed amendment from P&A and support that amendment?

Jan Engen: I would have to study it more to look at the consequences of it but yes we can work together to do that.

Vice Chairman Larry Klemin: You mentioned a handout?

Rep. Randy Boehning: Who is reporting from the handout you gave us?

Jan Engen: I don't have it on the handout but we can track that information and I could provide that to you.

Rep. Kathy Hogan: Are you comfortable taking out the financially providers in this bill as we discussed in the first hearing?

Jan Engen: I can understand where they are coming from but as an advocate for older adults I have concerns however I am neutral.

Rep. Kathy Hogan: It would be true if a financially provider saw a situation they thought was serious enough that intervention was needed they could still voluntarily report? Just not be a mandated reporter?

Jan Engen: That's correct.

Rep. Andy Maragos: Did you consult with the Department of Human Services at all on this proposed amendment?

David Boeck: We spoke yesterday afternoon and I sent a copy of my testimony and proposed amendment by email.

Rep. Randy Boehning: How many staff do you have in your office?

David Boeck: We have ten offices, approximately 25 people.

Rep. Randy Boehning: With all the reporting are you going to need more FTE's to handle this load?

David Boeck: I do not anticipate that we will be unable to handle the additional reports with our current staff.

Rep. Randy Boehning: Would you be able to provide us with some numbers you possible could be receiving.

David Boeck: I can try and get that and get it back to you today.

Vice Chairman Larry Klemin: We are not going to be meeting any further on this bill this week. We won't meet again until Monday.

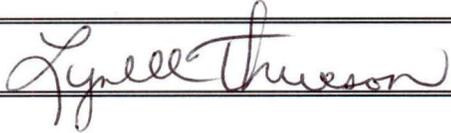
Vice Chairman Larry Klemin: No other testimony, closed the hearing on SD 2323.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2323
April 1, 2013
Job 20740

Conference Committee



Minutes:

Handout 1

Chairman Kim Koppelman: Opens SB 2323 for committee work.

Handout from the Department of Human Services Aging Services Division Vulnerable Protective Services Report was distributed.

1:08 Chairman Koppelman: Read an email from Tom Tupa. There is no definition in the bill that implies that this relates to Meals on Wheels folks.

3:04 Representative Larson: I move a Do Pass on the Murphy amendments to remove financial service providers 03001. Seconded by Representative Delmore.

Representative Paur: The Credit Union Association says their people wouldn't know what to look for, etc. in this business and the banks said they trained their people to look for this.

Representative Hogan: Of the referrals that we just received were from banks. They are doing it and continue to do it on a volunteer basis.

5:13 Chairman Koppelman: Nothing prevents them from doing it, just an observation. They are concerned about people sticking their nose in where it doesn't belong.

A Voice Roll Call vote: Carried

6:32 Vice Chairman Klemin: Regarding an amendment that was to be proposed, I haven't seen it yet. On page 2 if a report is made that satisfies the reporting requirements.

Chairman Koppelman: It's attached to the testimony. The amendment is on page 2 after line 5 insert "a report if required by section 2501.304 satisfies all reporting requirements of this chapter."

Representative Maragos: I move a Do Pass on the amendment, seconded by Representative Hogan.

A Voice Roll Call vote: Carried.

10:10 Vice Chair Klemin: I move a **Do Not Pass** as amended on this. We have a voluntary system now and the fiscal note is quite high. According to the testimony this is going to substantially increase the reporting because there will be many who report so they don't get penalized for not reporting. Seconded by Representative Toman.

11:21 Representative Hogan: I am going to oppose this because as one of the two states in the nation that doesn't have mandatory reporting it has had a significant impact. This will change how we are protecting elderly people. Mandatory reporting makes a difference.

12:25 Representative Larson: There is mandatory reporting for child abuse and not for vulnerable adults?

Representative Hogan: There is mandatory reporting for persons who are developmentally disabled under the state definition. If they are receiving this and are receiving publicly funded services for people with serious mental illness.

Representative Larson: So this expands the number of vulnerable people that social workers are mandated to report?

Representative Hogan: Absolutely.

Chairman Koppelman: Is there a definition for vulnerable adult in this section?

Representative Hogan: It's currently in the law. There is a section in the Century Code.

Chairman Koppelman: This will apply differently than that?

Representative Hogan: No this applies under that but there's a separate definition under PNA. There are two definitions.

Chairman Koppelman: This would be broader?

Representative Hogan: Yes.

Representative Delmore: There is a new fiscal note.

Chairman Koppelman: The penalty is an infraction and there is a penalty in current law for making a false report. Is there a problem in terms of a lot of abuse going on that's not being reported in your experience?

Representative Hogan: Absolutely. There are two primary issues. People are trained where and how to report. There is cautiousness about not understanding.

16:03 Chairman Koppelman: Does this deal with vulnerable or vulnerable elderly?

Representative Hogan: It is vulnerable adults. This is broader because you deal with those people with mental illness who are not being covered. They haven't been trained where and how to report. They see situations and they don't know what to do.

Chairman Koppelman: Does this bill solve that?

Representative Hogan: I think it will. This is building our basic infrastructure to protect our elderly people.

17:48 Representative Larson: I work with juveniles so am aware of what the child abuse reporting is and what it entails. As a mandated reporter for child abuse that makes a difference to some people.

19:03 Representative Paur: This does define vulnerable adult who has a substantial mental or functional impairment.

Representative Hogan: The other issue in terms of the impact of this is things like all the orientation procedures for EMS, staff or emergency rooms will not include training on mandatory reporting.

Chairman Koppelman: Do you know what's prevented them from training people what to look for and how to report under voluntary reporting?

Representative Hogan: The infrastructure is not in place. If not mandated by law they won't do it.

Chairman Koppelman: stated the motion on the floor is a **Do Not Pass**.

A **Do Not Pass Roll Call** vote: **Yes = 14, No = 9, Absent = 2.** Motion failed.

Representative Hogan: I move a **Do Pass**, seconded by Representative Hanson.

Chairman Koppelman: The motion of a Do Pass as amended on Engrossed SB 2323.

A **Do Pass as amended and Re-refer to Appropriations Roll Call** vote:

Yes = 9, No = 3, Absent = 2. Motion carried. **Carrier:** Representative Hogan.

FISCAL NOTE
Requested by Legislative Council
04/02/2013

Amendment to: SB 2323

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill will require mandatory reporting for certain individuals having knowledge of abuse or neglect of a vulnerable adult and provide a penalty.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 1 of the bill requires mandatory reporting by any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect. However, a member of the clergy is not required to report if the knowledge is derived from information received in the capacity of spiritual advisor. Section 1 subsection 3 provides for voluntary reporting by any person not required to report under subsection 1 who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect or who has observed a vulnerable adult being subjected to conditions that would result in abuse or neglect. Since the individuals required to report abuse in Section 1 are already reporting there is no fiscal impact to the Department of Human Services. The potential impact on State's Attorneys related to the provisions of failure to report is undeterminable since it is not possible to estimate the number of the cases that would be prosecuted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 04/03/2013

FISCAL NOTE
Requested by Legislative Council
03/08/2013

Amendment to: SB 2323

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$431,116		\$422,468	
Appropriations			\$431,116		\$422,468	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill will require mandatory reporting for certain individuals having knowledge of abuse or neglect of a vulnerable adult and provide a penalty.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 1 of the bill requires mandatory reporting by any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, financial service provider or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect. However, a member of the clergy is not required to report if the knowledge is derived from information received in the capacity of spiritual advisor. Section 1 subsection 2 provides for voluntary reporting by any person not required to report under subsection 1. For the first five months of SFY 2013, 504 intakes have been received. Annualized, this would be 1,210 intakes. Research on the impact to South Dakota when they instituted a similar but less restrictive bill, determined they had an increase of 70% in the number of intakes received. Since SB 2323 is more restrictive, it's estimated the state would see an increase of 35%, half of the impact seen in South Dakota in the number of intakes received. With current annual intakes of 1,210, a 35% increase would result in an additional 424 intakes per year for a total of 848 additional intakes for the 2013-2015 biennium. The addition of 2 FTE would be needed for the additional cases. The potential impact on State's Attorneys related to the provisions of failure to report is undeterminable since it is not possible to estimate the number of the cases that would be prosecuted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The fiscal impact for the Department of Human Services for the 2013-2015 biennium would be the cost for 2 FTE to handle the increased number of intakes that would be received. Costs for the biennium total \$431,116 and are comprised of: salary and benefits for 2 FTE \$338,549, operating costs for travel, rent, office supplies, and communication \$52,567, and IT costs for maintenance of a database reporting system \$40,000. The fiscal impact for DHS for the 2015-2017 biennium would be \$422,468. This reflects the removal of one-time costs for office furniture and equipment that would occur in the 2013-2015 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The funding needed to perform the requirements provided for in SB 2323 are not included in the Department of Human Services appropriation bill (HB 1012), therefore DHS would need a general fund appropriation of \$431,116 for the 2013-2015 biennium and \$422,468 for the 2015-2017 biennium.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 03/18/2013

