

1999 SENATE JUDICIARY

SB 2299

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2299

Senate Judiciary Committee

Conference Committee

Hearing Date February 3, 1999

Tape Number	Side A	Side B	Meter #
1		x	5480 - end
2	x		0 - 1640
2-9-99 1		x	3289 - end
2-9-99 2	x		0 - 650
2-15-99 1		x	2570 - end
2-15-99 2	x		0 - 290
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2299 relates to registration of offenders against children and sexual offenders.

SENATOR STENEHJEM opened the hearing on SB2299 at 11:15 a.m.

All were present.

LADD ERICKSON, Morton County Assistant State's Attorney, testified in support of SB2299.

Testimony attached.

CHAD MCCABE, Attorney in Bismarck, testified in support of SB2299. There are some absurdities in the statute. When two juveniles have consensual acts and then have to register for 10 years.

TIM BREHM, Department of Corrections, testified in support of SB2299. Testimony attached.

Page 2

Senate Judiciary Committee
Bill/Resolution Number SB2299
Hearing Date February 3, 1999

JONATHAN BYERS, Attorney General's Office, testified with concerns about SB2299. There may be controversy with this bill and the bill 1424. He offered some suggestions to some amendments to this bill. Also the ability of a Judge to remove the obligation to register, this concerns the Attorney General's Office.

BONNIE POLACEK, Council of Abused Women, testified in opposition to SB2299. One of the issues that we are concerned about is the decriminalization of consensual sex.

SENATOR STENEHJEM SUSPENDED the hearing on SB2299. There will be a further hearing on SB2299 on Tuesday, February 9 at 10:00.

February 9, 1999 Tape 1, Side B

Further consideration on SB2299.

LADD ERICKSON testified with some amendments and additional information. The only problem is the age issue.

BOB BENNETT gave more information from the Attorney General's Office. A three year age difference may be appropriate. On the age issue, no requirement on registration unless it is a predatory issue. Have the Court look at the conduct.

BONNIE PALACEK, North Dakota Council on Abused Women, gave more information on SB2299. The age differential concerns us also.

Jonathan Byers may get more information.

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February 8, 1999 Tape 2, Side A

LADD ERICKSON will get a complete set of amendments and have 2 sets. The Committee will have to decide on the age differential concerns.

SENATOR STENEHJEM CLOSED the hearing on SB2299.

February 15, 1999 Tape A, Side B

LADD ERICKSON proposed and explained amendments.

JONATHAN BYERS proposed and explained additional amendments.

SENATOR NELSON made a motion on Amendments, SENATOR BERCIER seconded.

Motion carried. 6 - 0 - 0

SENATOR NELSON made a motion for Further Amendments, SENATOR WATNE seconded.

Motion carried. 5 - 1 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON

seconded. Motion carried. 6 - 0 - 0

SENATOR WATNE will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2299 Amendment to: _____

Requested by Legislative Council Date of Request: 1-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

No fiscal impact is anticipated for the Office of Attorney General, Bureau of Criminal Investigation, as a result of this Bill.

2. **State** fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General	Special	General	Special	General	Special
Fund	Funds	Fund	Funds	Fund	Funds

Revenues:

Expenditures:

What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
- b. For the 1999-2001 biennium: _____
- c. For the 2001-03 biennium: _____

4. **County, City, and School District** fiscal effect in dollar amounts:

1995-97 Biennium			1997-99 Biennium			1999-2001 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed attach a supplemental sheet.

Signed Jerald C. Kemmet

Typed Name Jerald C. Kemmet

Date Prepared 1-25-99 Department Office of Attorney General, BCI

Phone Number 328-5500

PROPOSED AMENDMENTS TO SB2299

1. Page 1, lines 22-24, delete paragraph (e): “~~Qualified board~~” means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.

Reason: Dealt with in §25-03.3 (civil commitment statute), and deleted in HB 1424.

2. Page 2, lines 6-8, delete “~~Sexually violent predator~~” means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses.” Replace with (f) “Sexually dangerous individual” means a person that meets the definition specified in chapter 25-03.3.”

Reason: Deleted in HB 1424 because it is in the civil commitment statute.

3. Page 2, insert after the definition of “Sexually dangerous individual” a paragraph that states:

(g) “Temporarily domiciled” means staying or being physically present at a location for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of residence.

Reason: Addition necessary for *Wetterling Act* compliance, and is in HB 1424.

4. Page 2, lines 9-13, delete “~~After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state’s attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.~~”

Reason: Deleted in HB 1424 because the issue is handled in §25-03.3.

5. Page 2, line 18, insert after “domiciled”, “. The person must register”.

6. Page 2, line 19, insert after “resides”, “or is employed”.

7. Page 2, line 20, do not delete “The court” and strike the word “and”.

8. Page 2, line 21, insert after “records”, “. or a person must register pursuant to subparagraphs h, i, or j of this section.”

Reason: The Bill restructures the current statute, and this language ensures a person will still have to register even if their original criminal judgement did not state they have to register. This provision is necessary when dealing with out-of-state transfer cases.

9. Page 2, line 22, insert after, “Has pled guilty”, “or nolo contendere to.”
10. Page 2, line 26, insert after, “Has pled guilty”, “or nolo contendere to.”
11. Page 2, line 29, delete “~~Is found to be a sexually violent predator~~”, and replace with “Is a sexually dangerous individual”.

Reason: This definition matches the definition in §25-03.3

12. Page 2, line 30, insert after, “Has pled guilty”, “or nolo contendere to.”
13. Page 2, line 31, replace, “~~an offender~~” with “a person”.
14. Page 3, line 1, replace, “~~offender~~”, with “person”.
15. Page 3, line 3, replace, “~~offender~~”, with “person”.
16. Page 3, line 8, replace, “~~an offender~~”, with “a person”.
17. Page 3, line 8, replace, “~~offender~~”, with “person”.
18. Page 3, line 10, replace, “~~offender~~”, with “person”.
19. Page 3, line 12, insert after “Has pled guilty”, “or nolo contendere to.”.
20. Page 3, line 14, insert after “equivalent offenses.”, “Except if the offense is described in section 12.1-29-02; or section 12.1-18-01 or section 12.1-18-02 and the person is not the parent of the victim.”.

Reason: Mandatory registration required by the *Wetterling Act* for facilitating prostitution of a minor, kidnapping, or abducting a child.

21. Page 3, line 14-15, replace “~~an offender~~”, with “a person”.
22. Page 3, line 15, replace “~~offender~~”, with “person”.
23. Page 3, line 17, replace “~~offender~~”, with “person”.
24. Page 3, line 19, after “Has pled guilty”, delete the comma and insert “or nolo contendere.”
26. Page 3, line 21, insert after “mental abnormality or”, “sexual”.

Reason: Better focuses the section on the types of conduct that people should have to register for.

For example, a person that commits an aggravated assault against a women with the underlying motive of rape, but the elements of rape are not present. (Belated suggestion of Dr. Belenger.)

27. Page 3, line 23, replace “~~individual~~”, with “person”.

28. Page 3, line 24, replace “~~section~~”, with “subsection”.

29. Page 3, line 26, insert after “August 1, 1995,” “for a crime against a child described in section 12.1-29-02; or section 12.1-18-01 or section 12.1-18-02 if the person was not the parent of the victim.”.

30. Page 3, line 27, insert after the semi-colon “or”

31. Page 3, line 28-30, delete “~~Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c f of subsection 1; or~~”. Replace with “Has pled guilty or nolo contendere to, or been found guilty of any offense in a court of this state for which registration is mandatory under this section, or another state or the federal government equivalent to those offenses set forth in this section if the person was court ordered or required to register as a sexual offender or for a crime against a child in another state or by the federal government; or”

Reason: This provision mandates out-of-state offenders register in this State, and if a judge in this State fails to address registration in sentencing this provision allows the prosecution to establish jurisdiction to require the person to register. Depending on the facts, that may mean the person receives another sentencing hearing and is allowed to withdraw their plea.