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Bill/Resolution No.: SB 2323

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$1,611,771		\$1,577,179	
Appropriations			\$1,611,771		\$1,577,179	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill will require mandatory reporting of abuse or neglect of a vulnerable adult and provide a penalty.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 subsection 1 of the bill requires mandatory reporting by any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, financial service provider, attorney or caregiver having reasonable cause to believe a vulnerable adult has been subjected to abuse or neglect. Section 1 subsection 2 provides for voluntary reporting by any person not required to report under subsection 1. For the first four months of SFY 2013, 316 referrals have been received. It is estimated that under this bill, referrals would increase by 70%, based on similar legislation that was implemented in South Dakota. With a 70% increase, the estimated annual number of referrals could be 1,612. It is estimated that, at a minimum, this would require 1 FTE to be located in each of the eight regions of the state for a total of 8 FTE. The potential impact on State's Attorneys related to the provisions on failure to report is undeterminable since there is no way to estimate the number of the cases that would be prosecuted.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The fiscal impact for the Department of Human Services for the 2013-15 biennium would be the cost for 8 FTE to handle the increased number of referrals that would be received. Salary and fringe for 8 FTE would total \$1,354,197. Operating costs for travel, rent, office supplies, communications would total \$217,574. IT costs for

maintenance of database reporting system would total \$40,000. Total cost for the 2013-15 biennium would total \$1,611,771. The fiscal impact for DHS for the 2015-2017 biennium would be \$1,577,179. This reflects the removal of one-time costs for office furniture and equipment that would occur in 2013-15 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The funding needed to perform the requirements provided for in SB 2323 are not included in the Department of Human Services appropriation bill (HB 1012), therefore DHS would need a general fund appropriation of \$1,611,771 for the 2013-15 biennium and \$1,577,179 for the 2015-17 biennium.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/05/2013

April 1, 2013

VK
4/1/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2323

Page 1, line 9, remove "financial service provider."

Page 1, line 17, remove "section:"

Page 1, remove lines 18 through 20

Page 1, line 21, replace "b. "Medical"" with "subsection, "medical""

Page 2, line 5, after "2." insert "A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter."

3."

Page 2, line 13, replace "3." with "4."

Renumber accordingly

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2323

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0803.03001

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

Motion Made By Rep. Larson Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Unice vote - Carried

Date: 4-1-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2323

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0803.03002

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

Motion Made By Rep Maragos Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote Carried

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2323

House 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 Rep. Klemin Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman		/	Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning			Rep. Kathy Hogan		/
Rep. Roger Brabandt					
Rep. Karen Karls		/			
Rep. William Kretschmar		/			
Rep. Diane Larson		/			
Rep. Andrew Maragos		/			
Rep. Gary Paur	/				
Rep. Vicky Steiner	/	/			
Rep. Nathan Toman	/				

Total (Yes) 3 No 9

Absent 2

Floor Assignment _____

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

Date: 4-1-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2323

House 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 Rep. Hogan Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin		/	Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt					
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur		/			
Rep. Vicky Steiner	/				
Rep. Nathan Toman		/			

Total (Yes) 9 No 3

Absent 2

Floor Assignment Rep. Hogan

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

REPORT OF STANDING COMMITTEE

SB 2323, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2323 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "financial service provider."

Page 1, line 17, remove "section."

Page 1, remove lines 18 through 20

Page 1, line 21, replace "b. "Medical"" with "subsection, "medical""

Page 2, line 5, after "2." insert "A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter."

3."

Page 2, line 13, replace "3." with "4."

Renumber accordingly

2013 TESTIMONY

SB 2323

Testimony for 2323 63rd session Adult abuse and neglect

Mr. Chairman, members of the committee, I am Senator Phil Murphy from District 20.

I stand before you today because I was dismayed to find out earlier this year that ND is an outlier in terms of mandatory reporting of abuse or neglect of an elder. Along with us, only Colorado does not mandate reporting of this nature. You may all know that abuse or neglect of children in this state does necessitate reporting. I, myself, as a teacher face criminal charges if I have reason to believe a child has been maltreated and I do not report it. I find it difficult to understand why we in ND would not afford the same measure of respect to our elder citizens. This bill is intended to protect our elderly and the people who would report their abuse by giving immunity to anyone reporting in good faith. Secondarily, it would bring ND into a place in our United States where we will not be the subject of ridicule. I take offense to the notion that we here care less about our elders than other states, but our current statutes in this regard certainly invite that charge.

In the 35 years of my teaching, I recall a few times, perhaps as many as 7 or 8, whereby I notified our school counselor, principal or supt. of my concerns for a student and I felt good knowing I had done my duty as required. However, to allay fears of criminalizing people who do not report, I have drafted the bill so that the penalty is not a crime, but an infraction.

As many as 2 million US citizens are abused in various ways each year, the majority of cases are at the hands of relatives or other caregivers - this according to the Bismarck Tribune of last Tuesday, Jan 29 of 2013. Our demographics show that the number of us 65 and over is projected to nearly double by 2030 as the baby boomers (born 1946-1964) age. There are 74 million of us.

I have many more knowledgeable than I to testify today on this issue, but I would like to tell you that I have some amendments to submit, which I will explain, as well as a paragraph from the medical profession to read to you.

From: JAMES BROSSÉAU [mailto:JBROSSEAU@altru.org]

Sent: Thursday, January 24, 2013 11:31 AM

To: Murphy, Philip M.

Subject: Document1

Dear Senator Murphy. Yesterday you asked me about a bill you were going to introduce regarding elder abuse. This is certainly an area of concern, since there is an increasing number of vulnerable adults now with dementia or other cognitive impairments. Furthermore, many of these folks are being cared for at home.

I spoke with a number of my colleagues in Grand Forks this morning - an orthopedist, a rehab physician, and an emergency room doctor. All of us would support this type of legislation. Docs working in emergency departments are perhaps the most likely to see cases where trauma is involved. Issues of chronic neglect and deprivation might be more likely to be seen in the offices of primary care doctors.

The attached article might be of some interest to you. The last paragraph under the title "Background" lists most of the issues faced by doctors who see this type of thing. I thought this might be of interest to you.

-- Jim Brosseau, MD
Altru Clinic, Grand Forks

Ron Guggisberg

District 11

Testimony In Support Of SB2323

Chairman Hogue and Members of the Senate Judiciary Committee,

I would like to express my support for this legislation. As a firefighter I took an oath to protect lives and that is what this bill does. By requiring health care workers and emergency responders to be mandatory reporters, it will ensure the proper protections are in place for vulnerable adults. It will also give responders clear direction about their responsibilities when they witness a possible abuse situation.

Colorado should make reporting of elder abuse mandatory, Suthers

says

By John Suthers The Denver Post

Posted:

DenverPost.com

Re: "Improving Colorado in five easy (legislative) steps," Jan. 9 editorial.

The Denver Post editorial board laid out a plan for how to improve the state in five easy (legislative) steps.

I'd like to suggest a sixth step is needed: mandatory reporting of elder abuse.

Colorado is one of only three states that does not have a law specifically protecting our elder population from physical, sexual, caretaker and financial harm by requiring those in a position of awareness to report suspected abuse.

Last year, our legislature created a task force to study the issue. It recommended a system of mandatory reporting for the mistreatment and exploitation of at-risk persons over 70 years of age.

Gov. John Hickenlooper has dedicated \$5 million to put into place the policies and procedures needed for adult protective services to be resourced appropriately to be effective. It is now time to move from studying the issue to acting on it by passing the upcoming legislation sponsored by state Sen. Evie Hudak, D-Westminster, state Rep. Sue Schafer, D-Wheat Ridge, and Rep. Amy Stephens, R-Monument. Their efforts would commit the resources that Colorado's seniors need to help protect them from harm.

Across the country, law-enforcement and social-services professionals see exploitation on the rise, and with an aging population, the problem will only grow with time. We also know that financial abuse is often a gateway to physical abuse.

Only with mandatory reporting of elder abuse can we create the necessary flow between those in social services, medical services, financial services, and law enforcement to be able to act and safeguard our at-risk elders.

The January 2013 issue of Consumer Reports cited a MetLife Mature Market Institute study that found, "in 107 cases, seniors lost an average of more than \$145,000 from fraud committed by family, friends, caregivers and neighbors." And a survey by the Certified Financial Planner Board of Standards found that 56 percent of 2,600 financial planners said they knew older clients who had been subject to unfair, deceptive or abusive practices.

Twenty-five states now require financial institutions to report suspicious account activity involving seniors. And the American Bankers Association offers education to help employees identify the red flags that may signal financial abuse is occurring. As good corporate citizens interested in safeguarding their senior customers, that same model can be easily adopted by the financial community here.

Much like children, our seniors are also a unique, at-risk group who are too often victimized. This is the year that the state needs to do its part to protect them.

John Suthers, a Republican, is Colorado's attorney general.

1

13.0803.02003
Title.

Prepared by the Legislative Council staff for
Senator Murphy
February 6, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2323

Page 1, line 9, remove "attorney."

Page 1, line 10, remove "or reasonable cause to believe"

Page 1, line 14, after "agency" insert "if the knowledge is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the capacity of spiritual adviser"

Page 1, line 16, after the third underscored comma insert "or"

Page 1, line 17, remove ", or any officer or employee of a bank, credit union, or any other"

Page 1, line 18, remove "financial service provider"

Renumber accordingly

Mr. Chairman

Members of the Committee

My name is Cher Meyer, I am from Thompson North Dakota and I am here to testify on Senate bill 2323 .

I believe this bill is vital to every elder person and their families, in every community, to protect the rights and safety our elder population both now and in the future.

My background is I retired from San Diego County Sheriff's Department in San Diego California after 20 years, the last ten as a supervisor in Emergency Communications. I also taught over 1000 Senior Volunteers for the department.

North Dakota is one of two states that has no MANDATORY reporting laws for elder abuse. We need to change this making the laws MANDATORY not voluntary. When anything is voluntary, there is no requirement for an action.

Not all elder people live in nursing homes or have conservators/guardians to oversee their physical care or financial needs. Not all elder are disabled. The people who are in these categories have people who care for their physical and financial concerns and must follow strict guidelines.

Right now for example, an elder person can walk into their financial institution and take out \$10,000 in cash and all they will be asked is if they want an envelope for their money. A week later that same person could take another \$10,000 dollars out and NO ONE will ask why they would need this much cash in such a short amount of time? Wouldn't

it seem that someone should have or could have suspected that something was not right in this situation? As it stands right now, there is no MANDATORY law requiring any reporting of this type of situation!

Please do NOT think this doesn't or can't happen as I became aware of this very type of situation after the damage was done to a family member. I was stunned that my adopted home state of North Dakota had NO MANDATORY reporting laws.

When I made inquiries as to why no one was called to report something wasn't quite right, I was told "well she is such a nice person, we didn't want to get involved, we thought something wasn't right," Then I asked "aren't you mandated reporters?" The answer was NO!

Elder abuse has many forms which include physical, mental, financial, sexual, and is one of the most under reported crimes there is.

Sometimes an elder will mention in passing perhaps to their doctor or a trusted friend or a neighbor that something isn't right. Too often our elders concerns are ignored because NO one is required to report a suspicion of possible abuse.

We need to bring awareness to this and we must be the voice to require MANDATORY reporting. A standard must be in place so that we have mandated reporters who MUST report suspicious activity or concerns when it comes to our elder population without the fear of retaliation so that it can be investigated completely.

We must protect our elder population now and in the future. Our state is growing; the population age will continue to increase. If we make MANDATORY reporting and have mandated reporters then financial institutes, doctors, law enforcement, clergy and others will be

required to report any suspicions of financial or any other type of elder abuse. Our elder population deserves honor and respect yet sometimes they are mistreated or forgotten or sometimes the situation they are in gets ignored. These are the people who raised us and they deserve to be cared for and protected in a dignified manner. We ourselves are going to an elder someday wouldn't you want the same protection of MANDATORY reporting?

The elder population can be vulnerable and easy targets just like our children. We have so many laws that protect our children and have MANDATORY reporting for suspicions that involve children then why aren't we giving the same protections to our elder population?

Thank you.

Cher Meyer

Thompson ND 58278

Senate Human Services Committee
February 6, 2013
Testimony regarding Adult Protective Services
Senate Bill 2323
By Kim Jacobson, Director – Traill County Social Services

Chairman Hogue and members of the Senate Judiciary Committee, my name is Kim Jacobson, Director of Traill County Social Services and member of the Region V Adult Protection Funding Committee. I speak in support of Senate Bill 2323.

The North Dakota Legislature took an important step during the last biennium by appropriating a study to further understand the needs of vulnerable adults. The study, completed Winsor Schmitt, revealed many areas in which North Dakota could improve in protecting and serving vulnerable populations. Mr. Schmitt’s report recommended “North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect.” Senate Bill 2323 sets this recommendation in motion and helps define North Dakota a better place for vulnerable adults.

North Dakota is one of only two states without mandatory reporting of vulnerable adult abuse and neglect. It is important to note that North Dakota does have mandatory reporting laws for suspected child abuse and neglect. Mandatory reporting of abuse of vulnerable adults would be very effective if approached in a similar manner.

Current child protection law requires mandatory reporters to report *suspected* abuse or neglect. It is not the role of the reporter to confirm the abuse/neglect only to report *suspected* concerns. It is through proper assessment and investigation by qualified professionals (law enforcement, child protection social workers/team, etc.) that the report is substantiated. The identity of the reporter is kept confidential unless ordered by a court of law. These items ensure a safety net for both the alleged victim and the reporter. These practices would be very effective if incorporated into mandatory reporting law for abuse/neglect of vulnerable adults.

While we would all love to say that North Dakota is a safe place to live and we take good care of our vulnerable adult populations, this is not always the case. Abuse and neglect of North Dakota citizens

happens each day. Our current system falls seriously short in offering protections, consequences, resources, and safety nets for aiding this population group. Fact is, our state is changing daily. Abuse and neglect can occur in many ways including financial exploitation, physical abuse, sexual abuse, emotional maltreatment, neglect, and self-harm. It happens in North Dakota.

The legislative body, public servants, individuals identified as mandatory reporters, and citizens all have a role to help protect our vulnerable populations. SB 2323 sets the stage for mandatory reporting of suspected abuse of vulnerable adults. We cannot wait another year or until the next legislative session to provide protections for our vulnerable.

It is important to note that SB 2323 is part of an entire system of needed reform for vulnerable adult services. Partner bills: SB 2195 (adult protective services funding), HB 1041 (grants for guardianship services), HB 1040 (rights of potential wards), SB 2345 (definition and penalty of exploitation of vulnerable adult), and HB 1012 (NDDHS budget) serve as a cohesive body for providing an appropriate system for improving services and protections to vulnerable adults. Systemic change is needed.

This is a critical time in North Dakota history. There is an opportunity today for each of you to play a vital role in ensuring protections for North Dakota vulnerable adults. I urge you to take this time to seek to understand the facts, the need to protect vulnerable adults, and to commit to a statewide system to sustain those efforts.

I urge you to give Senate Bill 2323 a "Do PASS" recommendation.

Mr. Chairman and members of the Committee

(4)

Name: Mary Quates - retired nurse / nurse educator
and delegate for SHEA
Slow Haired Legislature
and I am in support of Bill 2323

As someone who dealt with some of the issues defined in NDCC Chapter 50-28.2-01 twenty some years ago working as a nurse, I can only voice my support for Senate Bill 2323.

In looking through the present language of 50-25-2, I find the wording in 50-25-2-

"May" as a copout for people who don't want to get involved. Involvement means dealing with uncomfortable situations and as humans we don't like being uncomfortable.

Also ~~there is a culture~~ to be a North Dakotan means you don't push your nose in other people's business - Good or bad. "It ain't proper!" And yet there are situations where it is our business to ~~put~~ ^{push} our noses into other people's business.

Again, in conclusion, I am in favor of this bill.

SB2323

Testimony of Gretchen Dobervich, Alzheimer's Association MN ND

February 6, 2013

Chairman Hogue

~~Chairwoman Lee~~, Members of the Committee, my name is Gretchen Dobervich and on behalf of the Alzheimer's Association MN ND I am here today to testify in support of Senate Bill 2323, which calls for the mandatory reporting of abuse and neglect of vulnerable adults in North Dakota.

The population served by the Alzheimer's Association MN ND is a vulnerable population and is at increased risk for exploitation, abuse and self neglect throughout the disease process. One in four of the 19,000 North Dakotans with Alzheimer's disease live alone, many in rural, isolated areas. Mandated reporting of abuse and neglect would provide an additional layer of support and safety for them.

Vulnerable persons who are victims of abuse and neglect may not report the maltreatment in fear of retaliation or concern that any assistance they are being provided will cease and they will no longer be able to live at home or may lack the capacity to recognize the abuse and neglect and/or tell anyone it is occurring. Mandated reporting by professionals who interact with vulnerable adults would provide a means of protection and advocacy for them that may lessen fear and increase the likelihood that action will be taken before further abuse and neglect can occur.

SB2323 would mandate all North Dakota's adults who are vulnerable and in suspected abusive or neglectful situations would be covered. Current mandates exist for persons with developmental disabilities, mental illness, victims of domestic violence and residents of long term care facilities.