32. Page 4, lines 1-2, delete “~~Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to August 1, 1995.~~”. Replace with “Has pled guilty or nolo contendere to, or been found guilty of a felonious crime against a child or as a sexual offender in which registration is mandatory under this section if the conviction occurred within ten years prior to August 1, 1995.”

33. Page 4, line 6, replace “~~may~~”, with “shall”.

Reason: At the request of the Abused Adult Resource Center. However, if the Committee adopts this amendment you may want to the entire sentence rephrased so as to preclude mandatory sex offender evaluations when the facts of the case are unrelated to the purposes of offender registration. (i.e. DUI homicide cases)

34. Page 4, line 7, insert after “counselor”, “psychologist”.

35. Page 4, line 18, insert after “reside”, “or work”.

36. Page 4, line 20-21, replace “~~one copy~~”, with “three copies”.
37. Page 4, line 21, replace “~~four~~” with “three”.
38. Page 4, line 24, insert after “reside”, “or work”.
39. Page 5, line 4, insert after “reside”, “or work”.
40. Page 5, line 9, insert after “reside”, “or work”.
41. Page 5, line 17, delete “~~name or address~~”, and insert “name, address, or employment address if working in this state but residing elsewhere.”
42. Page 5, line 20, after “residence”, insert “or employment”.
43. ~~Page 5, line 22, after “residence”, insert “or employment”.~~ OK
43. Page 6, lines 1-5, delete “~~Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination.~~” Insert “For the life of the person, if that person:
(1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of an offense in which that person was court ordered or required to register as a felonious sexual offender or felonious offender against a child pursuant to this section; or
(2) Pleads guilty or nolo contendere to, or found guilty of an offense committed after July 31st, 1999, described in subdivision a of subsection 1 of section 12.1-20-03, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve; or section 12.1-18-01 if that person is an adult other than a parent of the victim; or
(3) Has been civilly committed as a sexually dangerous individual pursuant to chapter 25-03.3, or under the laws of another state or by the federal government.”

Reason: Lifetime registration requirements pursuant to the Wetterling Act. However, the Wetterling Act does not require a §12.1-18-01 stranger kidnaping of a child as a lifetime registration offense. If the committee deletes that provision the State would still be in compliance with the federal requirements.

44. Page 6, line 7, after “person”, insert “other than a juvenile.”.

Reason: With the deletion of the juvenile court data base later in the Bill, juveniles will be exempted from the mandatory adult jail sentence and instead be sentenced at the discretion of the juvenile court for failing to register as ordered.

45. Page 6, lines 29-31, replace “~~A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or failing to disclose information as permitted by this section~~” with “A law enforcement agency, state officials, or school districts, and any of its employees and appointees are not subject to civil or criminal liability for making risk determinations or for disclosing or failing to disclose information as permitted by this section.”

46. Page 7, after line 11, insert:

12. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child pursuant to this section the person must comply with all of the registration requirements in this section. Regardless of any other provision of law, the law enforcement agency shall register a juvenile offender pursuant to the same requirements as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the child attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify the child’s teachers and guidance counselor of this information and may notify others in similar positions if the child transfers to another learning institution in or outside the state.

Reason: Relevant portions of the juvenile court data base are added to §12.1-32-15.

13. If a person has been required to register as a sexual offender or an offender against a child under 12.1-32-15 or 27-20-52.1 before the 1999 amendments the person may petition the court to be removed from the offender list if registration is no longer mandatory for that person. In considering the petition, the court shall comply with the requirements in this section.

SECTION 2. REPEAL. Section 27-20-52.1 of the North Dakota Century Code is repealed.

Reason: With the enactment of this Bill, the juvenile court data base is no longer necessary because the misdemeanors against a child are no longer register able offenses. This provision was done in concurrence with the Attorney General’s Office and Juvenile Courts.

SECTION 3. AMENDMENT. This act is declared to be an emergency measure.

Reason: This was added to preclude unnecessary registrations from occurring before the law is enacted.

Renumber the paragraphs and sections according.

Date: 2-15-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2299

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken motion on Amendments

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date: 2-15-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2299

Senate Judiciary Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on Further Amendments

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X	X			
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

Date: 2-15-99
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2299

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended.

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Watne

REPORT OF STANDING COMMITTEE

SB 2299: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2299 was placed on the Sixth order on the calendar.

Page 1, line 2, after the second "offenders" insert "; and to repeal section 27-20-52.1 of the North Dakota Century Code, relating to the law enforcement data base"

Page 1, line 22, overstrike ""Qualified board" means two or more experts in the field of behavior and"

Page 1, overstrike lines 23 and 24

Page 2, line 1, overstrike "f."

Page 2, after line 5, insert:

"f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01."

Page 2, line 6, overstrike ""Sexually violent predator" means a sexual offender who suffers from a"

Page 2, overstrike line 7

Page 2, line 8, overstrike "engage in predatory sexually violent offenses" and insert immediately thereafter ""Temporarily domiciled" means staying or being physically present at a location for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence"

Page 2, line 9, overstrike "After a person has pled guilty or has been found guilty as a sexual offender, the court"

Page 2, overstrike lines 10 through 13

Page 2, line 14, overstrike "3."

Page 2, line 17, overstrike "person" and insert immediately thereafter "individual"

Page 2, line 18, overstrike "person" and insert immediately thereafter "individual" and overstrike the comma and insert immediately thereafter ". The individual must register"

Page 2, line 19, overstrike "person" and insert immediately thereafter "individual" and after "resides" insert "or is employed"

Page 2, line 20, remove the overstrike over "~~The court~~", remove "and", and overstrike "a person" and insert immediately thereafter "an individual"

Page 2, line 21, overstrike "person" and insert immediately thereafter "individual"

Page 2, line 22, after the first "guilty" insert "or nolo contendere to,"

Page 2, line 26, after the first "guilty" insert "or nolo contendere to,"

Page 2, line 29, remove "found to be" and replace "violent predator" with "dangerous individual"

Page 2, line 30, after the first "guilty" insert "or nolo contendere to,"

Page 2, line 31, replace "offender" with "individual"

Page 3, line 1, after "finds" insert "the individual is no more than three years older than the victim," and replace "offender" with "individual"

Page 3, line 3, replace "offender" with "individual"

Page 3, line 5, remove "offender"

Page 3, line 8, replace "an offender" with "the juvenile" and replace the second "offender" with "juvenile"

Page 3, line 10, replace "offender" with "juvenile"

Page 3, line 12, after the first "guilty" insert "or nolo contendere to," and after "of" insert an underscored comma

Page 3, line 14, replace "The" with "Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the"

Page 3, line 15, replace the first "offender" with "individual" and replace the second "offender" with "individual"

Page 3, line 17, replace "offender" with "individual"

Page 3, line 19, after the first "guilty" insert "or nolo contendere"

Page 3, line 20, replace "person" with "individual"

Page 3, line 21, replace "person" with "individual" and after "or" insert "sexual"

Page 3, line 23, replace "a person" with "an individual"

Page 3, line 24, replace "offender must" with "individual shall"

Page 3, after line 25, insert:

"3. If a court has not ordered an individual to register in this state, the individual shall register if the individual:"

Page 3, line 26, replace "h." with "a." and remove the overstrike over "for a crime"

Page 3, line 27, remove the overstrike over "against a child" and insert immediately thereafter "described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim," and remove the overstrike over "or"

Page 3, line 28, remove the overstrike over "b." and remove "i."