The Alzheimer's Association MN ND suggests the addition of protection for reporters who make a report in good faith and prohibits retaliation towards reporters who have made a report in good faith. Clearly defining the time period a report must be made in such as immediately or within 24 hours versus "a reasonable amount of time" gives vulnerable adult reporting the sense of urgency and seriousness that victims deserve.

Thank you for the opportunity to express the Alzheimer's Association MN ND's support for a Do Pass of SB2323.



BE WISE

PROTECT YOURSELF FROM FINANCIAL ABUSE

6

Financial Exploitation can happen to anyone.
ABUSERS CHARM. THEY P'RESSURE.
They may even say they're doing you a favor.

PROTECT YOURSELF:

- Get to know your banker. Build a relationship with the people who handle your finances so they can be on the lookout for any suspicious activity related to your account.
- Plan ahead to protect your assets and to ensure that your wishes are followed. Talk to your banker, an attorney or financial advisor about the best options for you.
- You have the right not to be threatened or intimidated. If someone close to you is trying to take control of your finances, talk to someone you trust.
- Check references and credentials of anyone who wants to do work in your home.
- Sign your own checks. Do not sign "blank checks" where another person can fill in the amount. (If you need someone to help you write checks before you sign, ask a third party to review the check and take it to the bank.)
- Consult with a financial advisor or attorney before signing any document you don't understand.
- Never get rushed into a deal. Ask for details in writing.
- Pay with checks and credit cards rather than cash to keep a paper trail.
- Use Direct Deposit.
- Do not lend money in return for a general promissory note.
- Feel free to say "no." After all, it's your money.



If you or someone you know is being financially exploited or if you have any questions or concerns, please contact your local banker. They will be able to assist you.

Senate Judiciary Committee
Sixty-Third Legislative Assembly of North Dakota
Senate Bill No. 2323
February 6, 2013

Good morning, Chairman Hogue and Members of the Senate Judiciary Committee: I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

The Protection & Advocacy Project supports the concept of mandatory reporting of abuse and neglect of vulnerable adults. It likely is essential to an effective system to protect vulnerable adults. Still, the Protection & Advocacy Project has reservations about Senate Bill 2323.

→ The Vulnerable Adult Protective Services system would have great difficulty implementing this law, unless Senate Bill 2195 also becomes law so the present Vulnerable Adult Protective Services system would have adequate resources to receive all the reports and protect the vulnerable adults who are the subjects of those reports. Mandatory reporting would likely significantly increase the workload.

If Senate Bill 2195 and Senate Bill 2195 become law, it likely will take some start up time to put an expanded Vulnerable Adult Protective Services system in place. It might be advisable to have an

immediate implementation date for Senate Bill 2195 and a delayed implementation date for Senate Bill 2323.

- The statute that mandates reporting of child abuse and neglect provides an exemption for clergy who gain knowledge or develop a suspicion while acting as a "spiritual advisor." Senate Bill 2323 mandates that clergy report abuse and neglect of vulnerable adults but has no similar exemption.
- Senate Bill 2323 would require attorneys to report knowledge or suspicion of abuse and neglect of vulnerable adults though the North Dakota Supreme Court regulates the conduct of attorneys in the practice of law. The Rules of Professional Conduct promulgated by the Court addresses confidentiality in several respects.

The obligations that Senate Bill 2323 would impose conflict with some obligations attorneys must follow under the Rules of Professional Conduct. For example, the Rules of Professional Conduct preclude an attorney from disclosing information about possible abuse or neglect when the attorney is representing the person suspected of perpetrating that abuse or neglect.

Thank you. Please let me know if you have questions.

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2195

Introduced by

Senators Luick, J. Lee, Robinson

Representatives Fehr, Hogan, Mooney

1 A BILL for an Act to provide an appropriation to the department of human services for adult
2 protective services.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. APPROPRIATION. - DEPARTMENT OF HUMAN SERVICES - ADULT**

5 **PROTECTIVE SERVICES.** There is appropriated out of any moneys in the general fund in the
6 state treasury, not otherwise appropriated, the sum of \$1,650,000, or so much of the sum as
7 may be necessary, to the department of human services for the purpose of providing adult
8 protective services, including the assessment of the needs of vulnerable individuals,
9 identification of alternatives to guardianship resources, for the biennium beginning July 1, 2013,
10 and ending June 30, 2015. The department of human services may contract for the provision of
11 these services.

February 6, 2013

Senate Judiciary Committee

Senate Bill No. 2323

CHAIRMAN HOGUE AND COMMITTEE MEMBERS:

I'm Bill Neumann, Executive Director of the State Bar Association of North Dakota. The Bar Association has no problem with the general idea of mandatory reporting of adult abuse, but we must oppose the inclusion of attorneys as mandated reporters. I know the bill's sponsors only want to do what's best for vulnerable adults, but requiring lawyers to report client confidences strikes at the very heart of the attorney-client relationship.

The one thing everybody who hires a lawyer knows is that the things I tell my lawyer are held in strictest confidence. Every client relies on that confidentiality as the foundation of the relationship they have with their attorney. Without that confidentiality, clients cannot tell their lawyers the things their lawyers need to know in order to give good, competent advice. S.B. 2323 mandates disclosure of those confidences; it requires a breach of the attorney-client relationship.

Let's assume my client comes to me and says he wants to give his entire farm to his son, and wants to turn over control of all his bank accounts and other assets, too. Let's assume I know the son recently moved back in with my client after being away for years, and that the son never had a close relationship with his father. And let's assume my client also has a daughter who lives in a neighboring state.

Under the current law I'm not mandated to report this situation, but I can report it if I think my client is a vulnerable adult being subjected to financial exploitation. But if S. B. 2323 becomes law as it's presently written, I will be forced to report that situation. That means my client and his son will know what they tell me will not be confidential, and it therefore means the client and his son are not going to come to me to arrange the transfers the son wants. It means the son will seek out someone who is not licensed to practice law, someone who is not a mandated reporter, someone who is willing to commit the unauthorized practice of law to arrange these transfers.

A law that requires lawyers to divulge our clients' confidences will actually provide our clients less protection from exploitation than they presently have. I ask you to delete the word "attorney" from line 9 of this bill. If you do that, we will still be covered by the next section of the law as permissible reporters, and we will still have the option of acting to protect our clients when we believe it is necessary.

If you have any questions, I will try to answer them.

*Additional testimony
for
Dr. M. Booth*

63rd Legislative Assembly of North Dakota

Testimony in Support of SB 2323
North Dakota Medical Association
6 February 2013

Chairman Hogue and Members of the Senate Judiciary Committee:

I am Dr. Michael Booth, a practicing cardiovascular and thoracic surgeon in Bismarck and current president of the North Dakota Medical Association, who I am representing today.

Our organization rises to speak in favor of this bill and recommends a "Do Pass" from this committee subject to the comments outlined below.

We do support mandatory reporting of the suspected abuse and/or neglect of vulnerable adults, who have previously been in the North Dakota Century Code. For us as medical providers this is a logical extension of our mandate to report abuse and neglect for children.

We understand that the reporting process does not mean an automatic criminal investigation of the individuals in question, but rather the initiation of a process to evaluate and potentially intervene in a situation where abuse or neglect has become a concern. Criminal charges would only be one potential outcome, and hopefully infrequently required. Based on our state's 20 plus years of experience in investigating child abuse, we believe that this process may be implemented smoothly and for the benefit of all.

The issue of financial abuse or neglect is not currently part of the process that we as medical providers have dealt with in situations of child abuse, but we do appreciate its importance in vulnerable adults. While we would certainly encourage our colleagues to report financial issues if they feel it is appropriate, the amendment to line 14 proposed by Senator Murphy would certainly be acceptable to us to allay any concerns that we might be obligated to investigate a given patient's financial circumstances as a matter of course.

We do believe that the Century Code does provide an adequate definition for abuse and neglect to serve as the basis of this bill.

We also believe that the Century Code adequately defines the vulnerable adult. We would encourage you to NOT add an age (other than majority) to the definition of a vulnerable adult. (As the father of an autistic child who would potentially be vulnerable at any time after his 18th birthday, this speaker is especially concerned about this point.)

We would request that language be included as an amendment to this bill to hold the individual or entity reporting a suspected abuse or neglect case harmless from civil or criminal liability if the report has been made in good faith. We would also prefer that the reporting individual be de-identified in any proceedings undertaken to investigate these reports.

Added following the hearing:

We agree with the concerns voiced by the North Dakota Bar Association concerning mandatory reporting for attorneys. Current law should be adequate to prosecute attorneys who are complicit in financial abuse or neglect.

The issue is more problematic for financial service professionals. We would leave that to your discretion.

We would also urge that SB 2195, which funds the department of human services to administer these services for vulnerable adults, be enacted and fully funded.