Page 3, line 29, after "of" insert "this state for which registration is mandatory under this section or"

Page 3, line 30, overstrike "subdivisions a and", remove "f", and overstrike "of subsection 1" and insert immediately thereafter "this section if the individual was ordered by a court"

or required to register as a sexual offender, or for a crime against a child in another state or by the federal government"

Page 4, line 1, remove the overstrike over "e-", remove "j.", after the first "guilty" insert "or nolo contendere", after "to" insert an underscored comma, after "or" insert "has", remove the overstrike over "of" and insert immediately thereafter an underscored comma, remove the overstrike over "a" and insert immediately thereafter "felonious", and remove the overstrike over "~~crime against a child or~~"

Page 4, line 2, after "offender" insert "for which registration is mandatory under this section if the conviction occurred"

Page 4, line 6, replace "may" with "shall"

Page 4, line 7, after "counselor" insert ", psychologist,"

Page 4, line 8, replace "3" with "2"

Page 4, line 11, overstrike "a person" and insert immediately thereafter "an individual"

Page 4, line 12, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 13, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 14, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 15, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 16, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 17, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 18, overstrike "person" and insert immediately thereafter "individual" and after "reside" insert "or work"

Page 4, line 20, overstrike "one"

Page 4, line 21, overstrike "copy" and insert immediately thereafter "three copies", overstrike "person" and insert immediately thereafter "individual", and overstrike "four" and insert immediately thereafter "three"

Page 4, line 22, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 24, overstrike "person" and insert immediately thereafter "individual" and after "reside" insert "or work"

Page 4, line 25, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 26, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 28, overstrike "person" and insert immediately thereafter "individual"

Page 4, line 29, overstrike "A person" and insert immediately thereafter "An individual"

Page 4, line 31, overstrike "that person's" and insert immediately thereafter "the"

Page 5, line 1, overstrike the first "person" and insert immediately thereafter "individual" and overstrike the second "person" and insert immediately thereafter "individual"

Page 5, line 3, overstrike the first "person" and insert immediately thereafter "individual" and overstrike the second "person" and insert immediately thereafter "individual"

Page 5, line 4, overstrike "person" and insert immediately thereafter "individual" and after "reside" insert "or work"

Page 5, line 6, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 8, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 9, after "reside" insert "or work"

Page 5, line 10, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 12, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 14, overstrike "a person" and insert immediately thereafter "an individual"

Page 5, line 15, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 16, overstrike "person" and insert immediately thereafter "individual" and overstrike "person's" and insert immediately thereafter "individual's"

Page 5, line 17, after "address" insert ", or employment address if the individual is working in this state but not residing in this state"

Page 5, line 20, after "residence" insert "or employment"

Page 5, line 21, overstrike "person" and insert immediately thereafter "individual"

Page 5, line 22, after "residence" insert "or employment"

Page 5, line 27, overstrike "A person" and insert immediately thereafter "An individual"

Page 6, line 1, overstrike "Until a court determination is made that the person no longer is a sexually"

Page 6, overstrike lines 2 through 4

Page 6, line 5, overstrike "making the determination" and insert immediately thereafter "For the life of the individual, if that individual:

- (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;
- (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after the effective date of this Act which is described in subdivision a of subsection 1 of section 12.1-20-03, subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or

section 12.1-18-01 if that individual is an adult other than a parent of the victim; or

- (3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government"

Page 6, line 6, overstrike "A person" and insert immediately thereafter "An individual"

Page 6, line 7, overstrike "a person" and insert immediately thereafter "an individual, other than a juvenile,"

Page 6, line 9, overstrike "A person" and insert immediately thereafter "An individual"

Page 6, line 11, overstrike "a person" and insert immediately thereafter "an individual"

Page 6, line 13, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 16, overstrike "a person" and insert immediately thereafter "an individual"

Page 6, line 17, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 19, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 20, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 21, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 22, overstrike "person" and insert immediately thereafter "individual"

Page 6, line 23, overstrike "shall" and insert immediately thereafter "must"

Page 6, line 29, after "A" insert "state officer,", after "agency" insert ", or school district", and overstrike "its"

Page 6, line 30, overstrike "officials, and its employees" and insert immediately thereafter "and an appointee, officer, or employee of those entities" and after "for" insert "making risk determinations or for"

Page 7, after line 11, insert:

"13. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

14. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before the effective date of this Act, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for

that individual. In considering the petition, the court shall comply with the requirements of this section.

SECTION 2. REPEAL. Section 27-20-52.1 of the 1997 Supplement to the North Dakota Century Code is repealed."

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2299

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2299

House Judiciary Committee

Conference Committee

Hearing Date 3/15/99

Tape Number	Side A	Side B	Meter #
1		x	28.7-end
2	x		0.0-5.5
Committee Clerk Signature <i>Alan J. DeGrey (taken by Robin Small)</i>			

Minutes: REP. DEKREY called the committee hearing to order.

SUPPORT

LADD ERICKSON, MORTON COUNTY'S STATE'S ATTORNEY'S OFFICE.

SEE HANDOUT.

REP. DEKREY asks about an amendment. LADD replies with his thoughts.

REP. MAHONEY asks how does this fit into a court room setting. LADD replies that it does fit in. MAHONEY asks about burden of proof. LADD replies that's no presumption there, abnormality, the court has to find you in that category. MAHONEY : registration.

SUPPORT

JONATHON BYERS, ATTORNEY GENERAL'S OFFICE. SEE HANDOUT.

REP. DEKREY asks about the lists. BYER'S tells him about it.

REP. KOPPELMAN talks about deleting lines 5-8. BYER'S argues that every crime doesn't need registration.

REP. MEYER asks if the people will be notified? BYER'S replies that a letter will go out.

The committee did action on the bill right away.

REP. KOPPELMAN moves to accept the amendments, seconded by REP. DELMORE. The

voice vote passes. REP. DELMORE moved for a DO PASS AS AMENDED, seconded by

REP. KOPPELMAN. The roll call vote was taken with 13 YES, 0 NO, 2 ABSENT. The motion carries. The CARRIER of the bill is REP. MAHONEY.

Proposed Amendment to SB 2299

1. Page 4, line 27, replace “shall” with “may”.

VK
3/15/99

JUD 3-16-99

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2299

Page 2, line 14, after the underscored comma insert "attending school for longer than ten days."

Page 2, line 28, after "resides" insert ", attends school."

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2299

JUD 3-16-99

Page 3, line 4, replace "e" with "c"

Page 3, remove lines 5 through 8

Page 3, line 9, replace "d" with "b"

Page 3, line 16, replace "e" with "c"

Page 3, line 23, replace "f" with "d"

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2299

JUD 3-16-99

Page 4, line 1, replace "g" with "e"

Page 4, line 27, replace "shall" with "may"

Page 4, line 29, replace "g" with "e"

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2299

JUD 3-16-99

Page 5, line 9, after "reside" insert ", attend school."

Page 5, line 16, after "reside" insert ", attend school."

Page 5, line 28, after "reside" insert ", attend school."

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL NO. 2299

JUD 3-16-99

Page 6, line 2, after "reside" insert ", attend school."

Page 6, line 8, after "name" insert ", school."

Page 6, line 10, after "name" insert ", school."

Page 6, line 15, after "residence" insert ", school."

Page 6, line 18, after "residence" insert ", school."

Re-number accordingly

Date: 3/15/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2299

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken 2299 accept the amendments

Motion Made By Koppelman Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY			REP. KELSH		
REP. CLEARY			REP. KLEMIN		
REP. DELMORE			REP. KOPPELMAN		
REP. DISRUD			REP. MAHONEY		
REP. FAIRFIELD			REP. MARAGOS		
REP. GORDER			REP. MEYER		
REP. GUNTER			REP. SVEEN		
REP. HAWKEN					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3/15/99
 Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2299

House JUDICIARY Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken 2299 No Pass as Amended

Motion Made By Delmore Seconded By Koppelman

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS		
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN		
REP. HAWKEN	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment Mahoney

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

REPORT OF STANDING COMMITTEE

SB 2299, as reengrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2299 was placed on the Sixth order on the calendar.

Page 2, line 14, after the underscored comma insert "attending school for longer than ten days,"

Page 2, line 28, after "resides" insert ", attends school,"

Page 3, line 4, replace "e" with "c"

Page 3, remove lines 5 through 8

Page 3, line 9, replace "d" with "b"

Page 3, line 16, replace "e" with "c"

Page 3, line 23, replace "f" with "d"

Page 4, line 1, replace "g" with "e"

Page 4, line 27, replace "shall" with "may"

Page 4, line 29, replace "g" with "e"

Page 5, line 9, after "reside" insert ", attend school,"

Page 5, line 16, after "reside" insert ", attend school,"

Page 5, line 28, after "reside" insert ", attend school,"

Page 6, line 2, after "reside" insert ", attend school,"

Page 6, line 8, after "name" insert ", school,"

Page 6, line 10, after "name" insert ", school,"

Page 6, line 15, after "residence" insert ", school,"

Page 6, line 18, after "residence" insert ", school,"

Re-number accordingly

1999 TESTIMONY

SB 2299

January 25, 1999

Senator Wayne Stenehjem
Senate Judiciary Committee
State Capitol
Bismarck, ND 58505

RE: SB 2299

Dear Chairman Stenehjem and Committee members:

My name is Joan Halvorson and I have been the victim/witness coordinator for the Stutsman County State's Attorney for the past ten years. Prior to that, I spent almost nine years as a police officer for the City of Jamestown. I ask for your support of Senate Bill 2299.

It may not be often that an advocate for victim rights supports legislation to lessen sex offender registration requirements. But based upon experiences I have had in these types of crimes, changes are needed in the current law to provide some discretion for judges to use when the circumstances warrant it.

Take the case of a consensual sexual relationship between an eighteen-year-old (an adult) and his fifteen-year-old girlfriend. While I am not condoning this behavior, I do not believe it is in the best interest of justice to label this eighteen-year-old as a "sex offender" and have him register as such for the next ten years.

In the event of an assault against a child - if an eighteen-year-old gets into a fight with a seventeen-year-old classmate (a child), should this offender be labeled as an "offender against a child"? Under the current law, he will be and will be required to register for the next ten years.

Our sex offender registration law is for public safety. In these two examples, the public probably is not in any danger from the offenders. The changes as outlined in the proposed legislation would give the Court the discretion to eliminate the registration requirement for those cases where it is not necessary, while still requiring it for the more serious offenses. Under the proposed changes, judges are required to state on the record and in open court, of the reason the registration requirement is not necessary. This would, I hope, safeguard the victim from any abuses of the registration requirement.

I do feel, after working the past nineteen years within the criminal justice system, that these proposed changes are in the best interest of our society. I ask for a "do pass" from your committee.

Sincerely,



Joan Halvorson, M.Ed.
Victim Assistance
Stutsman County

Mandan Police Department

FACT SHEET

NOTIFICATION OF RELEASE IN NORTH DAKOTA

----- **LEVEL I OFFENDER:** Nonviolent history; offense occurred in family setting

X

----- **LEVEL II OFFENDER:** Crime occurred outside family setting; an offender committed multiple offenses at different times; violent offense (inside or outside of family)

----- **LEVEL III OFFENDER:** Multiple violent offenses; expresses a desire to reoffend; diagnosed as a sexual predator

The Mandan Police Department is releasing the following information pursuant to ND Century Code 12.1-32-15. Which requires law enforcement agencies to disclose to the public relevant and necessary registration information when a sexual offender registered under this section are a public risk and disclosure of the registration is necessary for public protection.

The individual who appears on this notification has pled guilty or been found guilty of a crime against a child or an attempted crime against a child, or has pled guilty or been found guilty as a sexual offender and is required to register as per the above statute.

The offender is **not wanted by the police** at this time and **has served the sentence** imposed by the court. This notification is not intended to increase fear in the community. It is the belief of the Mandan Police Department that an informed public is a safer public.

Not the **Mandan Police Department**, the supervising release agent, or the North Dakota Department of Corrections may direct where the offender does or does not reside, nor can these agencies direct where he works or goes to school. The risk level of the offender has been determined based largely on the potential to reoffend based on previous criminal behavior.

Convicted sex offenders have always been released to live in our communities, but it was not until passage of the above statutory requirement that law enforcement had an ability to know the residence, or track their moves after their initial release. Since the passage of the statute, law enforcement may share information about many of these offenders with the public. Abuse of this information to threaten, harass, or intimidate offenders may be a crime and will not be tolerated. Such abuse could potentially end the ability of law enforcement to do these notifications. The only person who wins if the community notification ends is the sex offender since many of these offenders derive their power from the opportunity that secrecy provides them.

The Mandan Police Department is available to help you by providing you and your family with useful information on personal safety. The Mandan Police Department may be reached by calling 667-3250.

Photo



Size:

Name, age, physical description, address, offense(s) for which offender was convicted, date of release, description of the facts of the previous offense and known criminal behavior patterns of the offender as well as other information pertinent to notification of the community and neighborhood. See attach information sheet.

Name of offender: Matthew C. Dyer

Age of offender: (35)

Physical description of offender: W/Male 6'0" 160lbs. Brn Hair/Brn Eyes

Address of offender: 201 1st Avenue NW, Mandan

Information narrative: See attached letter

12/11/97

This letter is being written to inform you of some information which we have recently learned. There is a person in our jurisdiction named Matthew Dyer. He goes by the name of Matt and lives in Hughes Apt complex. He is 35 YOA. Mr Dyer is a registered sex offender which means that he has been convicted of a sex crime in the past. His way of "luring" the boys in is for him to befriend young boys, generally 13-18 years old. He will begin by watching a movie with the boys and then it leads to pornographic movies. From there, he may furnish the boys with alcohol, tobacco and possibly drugs.

On 12/10/97, the offices of State of ND Parole & Probation and the Mandan Police Dept conducted a search at Mr. Dyer's residence. They found 2 young boys present as well as two young boys which had arrived during the search. There were at least 30 pornographic movies as well as paraphernalia and marijuana. While during the search, there was a list of names laying on the table. We do not know how these names are associated with Mr Dyer only that they were in his apartment on his table. Your sons name was on the list.

Our concern is that Mr Dyer may be trying to make contact with or be friends with your son. With Mr Dyer's past, it is very important that you are aware what he has done in the past and is capable of doing in the future.

I would appreciate a phone call from you once you receive this letter, to confirm that you did get it. My office number is 667-3250. I will also enclose my business card for future reference.

Thank-You,



Det Renae Wendlick
Enclosure

MANDAN POLICE DEPARTMENT

RENAE WENDLICK
INVESTIGATIONS

205 1st AVENUE N.W.
MANDAN , N.D. 58554

(701) 667-3250

Fax: (701) 667-3463

Mandan Police Department
FACT SHEET
NOTIFICATION OF RELEASE IN NORTH DAKOTA

____ **LEVEL I OFFENDER:** Nonviolent history; offense occurred in family setting

X

____ **LEVEL II OFFENDER:** Crime occurred outside family setting; an offender committed multiple offenses at different times; violent offense (inside or outside of family)

____ **LEVEL III OFFENDER:** Multiple violent offenses; expresses a desire to reoffend; diagnosed as a sexual predator

The Mandan Police Department is releasing the following information pursuant to ND Century Code 12.1-32-15. Which requires law enforcement agencies to disclose to the public relevant and necessary registration information when a sexual offender registered under this section are a public risk and disclosure of the registration is necessary for public protection.

The individual who appears on this notification has pled guilty or been found guilty of a crime against a child or an attempted crime against a child, or has pled guilty or been found guilty as a sexual offender and is required to register as per the above statute.

The offender is **not wanted by the police** at this time and **has served the sentence** imposed by the court. This notification is not intended to increase fear in the community. It is the belief of the Mandan Police Department that an informed public is a safer public.

Not the **Mandan Police Department**, the supervising release agent, or the North Dakota Department of Corrections may direct where the offender does or does not reside, nor can these agencies direct where he works or goes to school. The risk level of the offender has been determined based largely on the potential to reoffend based on previous criminal behavior.

Convicted sex offenders have always been released to live in our communities, but it was not until passage of the above statutory requirement that law enforcement had an ability to know the residence, or track their moves after their initial release. Since the passage of the statute, law enforcement may share information about many of these offenders with the public. Abuse of this information to threaten, harass, or intimidate offenders may be a crime and will not be tolerated. Such abuse could potentially end the ability of law enforcement to do these notifications. The only person who wins if the community notification ends is the sex offender since many of these offenders derive their power from the opportunity that secrecy provides them.

The Mandan Police Department is available to help you by providing you and your family with useful information on personal safety. The Mandan Police Department may be reached by calling 667-3250.