Respectfully submitted,

A. Michael Booth MD PhD FACS
President, North Dakota Medical Association

13.0803.02004
Title.

Prepared by the Legislative Council staff for
Senator Murphy
February 15, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2323

Page 1, line 10, remove "or reasonable cause to believe"

Page 1, line 14, after "agency" insert "if the knowledge is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the capacity of spiritual adviser"

Renumber accordingly

Senate Appropriations Committee
February 18, 2013
Testimony regarding Mandatory Reporting for Vulnerable Adult Protection and Related Fiscal Note
Senate Bill 2323
By Kim Jacobson, Director – Traill County Social Services

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Kim Jacobson. I am the Director of Traill County Social Services located in Hillsboro, North Dakota. I am also a member of the Region V Adult Protection Funding Committee and North Dakota County Social Service Director Association. I speak in support of Senate Bill 2323.

The North Dakota Legislature took an important step during the last biennium by appropriating a study to further understand the needs of vulnerable adults. The study, completed ^{by} Winsor Schmitt, revealed many areas in which North Dakota could improve in protecting and serving vulnerable populations. Mr. Schmitt's report recommended "North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect." Senate Bill 2323 sets this recommendation in motion and includes an appropriation to ensure adequate implementation. This would help define North Dakota a better place for vulnerable adults.

North Dakota is one of only two states without mandatory reporting of vulnerable adult abuse and neglect. It is important to note that North Dakota does have mandatory reporting laws for suspected child abuse and neglect. Mandatory reporting of abuse of vulnerable adults would be very effective if approached in a similar manner.

Current child protection law requires mandatory reporters to report *suspected* abuse or neglect. It is not the role of the reporter to confirm the abuse/neglect only to report *suspected* concerns. It is through proper assessment and investigation by qualified professionals (law enforcement, child protection social workers/team, etc.) that the report is substantiated. The identity of the reporter is kept confidential unless ordered by a court of law. These items ensure a safety net for both the alleged victim and the reporter. These practices would be very effective if incorporated into mandatory reporting law for abuse/neglect of vulnerable adults.

While we would all love to say that North Dakota is a safe place to live and we take good care of our vulnerable adult populations, this is not always the case. Abuse and neglect of North Dakota citizens happens each day. Our current system falls seriously short in offering protections, consequences, resources, and safety nets for aiding this population group. Fact is, our state is changing daily. Abuse and neglect can occur in many ways including financial exploitation, physical abuse, sexual abuse, emotional maltreatment, neglect, and self-harm. It happens in North Dakota.

The legislative body, public servants, individuals identified as mandatory reporters, and citizens all have a role to help protect our vulnerable populations. SB 2323 sets the stage for mandatory reporting of suspected abuse of vulnerable adults. We cannot wait another year or until the next legislative session to provide protections for our vulnerable.

It is important to note that the fiscal note in SB 2323 is key to success of this bill. NDCC clearly defines that the State is responsible for vulnerable adult protection. The current appropriation for vulnerable adult protective services is meager. Two western ND regions share a .25 FTE. There are only 3.25 FTES for the entire state with the exception of Region V. The counties in Region V (Cass, Richland, Ransom, Sargent, Steele and Traill) have actually chosen to supplement the current state appropriation despite this being the responsibility of the State, as the need is so great.

There are several bills before the legislative body that relate to the needs of vulnerable individuals. There has been some confusion between the various bills, the roles of each bill, and the funding for each bill. Please note there is not duplication of intent or funding between this bill and the following bills. HB 1041 (grants for guardianship services), HB 1040 (rights of potential wards), SB 2345 (definition and penalty of exploitation of vulnerable adult), and HB 1012 (NDDHS budget) serve together as a cohesive body for providing an appropriate system for improving services and protections to vulnerable adults.

Guardianship and adult protective services are very different from each other. Adult protective services can be likened to child protection services. Both assess/evaluate reports or concerns to see if

abuse/neglect has occurred and if intervention is needed. The difference is the child protection is for children. Adult protective services are for vulnerable adults. The difference is there is very little current funding for adult protective services and there is no mandatory reporting laws unlike child protection in North Dakota. Senate Bill 2323 seeks to strengthen the protections for the elderly and disabled.

Guardianship can be compared to foster care. Both are a method of providing a high level of required safety intervention under significant cases of proven abuse/neglect. Both foster care and adult guardianship require action of the Court in order to be implemented. Foster care is a significant safety intervention for children. Guardianship is a significant safety intervention for vulnerable adults. Both foster care and guardianship can be accomplished with the assistance of family caregivers, agency caregivers, or institutions. Again, the difference is that there is very little available funding to assist with adult guardianships in the ND system. In foster care, the state, counties, and federal government all share this expense. Adult guardianship is being addressed in the other bills previously mentioned this session.

This is a critical time in North Dakota history. There is an opportunity today for each of you to play a vital role in ensuring protections for North Dakota vulnerable adults. I urge you to take this time to seek to understand the facts, the need to protect vulnerable adults, and to commit to a statewide system to financially support efforts to protect North Dakota's adult vulnerables.

I urge you to give Senate Bill 2323 a "Do PASS" recommendation. Thank you for your consideration.

63rd Legislative Assembly of North Dakota

Testimony in Support of SB 2323
North Dakota Medical Association
6 February 2013

Chairman Hogue and Members of the Senate Judiciary Committee:

I am Dr. Michael Booth, a practicing cardiovascular and thoracic surgeon in Bismarck and current president of the North Dakota Medical Association, who I am representing today.

Our organization rises to speak in favor of this bill and recommends a "Do Pass" from this committee subject to the comments outlined below.

We do support mandatory reporting of the suspected abuse and/or neglect of vulnerable adults, who have previously been in the North Dakota Century Code. For us as medical providers this is a logical extension of our mandate to report abuse and neglect for children.

We understand that the reporting process does not mean an automatic criminal investigation of the individuals in question, but rather the initiation of a process to evaluate and potentially intervene in a situation where abuse or neglect has become a concern. Criminal charges would only be one potential outcome, and hopefully infrequently required. Based on our state's 20 plus years of experience in investigating child abuse, we believe that this process may be implemented smoothly and for the benefit of all.

The issue of financial abuse or neglect is not currently part of the process that we as medical providers have dealt with in situations of child abuse, but we do appreciate its importance in vulnerable adults. While we would certainly encourage our colleagues to report financial issues if they feel it is appropriate, the amendment to line 14 proposed by Senator Murphy would certainly be acceptable to us to allay any concerns that we might be obligated to investigate a given patient's financial circumstances as a matter of course.

We do believe that the Century Code does provide an adequate definition for abuse and neglect to serve as the basis of this bill.

We also believe that the Century Code adequately defines the vulnerable adult. We would encourage you to NOT add an age (other than majority) to the definition of a vulnerable adult. (As the father of an autistic child who would potentially be vulnerable at any time after his 18th birthday, this speaker is especially concerned about this point.)

We would request that language be included as an amendment to this bill to hold the individual or entity reporting a suspected abuse or neglect case harmless from civil or criminal liability if the report has been made in good faith. We would also prefer that the reporting individual be de-identified in any proceedings undertaken to investigate these reports.

Added following the hearing:

We agree with the concerns voiced by the North Dakota Bar Association concerning mandatory reporting for attorneys. Current law should be adequate to prosecute attorneys who are complicit in financial abuse or neglect.

The issue is more problematic for financial service professionals. We would leave that to your discretion.

We would also urge that SB 2195, which funds the department of human services to administer these services for vulnerable adults, be enacted and fully funded.

Respectfully submitted,

A. Michael Booth MD PhD FACS
President, North Dakota Medical Association

February 18, 2013

Senate Appropriations Committee

Senate Bill No. 2323

CHAIRMAN HOLMBERG AND COMMITTEE MEMBERS:

I'm Bill Neumann, Executive Director of the State Bar Association of North Dakota. The Bar Association has no problem with the general idea of mandatory reporting of adult abuse, but we must oppose the inclusion of attorneys as mandated reporters. Requiring lawyers to report client confidences strikes at the very heart of the attorney-client relationship.

Everybody knows the things they tell their lawyer are confidential; that confidentiality is the foundation of the attorney-client relationship. Without confidentiality, clients cannot tell their lawyers what lawyers need to know to give good, competent advice. S.B. 2323 mandates disclosure of client confidences; it requires a breach of the attorney-client relationship.

What if my client suddenly wants to give his entire farm and all his assets to his son, who recently moved back in with his father after being away for years, and who has never had a close relationship with his father. And let's assume my client also has a daughter who lives in a neighboring state.

Under current law I'm not mandated to report this situation, but I can report it if I think my client is a vulnerable adult being subjected to financial exploitation. But if S. B. 2323 becomes law, I will be forced to report that situation. That means my client and his son will know what they tell me will not be confidential, and therefore they are not going to come to me to arrange these transfers. It means the son will find someone who is not licensed to practice law, and therefore not a mandated reporter, someone who is willing to commit the unauthorized practice of law to arrange these transfers.