Photo



Name, age, physical description, address, offense(s) for which offender was convicted, date of release, description of the facts of the previous offense and known criminal behavior patterns of the offender as well as other information pertinent to notification of the community and neighborhood. See attach information sheet.

Size:

Name of offender: Silas V. Conica

Age of offender: 37

Physical description of offender: Native American Male, 5'05, 152 pounds, Brown eyes and Black hair

Address of offender: 920 Poplar St SE, Mandan

Information narrative:

This information is being written to you to inform you of a sex offender who has registered with the Mandan Police Dept. A person is ordered to register as a sex offender if they have (1) been found guilty or plead guilty to a sex crime and/or (2) if the person has been found guilty or plead guilty to a crime against a child.

Silas Conica recently registered with the Mandan Police Dept. to being a sex offender. He is registered as living at 920 Poplar St., Mandan. His past crime happened in Cannonball, ND. He was convicted of Sexual Assault of a Minor.

Our concern is that Mr. Conica could sexually abuse another child. We are doing what we can to prevent any further action on Mr. Conica's behalf.

If you should have any questions, please contact Det. Wendlick, with the Mandan Police Dept., at 667-3250. Thank-you.

Sincerely,



Det. Renae Wendlick
Mandan Police Dept.

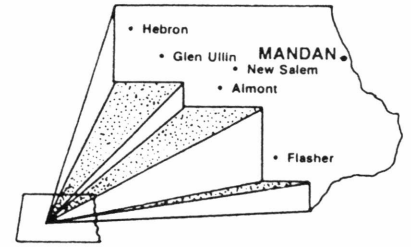
MANDAN POLICE DEPARTMENT

RENAE WENDLICK
INVESTIGATIONS

205 1st AVENUE N.W.
MANDAN , N.D. 58554



MORTON COUNTY
STATE OF NORTH DAKOTA
OFFICE OF
STATE'S ATTORNEY



210 2ND AVE. N.W.

MANDAN, NORTH DAKOTA 58554

PHONE 667-3350

ALLEN KOPPY
State's Attorney

BRIAN D. GROSINGER
Assistant State's Attorney
LADD R. ERICKSON
Assistant State's Attorney

To: Senator Wayne Stenehjem

From: Ladd R. Erickson

Re: Amendments to SB 2299

Date: February 1, 1999

The following are proposed changes to SB 2299 as a result of HB 1424, and further comments received on the bill:

1) Deletion of definitions of "Qualified board" (p.1, lines 30-32); "Sexually violent predator" (p. 2, lines 6-8); Paragraph (2) (p.2, lines 13-18)

Explanation: These items are deleted in HB 1424 because they are now found, and relate, to civil commitment in Chapter 25-03.3. HB 1424 also deleted "mental abnormality" and "predatory conduct," but those definitions are necessary for the discretionary provisions in SB 2299. In addition, HB 1424 deletes "sexually violent predatory." Proposed changes to SB 2299 substitute that term with "sexually dangerous individual" as defined in Chapter 25-03.3. I left it open as to an exact definition in SB 2299 in light of SB 2367 which changes the current "sexually dangerous individual" definition. (There is no reason to fix the definition in the registration statute if the definition in 25-03.3 may change.)

2) Addition of paragraph (g) (p. 2 lines 10-12) - "Temporarily domiciled" definition is added by HB 1424 per Wetterling Act requirement.

3) Addition of "or a person must register pursuant to subparagraphs h, i, or j of this section" (p. 2, lines 26-27) This was added because the legislative council changed the format of the current law, and without this language the statute could be read to limit the registration of out-of state offenders if their home state did not make a court record requiring registration.

4) Addition of “Except if the offense is described in 12.1-18-01 or 12.1-18-02 and the person is not a parent.” (p.3, lines 17-18) The Wetterling Act requires kidnapping and felonious restraint of a minor, other than by a parent be registered without exception. It is optional under the Wetterling Act as to whether a parent has to register for these offenses. Under SB2299, there is a presumption that a parent would have to register with the court being able to deviate. I thought this was a good option so the registration program doesn’t become a wedge tool in visitation and custody fights.

5) Addition of the word “sexual” (p. 3, line 25). This word focuses the paragraph on the issues. (Per comments received from Dr. Belenger, and State’s Attorneys)

6) Addition of “in this chapter if the person was court ordered or required to register as a sexual offender or for a crime against a child in another state or by the federal government.” This language clarifies and ensures that if a person had to register in another state for any offense they have to register in North Dakota. There is no way for our court to revisit out-of-state cases to determine if a deviation from registration is proper. Therefore, if you had to register someplace else, you have to register in North Dakota for any level offense.

7) Addition of the “registration for life” (p. 4, lines 1-14) This provision is required by amendments to the Wetterling Act. This is the focus of HB 1424. I wrote the provisions differently than the Attorney General’s office did. HB 1424 states when a person must register for life as follows:

(1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense described in subsection 1 or subdivision b of subsection 2;

I believe this is very broad. For example, this would mean that two simple assaults against a child, if the current law were not changed by SB 2299, would require lifetime registration. That problem could suffice with the young adult, mature juvenile fist fight cases. The Wetterling Act focuses lifetime registration on the more serious sex offenses (i.e. violent rapes, and child molestation.)

I wrote SB 2299 to cover this Wetterling Act requirement as follows:

(1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of an offense in which that person was court ordered or required to register as a felonious sexual offender or felonious offender against a child pursuant to this chapter;

I believe this wording better focuses the ‘lifetime’ registration for second offenses on the intent of Wetterling, and will reduce the potential for unnecessary lifetime registration. Especially when this provision is read in conjunction with the following provision:

HB 1424 -

(2) Pleads guilty or is found guilty of a violation of Section 12.1-20-03 and the offense is a class A felony occurring after July 31, 1999;

There are two class A felonies in 12.1-20-03. First, 12.1-20-03(1)(a) addresses violent sexual attacks. Second, 12.1-20-03(1)(d) is a class A felony whenever a victim is under fifteen years of age. The problem with the HB 1424 wording is that it does not account for the age of the defendant. Therefore, an 18 year old would have to register for life for a consensual sex act with a 14 year old. While I am not condoning this in anyway, I believe a lifetime registration for these defendants is witch hunting. These are common class A felony cases, and generally the victim is already sexually active. Currently, an offender in these cases will do some prison time, supervised probation, and ten years of offender registration. I think that is enough, and I hate to see these defendants still on the 'list' when they are in their 60's and 70's. In addition, SB 2299 would give some flexibility in registering an 18 year old with a 15 year old. If the 15 year old were a few months younger the person would have to register for life under HB 1424--that is quite a leap.

The other problem with this provision in HB 1424 is it does not state the age of the defendant, so presumably a juvenile would have to register for life. (Frankly, I doubt the Supreme Court would allow that on many different constitutional grounds.)

The Wetterling Act is intended to lifetime register adults that have sex with children under twelve. Therefore, I wrote this provision as follows:

(2) Pleads guilty or nolo contendere to, or found guilty of an offense committed after July 31, 1999, described in 12.1-20-03(1)(a), or 12.1-20-03(1)(d) if that person is an adult and the victim is under age twelve; or 12.1-18-01 if that person is an adult other than a parent and the victim is a child.

Here, the violent sex offenses are the same, but the intent of the Wetterling Act is more clearly described. With this provision the victim will almost always be a pre-puberty child, and the defendant will, on its face, be a pedophile. Again, this provision focuses lifetime registration on those who by the nature of the offense are a risk to society. I added kidnapping of a child, by a nonparent, as a lifetime offense. It is not necessary for Wetterling compliance, nor does HB 1424 have it. I added for these reasons: (1) It is at least as serious an offense as the other lifetime offenses; (2) I believe it is good public policy; (3) I believe it is a good selling point for the bill; (4) When DOJ audits our registration statute this is a strength that will offset any weakness in the law they find. (They do a "totality of the circumstances" type test). However, as mentioned, it is not required so feel free to delete it.

The lifetime sexually dangerous individual registration requirement is substantially the same in HB1424 and SB 2299.