Requiring us to divulge our clients' confidences actually gives our clients less protection from exploitation than they have now. If the word "attorney" is deleted from line 9 of this bill, we will still be permissible reporters under the next section of the law, and we will still have the option of acting to protect our clients when we believe it is necessary. If you have any questions, I will try to answer them.

(Three hole punch)

Date: February 18, 2013

Committee & Bill No.: Senate Appropriations 2323

Chairman name & Committee Members: Ray Holmberg-Chair

Bill L. Bowman-Co-Vice Chairman

Tony Grindberg-Co-Vice Chairman

Ron Carlisle

Ralph Kilzer

Karen Krebsbach

Gary A. Lee

Terry M Wanzek

Tim Mathern

David O'Connell

Larry Robinson

John M. Warner

My name is John Brown and I am the Executive Vice President for Independent Community Banks of North Dakota (ICBND). I am here to testify against 2323 in its current form. When first introduced by Senator Murphy he also proposed an amendment to remove Lines 15-18 taking "financial institution providers" out of the bill. Unfortunately, that's not how it came out of the Judiciary Committee.

I wanted to let you know that as part of the Federal USA Patriot Act, through the Financial Crimes Enforcement Network, known as **FinCEN**, financial institutions are required to report suspected activities that would include elder financial exploitation.

I found the following example on the FinCEN Network. "FinCEN data was critical in identifying the disposition of a \$20,000 withdrawal from a bank account of elderly persons. Investigators had earlier executed a search warrant for the records of the victims at the bank that had files the Currency Transaction Report, but the bank had inadvertently missed the transaction in question. The discovery of the Currency Transaction resulted in us urging the bank to complete its compliance with the initial search warrant. Records pertaining to the cash withdrawal helped arrest the subject on charges of larceny totaling \$218,000."

Therefore, I urge you **not** to include "financial institutions" in this legislation. Thank you.

I would be glad to try and answer any questions you may have!

5



Department of the Treasury Financial Crimes Enforcement Network

Advisory

FIN-2011-A003

Issued: February 22, 2011

**Subject: Advisory to Financial Institutions on Filing Suspicious Activity Reports
Regarding Elder Financial Exploitation**

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to assist the financial industry in reporting instances of financial exploitation of the elderly, a form of elder abuse.¹ Financial institutions can play a key role in addressing elder financial exploitation due to the nature of the client relationship. Often, financial institutions are quick to suspect elder financial exploitation based on bank personnel familiarity with their elderly customers. The valuable role financial institutions can play in alerting appropriate authorities to suspected elder financial exploitation has received increased attention at the state level; this focus is consistent with an upward trend at the federal level in Suspicious Activity Reports (SARs) describing instances of suspected elder financial exploitation.² Analysis of SARs reporting elder financial exploitation can provide critical information about specific frauds and potential trends, and can highlight abuses perpetrated against the elderly.

This advisory contains examples of “red flags” based on activity identified by various state and federal agencies and provides a common narrative term that will assist law enforcement in better identifying suspected cases of financial exploitation of the elderly reported in SARs.

Older Americans hold a high concentration of wealth as compared to the general population. In the instances where elderly individuals experience declining cognitive or physical abilities, they may find themselves more reliant on specific individuals for their physical well-being, financial management, and social interaction. While anyone can be a victim of a financial crime such as identity theft, embezzlement, and fraudulent schemes, certain elderly individuals may be particularly vulnerable.

Potential Indicators of Elder Financial Exploitation

The following red flags could indicate the existence of elder financial exploitation. This list of red flags identifies only *possible* signs of illicit activity. Financial institutions

¹ Abuse and exploitation of the elderly is statutorily defined at the state level. The National Center on Elder Abuse offers the following definition of exploitation as a type of elder abuse: “the illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.”

² Bank Secrecy Act data reflects increasing use of terms related to elder financial exploitation/abuse in SAR narratives.

should evaluate indicators of potential financial exploitation in combination with other red flags and expected transaction activity being conducted by or on behalf of the elder. Additional investigation and analysis may be necessary to determine if the activity is suspicious.

Financial institutions may become aware of persons or entities perpetrating illicit activity against the elderly through monitoring transaction activity that is not consistent with expected behavior. In addition, financial institutions may become aware of such scams through their direct interactions with elderly customers who are being financially exploited. In many cases, branch personnel familiarity with specific victim customers may lead to identification of anomalous activity that could alert bank personnel to initiate a review of the customer activity.

- Erratic or unusual banking transactions, or changes in banking patterns:
 - Frequent large withdrawals, including daily maximum currency withdrawals from an ATM;
 - Sudden Non-Sufficient Fund activity;
 - Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
 - Debit transactions that are inconsistent for the elder;
 - Uncharacteristic attempts to wire large sums of money;
 - Closing of CDs or accounts without regard to penalties.
- Interactions with customers or caregivers:
 - A caregiver or other individual shows excessive interest in the elder's finances or assets, does not allow the elder to speak for himself, or is reluctant to leave the elder's side during conversations;
 - The elder shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker;
 - The financial institution is unable to speak directly with the elder, despite repeated attempts to contact him or her;
 - A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the elder without proper documentation;
 - The customer moves away from existing relationships and toward new associations with other "friends" or strangers;
 - The elderly individual's financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual;

- The elderly customer lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

Suspicious Activity Reporting

SARs continue to be a valuable avenue for financial institutions to report elder financial exploitation. Consistent with the standard for reporting suspicious activity as provided for in 31 CFR Part 103 (future 31 CFR Chapter X), if a financial institution knows, suspects, or has reason to suspect that a transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, the financial institution should then file a Suspicious Activity Report.³

In order to assist law enforcement in its effort to target instances of financial exploitation of the elderly, FinCEN requests that financial institutions select the appropriate characterization of suspicious activity in the Suspicious Activity Information section of the SAR form and include the term “elder financial exploitation” in the narrative portion of all relevant SARs filed. The narrative should also include an explanation of why the institution knows, suspects, or has reason to suspect that the activity is suspicious. It is important to note that the potential victim of elder financial exploitation *should not be reported as the subject* of the SAR. Rather, all available information on the victim should be included in the narrative portion of the SAR.

Elder abuse, including financial exploitation, is generally reported and investigated at the local level, with Adult Protective Services, District Attorney’s offices, sheriff’s offices, and police departments taking key roles. We emphasize that filers should continue to report all forms of elder abuse according to institutional policies and the requirements of state and local laws and regulations, where applicable. Financial institutions may wish to consider how their AML programs can complement their policies on reporting elder financial exploitation at the local and state level.

Financial institutions with questions or comments regarding this Advisory should contact FinCEN’s Regulatory Helpline at 800-949-2732.

³ Financial institutions shall file with FinCEN to the extent and in the manner required a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a Suspicious Activity Report with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations. *See, e.g.*, 31 CFR § 103.18(a) (future 31 CFR § 1020.320(a)).

Testimony for 2323 63rd session Adult abuse and neglect

Mr. Chairman, members of the committee, I am Senator Phil Murphy from District 20.

I stand before you today because I was dismayed to find out earlier this year that ND is an outlier in terms of mandatory reporting of abuse or neglect of an elder. Along with us, only Colorado does not mandate reporting of this nature. You may all know that abuse or neglect of children in this state does necessitate reporting. I, myself, as a teacher face criminal charges if I have reason to believe a child has been maltreated and I do not report it. I find it difficult to understand why we in ND would not afford the same measure of respect to our elder citizens. This bill is intended to protect our elderly and the people who would report their abuse by giving immunity to anyone reporting in good faith. Secondarily, it would bring ND into a place in our United States where we will not be the subject of ridicule. I take offense to the notion that we here care less about our elders than other states, but our current statutes in this regard certainly invite that charge.

In the 35 years of my teaching, I recall a few times, perhaps as many as 7 or 8, whereby I notified our school counselor, principal or supt. of my concerns for a student and I felt good knowing I had done my duty as required. However, to allay fears of criminalizing people who do not report, I have drafted the bill so that the penalty is not a crime, but an infraction.

As many as 2 million US citizens are abused in various ways each year, the majority of cases are at the hands of relatives or other caregivers - this according to the Bismarck Tribune of last Tuesday, Jan 29 of 2013. Our demographics show that the number of us 65 and over is projected to nearly double by 2030 as the baby boomers (born 1946-1964) age. There are 74 million of us.

I have many more knowledgeable than I to testify today on this issue, but I would like to tell you that I have some amendments to submit, which I will explain, as well as a paragraph from the medical profession to read to you.