(8) Added "other than a juvenile" (p. 6, lines 15-16) as an exemption to the mandatory jail time for failing to register. If the juvenile data base is deleted, then enforcement for all offenders will

be done under this paragraph, and I believe failing to register should be treated as a juvenile court discretionary matter instead of mandating adult jail time for juveniles.

(9) Added a juvenile provision to encompass registering juveniles in consideration of repealing the juvenile court data base. (p. 7, lines 18-31) This provision takes the heart of the juvenile court data base and places it into 12.1-32-15.

(10) Added the retroactive provision we discussed. (p. 7, lines 32-35, p.8, line 1)

(11) Added the repeal of the juvenile court data base.

(12) Added the emergency provision if you want it.

Intelligent Energy
Psychological Consultations

Joseph Belanger, Ph.D.
ND Psych. Lic. # 132
CA Psych. Lic. # 10798

Mr. Ladd Erickson
Morton County State's Attorney's Office
210 2nd Ave. NW,
Mandan, ND 58554

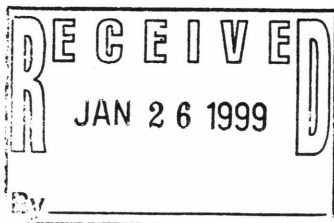
In Re: Senate Bill 2299

Dear Mr. Erickson,

This letter is to express my complete support of discretionary and graded Sex Offender registration. The most important, most humane, and most compassionate aspect of this bill is the fact that it allows for a selection of juveniles who will not be defined and labeled as SO because of an adolescent mistake.

In my own work I assess and treat adult sex offenders, assess and treat juveniles, assess and treat juvenile sex offenders, and teach the undergraduate course in Adolescent Psychology at Jamestown College. As a result of these various work related perspectives I have come to understand that not all adolescents who commit acts of sexually predatory conduct are alike.

Some are highly psychopathic. Some are psychotic. Some are paraphilic. But some are just adolescents who made a mistake. The intent of House Bill 2299 is quite simply to allow experts in the assessment and treatment of Sexual Offenders some discretion. Such discretion is not for the purpose of self-aggrandizement but for the purpose of serving all North Dakotans in the most cost effective way.



Yours Sincerely,

Joseph Belanger, Ph.D.

Extract of Curriculum Vitae
Re: Expertise in Assessment & Treatment of Sexual Offenders

Licenses

North Dakota: 132

California: Psy. 10798 [inactive]

Education

B.A. Yale University 1971 Major in Psychology Magna Cum Laude overall Honors of the Most Exceptional Distinction: Psychology Department

Ph.D. City University of New York 1977 Degree in Clinical Psychology First dissertation ever to be accepted as presented by the Psychology Department

1979: The Criminal Personality by Stanton E. Samenow, Ph.D. This two day workshop was an explication and demonstration of Samenow & Yokelson's seminal work on the assessment and treatment of character disorders.

1992: (4/30): Violence Toward And By Children And Youth Given by Gary B Melton, Ph.D. This one day seminar gave an up to date review of the latest material on assessment and treatment; both of child abuse and of inter child and youth violence.

1993: October 2nd: Victimization: Prevalence, Diagnosis, and Treatment This workshop awarded six Category A contact hours. D. G. Kilpatrick, Ph.D. was the presenter. We reviewed the latest research on incidence, prevalence, and psychological effects of victimization; focusing on a recently completed three year study.

1996: November 13 through November 16: Association for Treatment of Sexual Abusers: 15th Annual Research & Treatment Conference In this series of seminars I received a total of 20 C.E.U.s for courses given by experts including Gene Able, M.D., Bruce Sale, J.D., Ph.D., and Judith Becker, Ph.D. I chose my courses so as to be able to design and implement an assessment and treatment program.

1997: June 27 the North Dakota State Hospital sponsored a seminar in “Sexual Predator’ Commitment & Evaluation” given by Dennis Doren, Ph.D. For this work I earned 13 contact hours.

1997: August 20-22 Sexual Offenders: Assessment, Risk Management and Treatment For this advanced training seminar sponsored by Specialized Training Services I earned 18 continuing Education Hours qualifying under MCEP standards for California Psychologists.

1998: April 20-21 Sex Offender Risk Assessment: This two day seminar was given by Mr Stephen Huot and focused on the development and the use of the MnSOSTR.

1998: June 19-20 Clinical Assessment of Deception and Malingering 12 CEUS This two day

seminar given by Richard Rogers, Ph.D., ABBP at the Post-Graduate Institute for Summer Study focused on the use of psychometrics and structured interviews to detect deception \ malingering in a variety of populations including Sexual Offenders.

Supervision

1995: by Awad Ismir, Ph.D.

1996: by Myron Veenstra, Ph.D.

1997 through present: Dennis Doren, Ph.D.

Practice

1978: Out-patient treatment of an incestuous father while Chief Psychologist for Appalachian CMHC

1994 through present: Treatment of one or more Developmentally Disabled adults who exhibited Sexually Predatory Conduct

1995 Treatment of an anger based rapist transferred from North Dakota State Penitentiary to North Dakota State Hospital

1996 Assessment and treatment of a man convicted of child sexual abuse at NDSH

1997 through present initiated and ran the Sexually Responsible Behavior group at NDSH

1998 on June 1 I began the clinical leadership of North Dakota's SOTEP at NDSH

Memberships

North Dakota Psychological Association

American Psychological Association

Association for Treatment of Sexual Abusers (Affiliate)



MANDAN CITY POLICE

Dennis R. Rohr
Chief of Police
205 1st Ave. N.W.
P.O. Box 1315
Mandan, ND 58554
(701) 667-3200
(701) 667-3250

February 2, 1999

Senator Wayne Stenehjem
Chairperson, Senate Judiciary Committee
North Dakota State Senate

Mr. Chairman:

I am writing this letter in support of Senate Bill 2299. As the supervising officer overseeing criminal investigations, I have a working understanding of the time and energy we place into the backgrounds of each offender registered with the Mandan Police Department.

Senate Bill 2299 will focus sex offender registration and enhance the effectiveness of investigating sex crimes. It will protect the citizens of North Dakota from child molesters' and people that commit violent sex crimes.

I want to thank you and the members of the Judiciary Committee in your efforts, in addressing something important not only to the citizens of North Dakota, but to law-enforcement who have the task of monitoring offender registration.

Sincerely;

A handwritten signature in cursive script that reads "Dennis A. Bullinger".

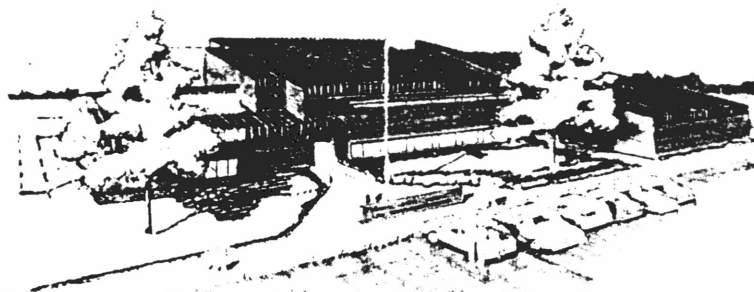
Dennis A. Bullinger
Deputy Chief

MORTON COUNTY

Combined Law Enforcement Center

STATE OF NORTH DAKOTA

LEO SNIDER
SHERIFF



205 1st Ave. NW
MANDAN, NORTH DAKOTA 58554
PHONE 667-3330
FAX # (701) 667-3463

February 2, 1999

Senator Wayne Stenehjem
Chairperson, Senate Judiciary Committee
North Dakota State Senate


Mr. Chairman:

I am writing this letter in support of Senate Bill 2299. As the supervising officer overseeing criminal investigations, I have a working understanding of the time and energy we place into the backgrounds of each offender registered with the Morton County Sheriff's Department.

Senate Bill 2299 will focus sex offender registration and enhance the effectiveness of investigating sex crimes. It will protect the citizens of North Dakota from child molesters and people that commit violent sex crimes.