*Hand
out included test #1*

Ron Guggisberg

District 11

Testimony In Support Of SB2323

Chairman Hogue and Members of the Senate Judiciary Committee,

I would like to express my support for this legislation. As a firefighter I took an oath to protect lives and that is what this bill does. By requiring health care workers and emergency responders to be mandatory reporters, it will ensure the proper protections are in place for vulnerable adults. It will also give responders clear direction about their responsibilities when they witness a possible abuse situation.

handout included
in testimony #1

Mr. Chairman

Members of the Committee

My name is Cher Meyer, I am from Thompson North Dakota and I am here to testify on Senate bill 2323 .

I believe this bill is vital to every elder person and their families, in every community, to protect the rights and safety our elder population both now and in the future.

My background is I retired from San Diego County Sheriff's Department in San Diego California after 20 years, the last ten as a supervisor in Emergency Communications. I also taught over 1000 Senior Volunteers for the department.

North Dakota is one of two states that has no MANDATORY reporting laws for elder abuse. We need to change this making the laws MANDATORY not voluntary. When anything is voluntary, there is no requirement for an action.

Not all elder people live in nursing homes or have conservators/guardians to oversee their physical care or financial needs. Not all elder are disabled. The people who are in these categories have people who care for their physical and financial concerns and must follow strict guidelines.

Right now for example, an elder person can walk into their financial institution and take out \$10,000 in cash and all they will be asked is if they want an envelope for their money. A week later that same person could take another \$10,000 dollars out and NO ONE will ask why they would need this much cash in such a short amount of time? Wouldn't

it seem that someone should have or could have suspected that something was not right in this situation? As it stands right now, there is no MANDATORY law requiring any reporting of this type of situation!

Please do NOT think this doesn't or can't happen as I became aware of this very type of situation after the damage was done to a family member. I was stunned that my adopted home state of North Dakota had NO MANDATORY reporting laws.

When I made inquiries as to why no one was called to report something wasn't quite right, I was told "well she is such a nice person, we didn't want to get involved, we thought something wasn't right," Then I asked "aren't you mandated reporters?" The answer was NO!

Elder abuse has many forms which include physical, mental, financial, sexual, and is one of the most under reported crimes there is.

Sometimes an elder will mention in passing perhaps to their doctor or a trusted friend or a neighbor that something isn't right. Too often our elders concerns are ignored because NO one is required to report a suspicion of possible abuse.

We need to bring awareness to this and we must be the voice to require MANDATORY reporting. A standard must be in place so that we have mandated reporters who MUST report suspicious activity or concerns when it comes to our elder population without the fear of retaliation so that it can be investigated completely.

We must protect our elder population now and in the future. Our state is growing; the population age will continue to increase. If we make MANDATORY reporting and have mandated reporters then financial institutes, doctors, law enforcement, clergy and others will be

required to report any suspicions of financial or any other type of elder abuse. Our elder population deserves honor and respect yet sometimes they are mistreated or forgotten or sometimes the situation they are in gets ignored. These are the people who raised us and they deserve to be cared for and protected in a dignified manner. We ourselves are going to an elder someday wouldn't you want the same protection of MANDATORY reporting?

The elder population can be vulnerable and easy targets just like our children. We have so many laws that protect our children and have MANDATORY reporting for suspicions that involve children then why aren't we giving the same protections to our elder population?

Thank you.

Cher Meyer

Thompson ND 58278

13.0803.03001
Title.

Prepared by the Legislative Council staff for
Senator Murphy

March 6, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2323

Page 1, line 9, remove "financial service provider."

Page 1, line 17, remove "section:"

Page 1, remove lines 18 through 20

Page 1, line 21, replace "b. "Medical"" with "subsection, "medical""

Renumber accordingly

House Judiciary Committee

Senate Bill 2323

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Chairman Koppelman and members of the Judiciary Committee I would respectfully ask for your 'Do Pass' recommendation on SB2323 relating to the reporting of abuse or neglect of a vulnerable adult.

It is most unfortunate that there are individuals who live amongst us that prey upon the vulnerability of adults suffering from diminished mental or physical capabilities. The West Fargo Police Department has responded to incidents where an adult may have been physically or mentally abused or neglected by a family member, an acquaintance, a care giver or a total stranger. Other cases involve theft or other personal crimes committed against the victim. I had asked our detective sergeant to provide an example of financial crimes committed against a vulnerable adult. He provided the following:

2012 This incident involves a female vulnerable adult who is confined to a wheel chair and at the time of this incident did have a life coach who was a male adult. The life coach took advantage of the victim by using her credit card on several occasions throughout the Fargo Moorhead area. The suspect helped the victim receive cash from her bank and was given the pin number to her bank in confidence by the victim. The suspect initially stole her billfold to gain access to her credit card and again use it numerous times. The suspect was eventually fired but not until he ran up 1500.00 dollars in credit card transactions. Further investigation found that the suspect also did this to his own grandfather and that case is still pending in Cass County.

2007 The victim was 80 years old at the time of our investigation. The suspect was and still is a career criminal involving vulnerable adults. Both parties had known one another for a long period of time. The suspect knew that the victim was financially well to do and know the victim's mental health was getting worse by each passing month. The suspect took the victim to the bank on several occasions and talked the victim into withdrawing large amounts of cash in excess of 200,000.00 dollars, and also getting money from the victim's retirement accounts. The suspect in this case had just done the same type of crime in Minnesota which resulted in a loss in excess of 400,000.00 dollars.

The common thread in both of these cases was the suspect accessed the victim's bank accounts by going to the bank. It is not uncommon as we investigate similar crimes that we interview bank employees. At different times we have heard statements about how the employee suspected something was wrong but did not feel it was their place to question the victim or to contact police. Unfortunately, the victims seldom recover from their financial loss.

The requirements of SB2323 directing certain persons with direct contact to report known or suspected neglect or abuse of a victim are a key element in providing early detection and protection. The bill also provides backing to an individual who otherwise might not have made the report under the fear of being wrong or not wanting to be involved in someone else's business. The reporting party is able to state the report was done under the requirements of the law and removes the misconception the decision was based upon a personal prejudice.

Rapid reporting of known or suspected abuse or neglect is paramount to the early intervention and the physical and financial recovery of the victim of abuse or neglect. SB2323 provides for the key element of early reporting necessary to protect the vulnerable adults of North Dakota from abuse and neglect. I ask for your support of SB2323.

House Judiciary Committee

Senate Bill 2323

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Respectfully submitted.

Assistant Chief Mike Reitan

West Fargo Police Department

800 4th Ave E

West Fargo, 58078

701-433-5500

fax 433-5508

mike.reitan@westfargond.gov<<mailto:mike.reitan@westfargond.gov>>



3

63rd Legislative Assembly of North Dakota

Testimony in Support of SB 2323
North Dakota Medical Association
March 20, 2013

Chairman Koppelman and Members of the House Judiciary Committee:

I am Dr. Michael Booth, a practicing cardiovascular and thoracic surgeon in Bismarck and current president of the North Dakota Medical Association, who I am representing today.

Our organization rises to speak in favor of this bill and recommends a “Do Pass” from this committee subject to the comments outlined below.

We do support mandatory reporting of the suspected abuse and/or neglect of vulnerable adults, who have previously been in the North Dakota Century Code. For us as medical providers this is a logical extension of our mandate to report abuse and neglect for children.

We understand that the reporting process does not mean an automatic criminal investigation of the individuals in question, but rather the initiation of a process to evaluate and potentially intervene in a situation where abuse or neglect has become a concern. Criminal charges would only be one potential outcome, and hopefully infrequently required. Based on our state’s 20 plus years of experience in investigating child abuse, we believe that this process may be implemented smoothly and for the benefit of all.

The issue of financial abuse or neglect is not currently part of the process that we as medical providers have dealt with in situations of child abuse, but we do appreciate its importance in vulnerable adults.

We do believe that the Century Code does provide an adequate definition for abuse and neglect to serve as the basis of this bill.

We also believe that the Century Code adequately defines the vulnerable adult. We would encourage you to NOT add an age (other than majority) to the definition of a vulnerable adult. (As the father of an autistic child who would potentially be vulnerable at any time after his 18th birthday, this speaker is especially concerned about this point.)

Thank you for the opportunity to address this important issue. I would be happy to answer any questions.

Respectfully submitted,

A. Michael Booth MD PhD FACS
President, North Dakota Medical Association

H 4

House Judiciary Committee

March 20, 2013

Senate Bill 2323

By Kim Jacobson, Director – Traill County Social Services

Chairman Koppelman and members of the House Judiciary Committee, my name is Kim Jacobson. I am the Director of Traill County Social Services located in Hillsboro, North Dakota. I am also a member of the Region V Adult Protection Funding Committee and North Dakota County Social Service Director Association. I speak in support of Senate Bill 2323.