I want to thank you and the members of the Judiciary Committee in your efforts, in addressing something important not only to the citizens of North Dakota, but to law-enforcement who have the task of monitoring offender registration.

Sincerely,


Kenneth G. Helmer
Chief Deputy

SENATE JUDICIARY COMMITTEE
WAYNE STENEHJEM, CHAIRMAN
FEBRUARY 3, 1999

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SENATE BILL # 2299 – REGISTRATION OF OFFENDERS

Supporting Testimony by Tim R. Brehm
Community Corrections Program Manager
North Dakota Department of Corrections and Rehabilitation
Field Services Division

Chairman and Members of the Senate Judiciary Committee:

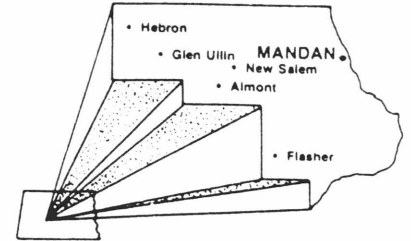
Thank you for this opportunity to address you concerning Senate Bill 2299. The North Dakota Department of Corrections and Rehabilitation, Field Services Division supports passage of SB 2299.

This legislation is discretionary and allows the court greater latitude in sentencing. SB 2299 continues to require those sex offenders who are indeed predators to register but also allows the court the discretion as to whether or not a convicted individual should be required to register as a sex offender. I provide two simple examples when the court might use discretion if this legislation becomes law: 1. A young 18-year-old individual has consensual sexual relations with a 16-year-old. 2. A 32 year old woman is intoxicated has a vehicle accident and her 2 year old son is killed. Neither of these individuals are sexual predators however, current law requires both individuals to register as sex offenders.

In closure, SB 2299 is a common sense bill that the Department of Corrections and Rehabilitation, Division of Field Services urges it support of.



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Testimony on Morton County Assistant State's Attorney Ladd R. Erickson in support of Senate Bill 2299. (e-mail address - lre@btigate.com)

Mr. Chairman and members of the committee, my name is Ladd R. Erickson and I work for the Morton County State's Attorney's Office. I am here to testify in support of SB 2299. This Bill is designed to strengthen and focus the State's sex and child offender registration program. The provisions in this Bill were developed from the ground up by working with prosecutors, detectives, juvenile court officials, crime victim advocates, Dr. Joseph Belenger the sex offender evaluation and treatment expert from the State Hospital in Jamestown, and others.

Registering people that commit sex offenses or crimes against a child has two primary purposes: First, registration of convicted sex and child offenders is an investigatory tool that assists law enforcement agencies in identifying suspects when a violent sex offense or offense against a child is committed. Second, offender registration enhances the ability of citizens to protect themselves from offenders by providing necessary information about offenders living in their communities¹.

¹"First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information". *Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as*

Serious problems have developed with the existing registration law are undermining the important purposes of the registration program. Currently, many offenses that have nothing whatsoever to do with the purposes of the registration program such as playground fights (simple assault) between juveniles, or young adults and juveniles, where the underlying motive is unrelated to do sexual deviance or victimization are forced to register. In addition, consensual sexual relations between mature juveniles, and mature juveniles and young adults, are required to register as offenders.

The problems with registering these types of offenses start with the realization that people that are not dangerous to society are unjustly labeled as perverts, pedophiles, rapists, or predators. While a law enforcement officer knows these people are not a danger the public does not, and a citizen that looks at the offender list can not make a distinction between a sexual predator and a young adult who had a consensual sexual relationship with a girlfriend that is a few months or years younger than the "offender". It is wrong and unnecessary to stigmatize people, by law, and subject them to ten years of possible harassment, hate crimes, and having their neighbors living in fear that these people are a danger to themselves or their family.

With the consensual sex cases between young people, enforcement is very random and arbitrary because these offenses rarely come to the attention of law enforcement. Usually, these cases are only brought to the prosecutor because there is a pregnancy. In other words, unlike a forced sex rape case where the victim comes to the attention of law enforcement when the crime occurs, there are countless sexual relationships between young people that go on undetected.

Amended, 63 Fed. Reg., Vol. 63, No. 118, June 19, 1998.

When these cases are prosecuted, with the current registration law we are picking a needle out of a hay stack and labeling these people as perverts. These people are not perverts, pedophiles, or child molesters. They are not a danger to our society. Committee members, they are your own sons and daughters.

The absurd results created by registering and labeling these people is being felt in our State. Recently, in Grand Forks a citizen obtained the local offender list and the listed names on the radio. This is a very irresponsible act committed by a person ignorant of the current problems with the offender registration law. This is a person that no doubt, like many people, wrongly assumed sex offender means pervert, predator, and pedophile. Why scare the citizens of Grand Forks when they hear the names of people on the radio that live in their neighborhoods, and who may have done nothing more than had a consensual sexual relationship with their girlfriend? Frankly, members of the committee, it is nothing more than irresponsible witch-hunting.

In this State, we now have registered sex offenders that have married the person they had the relationship with, but for ten years they are labeled "perverts". In this State, a sixteen year old can still get married to anyone they want with parental consent. (See § 14-03-02) But currently, if that sixteen year old has a consensual sexual relationship with a person in their age group their partner could be prosecuted for Corruption of a Minor (A misdemeanor) and have to register as a sex offender. If that sixteen year old's partner is also a minor, then they are both required to register as sex offenders despite the fact they are not a danger to society, or present any legitimate law enforcement purpose to track for ten years as sex offenders.

The same is true for the misdemeanors offenses against a child. Misdemeanors are by

definition minor or petty offenses, and when most people think of a “child” they think of a toddler. However, a child (under the law) is anyone under age eighteen. It is very common for young adult and mature juvenile boys to get into fist fights over sports, girls, cars, and other motives wholly unrelated to molesting or abducting a child, which is the purpose and intent of the Wetterling Act. Prosecutors need the ability to prosecute these cases and have the defendants receive whatever punishment is just based on the facts. It is never a just result to place these people on a list and label them as “offenders” for ten years. Currently, approximately half of the registered crimes on the juvenile offender database are simple assault “playground” type fights. This is strong evidence alone of how far afield the current registration law has gotten from the intent of the Wetterling Act. There is no evidence in these misdemeanor assault cases that the defendants will victimize or molest children.

In reaction to the severe injustices of the current registration law prosecutors routinely, in fact are almost ethically bound to, change charges to Disorderly Conduct to adjust for and eliminate unjust results in misdemeanor “crimes against a child” cases. If these people exhibit any evidence of victimization, molestation, or deviant sexual activity, the charges will not be a misdemeanor, but a felony. These people being placed on a list serves no public or law enforcement function and dilutes the significance of the offenders on the registration list as people that may be a danger to society are grouped with people that are not a danger to society. Nothing in the Wetterling Act, or other legitimate sources I am aware of information advocate the inclusion of these misdemeanor’s as registerable offenses.

There are good reasons why these offenses should not be considered for the offender list. As this legislature continually considers proposals to enhance community protection from sexual

molesters and violent rapists, such as placing the letter “y” on offender drivers licenses, limiting internet access for convicted sex offenders, and other measures, it is very important to ensure that the “base” list of offenders is purified so people that are not a danger to society are not “burned at the stake” for petty offenses. That is not what our justice system is all about.

Unnecessary offender registration also has severe consequences for law enforcement. There is nothing more polarizing to a community than when a young child is abducted. Unfortunately, when a sexual predator does abduct a child, law enforcement has to act fast in trying to save the child. These children are generally molested and killed within 24 to 48 hours of the abduction. One of the primary purposes of offender registration is to provide law enforcement an investigatory tool to immediately check for suspects based on registered offenders in the area that might meet the description or m.o. of the abductor. Law enforcement officials can also respond by checking offender lists in neighboring communities in their attempts to quickly locate and save the child.

Under the current system, detectives have to swim through all of the listed offenders attempting to find people that may be suspects. All these minor offense registrations hamper investigations, and can endanger the victims as detectives try to find offenders that match the profile of the crime.

In addition, regardless of whether an offender committed a serious offense that was meant to be registered under the Wetterling Act, or a petty offense, a person that violates registration requirements has to serve a mandatory ninety-day jail sentence. If there was no legitimate reason to register a person in the first place, this wastes prosecution, court, and detention resources.

Senate Bill 2299 is intended to focus offender registration on what was originally

intended by the Wetterly Act. The provisions in this Bill have been designed from the bottom up by people who prosecute sex crimes, people that work with crime victims, people that investigate sex crimes, and people that work in the juvenile court system.

The provisions these sources developed with are as follows:

- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision e.

This first provision is the “heart and soul” of offender registration. It mandates any felony sex offense be registered, and includes crimes like Gross Sexual Imposition (GSI), Sexual Imposition (SI), Corruption of a Minor if the offender is over twenty-one years old and the victim is over fifteen. These are the high school teacher consensual sex cases. (If the victim is under fifteen it is a GSI case.) Under SB 2299, an adult offender that is convicted of one of these offenses must register, without exception, for ten years after being released from prison - unless it is a second offense, the victim was under age twelve, or the offender used or threatened violence in the commission of the offense. In these cases the offender must register for life.

- b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender and at the time of the commission of the offense was twenty-two years of age or older and the victim was under fifteen years of age.

This paragraph was designed to ensure that any sex offense that does not require registration under paragraph (a) mandates a person register if the victim is a child. Frankly, this paragraph is for the most part duplicate of many crimes covered by paragraph (a), but it is possible to have a non-contact offense like Surreptitious Intrusion (Peeping Tom) when the victim is under fifteen. Therefore, if the offender is over twenty-one and the victim is under fifteen the offender must register.

- c. Is a sexually dangerous individual.

This paragraph speaks for itself.

- d. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring a person to register if the court first finds the person has not previously been convicted as a sexual offender or of a felony crime against a child, and the person did not exhibit mental abnormality or predatory conduct in the commission of the offense.

This paragraph begins the discretionary provisions in the Bill. However, there is tight discretion. For any misdemeanor sex offense there is a presumption that a person must register. This is modeled after the first offense drug conviction which requires a mandatory sentence unless the court first finds extenuating circumstances. This provision is working very well in prosecuting drug cases. The only way the court can deviate from registering a person for a misdemeanor sex crime is if it is a first offense and the court finds there was no "mental abnormality" or "predatory conduct" in the commission of the offense. Those terms are defined in the Bill and focus registration for misdemeanors on whether people have exhibited conduct which, although a misdemeanor, may result in further criminal activity. At the same time, people that are of no danger to society because the offense that was committed was an adolescent mistake in which there was no violence, unconsensual sex, an age disparity, or abnormal conduct may be excluded from registering. (The test for determining whether a deviation is proper is listed below.)

- e. Is a juvenile offender found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring a person to register if the court first finds the person has of previously been convicted as a sexual offender or for a felony crime against a child, and the person did not exhibit mental abnormality or predatory conduct in the commission of the offense.

This provision is similar to the adult misdemeanor provision with the exception of the inclusion of two felonies. The felonies listed in this section are only felonies because of the age

of the victim. (Under fifteen, and this is in compliance with the Wetterling Act) If there was unconsensual sex or the victim was intoxicated, the juvenile offender is cited under different provisions of the GSI statute and must register under paragraph (a). Again there is a presumption of registration with the ability of the court to deviate from registration if appropriate. Under the current registration format if both the parties are under age fifteen and have a consensual sexual relationship they both are now required to register as sex offenders for committing an A felony GSI against each other. This Bill will allow the juvenile courts some discretion to keep absurd registrations from occurring when there is no evidence of a danger to the public.

f. Has pled guilty or nolo contendere to, or been found guilty of a felony crime against a child or an attempted felony crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in 12.1-18-01 or 12.1-18-02 and the person is not a parent, the Court may deviate from requiring a person to register if the court first finds the offender has not previously been convicted as a sexual offender or for a felony crime against a child, and the person did not exhibit mental abnormality or predatory conduct in the commission of the offense.

The Wetterling Act's "crimes against a child" provisions focus on those crimes that have an underlying motive of sexual deviance. This is an area where the North Dakota law has gotten very far afield. This Bill re-focuses the offenders against child provision back on the important purposes of offender registration.

Under this Bill there is no way to deviate from registering kidnaping or feloniously restraining a child. In addition, this Bill requires anyone that kidnaps a child, other than a parent, to register for life. A parent would presumably have to register for ten years, but the court could deviate from requiring registration if the circumstances presented themselves. (i.e. it is important to ensure the offender registration program is not used as a weapon in visitation and custody fights.)

There is a presumption of registration for non-sex offense felony "crimes against a

child". The discretion is necessary in this provision because some of the offenses have nothing to do with the purposes of offender registration. For example, one common and unfortunate occurrence that seems to occur too many times each year is when a group of young people will go to a party and get intoxicated. They will then get into a car together and drive until there is a tragic accident. If anyone is killed in the accident the driver is normally charged with negligent homicide. If a victim is under eighteen, these drivers are currently required to register as child offenders. This is completely unnecessary and does not advance the purposes of offender registration. These people are punished in the criminal justice system, and don't need to be labeled as perverts or pedophiles. The volume of these types of cases far exceed the volume of cases where a crime against a child is committed with some underlying sexual or victimization motive. The integrity of the registration system is being diminished by having to register these offenses, and these offenses jeopardize the effectiveness of using the offender list as an investigative and public notice tool.

g. Has pled guilty or nolo contendere to, been found guilty, or been adjudicated delinquent of any crime against another person which is not otherwise specified in this chapter if the court finds the person demonstrated sexual mental abnormality or predatory conduct in the commission of the offense and therefore orders registration for the person. If the court orders a person to register as an offender under this subsection, the offender must comply with all of the registration requirements in this chapter.

This provision was added to the Bill to permit registration of offenses that are not covered by other offenses listed in this chapter if the underlying motive of the offense is sexual deviance. For example, the Stutsman County State's Attorney's Office recently had a case where a person was burglarizing homes with the underlying motive of stealing women's underwear. This offender could be very dangerous because he is seeking the thrill of entering a strange home at night to satisfy his sexual urges of exercising control, and is a strong candidate to escalate into a home-rapist. It seemed absurd to those of us who put this Bill

together that the law requires registration for non-violent consensual sex cases, and a person that has demonstrated the potential for a violent sex act is not registered. Other crimes such as stalking an adult, harassment, and misdemeanors against children that are committed with some evidence the person may be a danger to the public can be registered under this section.

- 3 4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision g of subsection 3, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.

This is court test for determining when a deviation from registration is appropriate. If the court decides that a deviation from registration is appropriate under the circumstances the judge is required to make a record in open court stating the reasons why a person does not have to register. Judges will be held accountable in a public record for their finding's, and this will assist the legislature in future sessions in considering the effectiveness of the registration program.

Mr. Chairman and members of this committee, this Bill has been the product of a lot of hard work by many people who use the law and are very experienced in these areas, and I ask for you support of this Bill. Thank you.

SENATE BILL 2299
MARCH 15TH, 1999
HOUSE JUDICIARY COMMITTEE
PRAIRIE ROOM

Testimony by Jonathan Byers, Assistant Attorney General

Chairman DeKrey,, members of the House Judiciary Committee:

I appear on behalf of the Attorney General and testify in support of House Bill 2299. The House of Representatives has reviewed and approved some of the amendments contained in Senate Bill 2299. The Jacob Wetterling compliance amendments from House Bill 1424 now appear in this Senate Bill. I will not waste your time going over those amendments again.

There are more substantial and substantive amendments contained in this Senate Bill. We have reviewed these changes to ascertain whether they comply with the Wetterling Act, and as amended in the Senate Judiciary, we believe they do.

As a policy matter, this Senate Bill will potentially exempt some sex offenders and offenders against children from having to register. At first glance, that may be troubling to you and to the public. However, if the goal of registration is to protect the public from criminals who may

constitute a risk to them, we better serve the public by identifying for them which offenders have committed risky crimes.

I ask for a do pass and would be happy to answer any questions.