The North Dakota Legislature took an important step during the last biennium by appropriating a study to further understand the needs of vulnerable adults. The study, completed Winsor Schmitt, revealed many areas in which North Dakota could improve in protecting and serving vulnerable populations. Mr. Schmitt's report recommended "North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect." Senate Bill 2323 sets this recommendation in motion and includes an appropriation to ensure implementation. This would help define North Dakota as a better place for vulnerable adults.

North Dakota is one of only two states without mandatory reporting of vulnerable adult abuse and neglect. It is important to note that North Dakota does have mandatory reporting laws for suspected child abuse and neglect. Mandatory reporting of abuse of vulnerable adults would be very effective if approached in a similar manner.

Current child protection law requires mandatory reporters to report *suspected* abuse or neglect. It is not the role of the reporter to confirm the abuse/neglect, only to report *suspected* concerns. It is through proper assessment and investigation by qualified professionals (law enforcement, child protection social workers/team, etc.) that the report is substantiated. The identity of the reporter is kept confidential unless ordered by a court of law. These items ensure a safety net for both the alleged victim and the reporter. These practices would be very effective if incorporated into mandatory reporting of suspected abuse and/or neglect of vulnerable adults.

While we would all love to say that North Dakota is a safe place to live and we take good care of our vulnerable adult populations, this is not always the case. Abuse and neglect of North Dakota citizens happens each day. Our current system falls seriously short in offering protections, consequences, resources, and safety nets for aiding this population group. Fact is, our state is changing daily. Abuse and neglect can occur in many ways including financial exploitation, physical abuse, sexual abuse, emotional maltreatment, neglect, and self-harm. It happens in North Dakota.

The legislative body, public servants, individuals identified as mandatory reporters, and citizens all have a role to help protect our vulnerable populations. SB 2323 sets the stage for mandatory reporting of suspected abuse of vulnerable adults. We cannot wait another year or until the next legislative session to provide protections for our vulnerable.

It is important to note that the fiscal note in SB 2323 is key to success of this bill. NDCC clearly defines that the State is responsible for vulnerable adult protection. The current appropriation for vulnerable adult protective services is meager. The Williston and Minot Regions share a .5 FTE for current adult protective services. There are only 3.5 FTES for the entire state with the exception of Region V. The counties in Region V (Cass, Richland, Ransom, Sargent, Steele and Traill) have actually chosen to supplement the current state appropriation with county funds despite this being the responsibility of the State, as the need is so great. Region V collective employs 3.25 FTEs for adult protective services using state and county funds.

This is a critical time in North Dakota history. There is an opportunity today for each of you to play a vital role in ensuring protections for North Dakota vulnerable adults. I urge you to take this time to seek to understand the need to protect vulnerable adults and to commit to a statewide system to financially support efforts to protect North Dakota's adult vulnerables.

I urge you to give Senate Bill 2323 a "Do PASS" recommendation. Thank you for your consideration.

F

House Judiciary Committee
Sixty-Third Legislative Assembly of North Dakota
Senate Bill No. 2323
March 27, 2013

Good morning, Chairman Koppelman and Members of the House Judiciary Committee: I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

The Protection & Advocacy Project supports the proposed requirement for reporting abuse and neglect of vulnerable adults. It likely is essential to an effective system to protect vulnerable adults.

Presently there is a voluntary reporting system for reporting suspected abuse or neglect of vulnerable adults and Jan Engan is here from the Aging Services Division of the Department of Human Services to answer any questions the Committee may have about how the voluntary program works and how a mandatory reporting program would operate.

There is already a law that requires certain individuals to report to the Protection & Advocacy Project the suspected abuse or neglect of an adult with a developmental disability or a mental illness. This requirement might not include adults with traumatic brain injuries, adults with physical impairments that do not arise from a developmental disability, stroke survivors, and some adults with cancer, among others.

No one will have double reporting responsibilities if SB 2323 is amended as proposed in a separate document I have distributed with my testimony.

Thank you. Please let me know if you have questions.

Proposed Amendments to Engrossed Senate Bill 2323

Page 2, after line 5, insert:

"2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter."

Renumber accordingly

Jan Engan

3-27-13

2

Vulnerable Adult Protective Services

Breakout of intakes for alleged vulnerable adult protective services reports from October 1, 2012 to March 6, 2013. The intake begins the screening process for an assessment or providing information or education. Intakes are moved to the assessment (investigation) stage and are determined to be substantiated or unsubstantiated. Substantiated reports are prioritized based on severity with a face-to-face visit of the alleged victim for further assessment and action.

Intake Reports

Region I (Divide, Williams, and McKenzie)

County	Number of Intakes
Burleigh ¹	1
Divide	3
McKenzie	4
Williams	12
TOTAL	20

¹ Report taken in Burleigh County on a resident from Region I

Region II (Burke, Renville, Bottineau, Mountrail, Ward, McHenry, and Pierce)

County	Number of Intakes
Bottineau	2
Burke	1
McHenry	10
Mountrail	3
Pierce	2
Renville	5
Ward	41
TOTAL	64

Region III (Rolette, Towner, Cavalier, Ramsey, Benson, and Eddy)

County	Number of Intakes
Benson	7
Cavalier	4
Eddy	5
Ramsey	16
Rolette	13
Towner	1
TOTAL	46

Region IV (Pembina, Walsh, Nelson, and Grand Forks)

County	Number of Intakes
Traill ²	1
Grand Forks	80
Nelson	3
Pembina	6
Walsh	7
Unidentified County	2
TOTAL	99

²Report taken in Grand Forks County on a resident from Region V (Traill)

Region V (Steele, Traill, Cass, Ransom, Sargent, and Richland)

County	Number of Intakes
Cass	138
Clay	4
Moody	1
Richland	2
Steele	1
Traill	3
Unidentified County	
TOTAL	150

Region VI (Wells, Foster, Griggs, Stutsman, Barnes, Logan, LaMoure, McIntosh, and Dickey)

County	Number of Intakes
Barnes	12
Dickey	1
Foster	1
Griggs	3
LaMoure	2
Logan	1
McIntosh	1
Stutsman	17
Unidentified County	2
TOTAL	40

Region VII (McLean, Sheridan, Mercer, Oliver, Burleigh, Kidder, Morton, Grand, Sioux, Emmons)

County	Number of Intakes
Burleigh	32
Emmons	3
Grand Forks	1
Grant	1
Kidder	1
McLean	5
Morton	13
Sioux	1
TOTAL	57

Region VIII (Dunn, Billings, Golden Valley, Stark, Slope, Hettinger, Bowman, and Adams)

County	Number of Intakes
Unidentified County	1
Adams	1
Bowman	2
Dunn	5
Hettinger	1
McKenzie	1
Stark	18
TOTAL	28

SUMMARY BY REGION

REGION	NUMBER OF INTAKES
Region I	20
Region II	64
Region III	46
Region IV	99
Region V	150
Regions VI	40
Region VII	57
Region V III	28
Total Intake 10/1/12 -3/6/2013	504

Investigations

From October 1, 2012 to March 7, 2013, 309 **intakes** were moved to investigation status. At this time a face-to-face assessment is completed.

Once an assessment is completed the determination is made to whether the report is substantiated or unsubstantiated. Of the 309 **intakes** moved to investigation status there are 125 **cases** of which 78 are substantiated and 47 are unsubstantiated. The cases are in the following categories:

- Abuse – 12
- Exploitation – 21
- Neglect – 24
- Self-Neglect - 68

#1

Department of Human Services
Aging Services Division

Vulnerable Protective Services Report Sources
October 1, 2012 - March 27, 2013¹

Reporter Category

FAMILY	115
<i>Spouse</i>	4
<i>Children</i>	50
<i>In-laws</i>	14
<i>Siblings</i>	15
<i>Parents</i>	10
<i>Unidentified</i>	22
SELF	30
COMMUNITY/AGENCY	201
<i>Advocate</i>	3
<i>Bank</i>	4
<i>Church</i>	4
<i>Friend</i>	10
<i>Legal Guardian</i>	1
<i>Licensed Practitioner</i>	2
<i>Neighbor</i>	15
<i>Other</i>	45
<i>Other Professional</i>	59
<i>Unidentified</i>	58
HOUSING	3
<i>Group Home Staff</i>	2
<i>Ass't Living Staff</i>	1
IN-HOME SERVICES	8
<i>In-Home Aide</i>	1
<i>Medical Home Health</i>	7
LEGAL	16
<i>Attorney</i>	2
<i>Law Enforcement</i>	10
<i>Legal</i>	4
MEDICAL	75
<i>Doctor</i>	6
<i>Health Medical Professional</i>	68
<i>Health Practitioner</i>	1
SOCIAL WORK	192
<i>HCBS Case Manager</i>	27
<i>Hospital</i>	49
<i>Medical Home Health</i>	41
<i>Agency/Community</i>	75

TOTAL REPORTS 640

¹Report contains an additional three weeks of data. Data is recorded by date of entry and date of report.