

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2100

2007 SENATE JUDICIARY

SB 2100

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2100

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 10, 2007

Recorder Job Number: 904

Committee Clerk Signature

*Maria L Solberg*

**Minutes:** Relating to reports written on persons reporting alleging child abuse or neglect.

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

### Testimony In Support of Bill:

**Tara Lea Muhlhauser**, Dep. Dir of the Children and Family Services Div. & Prog. Admin.-Dept of Human Services. (meter 0:40) Gave Testimony Att. #1

Sen. Nelson question of how many cases reported, were reported false (meter 8:02) very low.

**Kathy Hogan**, Dir. Cass Co. Social Services, ND Co. Social Service Dir. Assoc. (meter 9:50)

Gave Testimony Att. #2a. Additional Information Att. #2b, Questions/concerns Att. #2c.

### Testimony in Opposition of the Bill:

**Jim Jacobson**, Dir of Protective Service Unit for the ND Protection and Advocacy Project (Meter 15:20) Concerns in the elimination of school personnel in recording. While I understand there is a resource issue relative to child protective services, and the ability to investigate cases that arises in the school settings. Our agency works with adults and children with disabilities. We at times get cases referred to us that involves the potential mistreatment of children in school settings. I am concerned that there isn't a set of guidelines or set of regulations that mandate an effective response by the school system. Sited example of (meter

16:40) of child with a disability being left on a bus in the winter all day. The school would not respond to what they did-stating it would be in violation of the "family education right to privacy" act and could not make a report, stated another incident of a teachers "coaching" of miss behavior.

**Nancy Sand**, NDEA (meter 18:36) In opposition to only one statement in the bill. Sec. 5 Reporting out to go to the Administration rather than the school boards. Sec. 4 to add school councilor in reporting and providing information, we understand the reason for that and that is o.k. In adding school personnel to the list of mandated reporters-F.Y.I. we represent a large number of support staff members in our organization and we inform them that if they suspect anything it should be reported We would request that in Sec. 5 you include the School Administration.

**Testimony Neutral to the Bill:**

**Susan Beehler**, Mandan, ND Mother (meter 20:32) page 2 under "cause by person responsible" line 4 they struck out "or" left in "and" this language makes it that the person has to have done both.

Page 1 and page 4 -should include a "person responsible" should be persons required to submit. Sited cases between siblings and step spouses/children (meter 22:10). They may are not required to report. Spoke of children that set fires.

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2100**

**Senate Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1291

Committee Clerk Signature

*Maria L Solberg*

**Minutes:** Relating to reports written on persons reporting alleging child abuse or neglect.

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

**Sen. Olafson** reviewed the sub committee work on and amendment done three different ways

-Att #1b is best.

**Senator David Nething**, Chairman closed the hearing.

**Sen. Olafson** made the motion to Do Pass Amendment 1b and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes

**Sen. Olafson** made the motion to Do Pass SB 2100 as Amended and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Marcellais**

**Senator David Nething**, Chairman closed the hearing.





**REPORT OF STANDING COMMITTEE**

**SB 2100: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2100 was placed on the Sixth order on the calendar.

Page 4, line 17, overstrike "center or any other child care"

Page 4, line 18, after the second comma insert "juvenile court personnel, probation officer, division of juvenile services employee."

Page 5, line 3, overstrike "is the", remove "child identified in", overstrike the second "a", remove "child abuse and neglect", and overstrike "report" and insert immediately thereafter "the person or official has knowledge or reasonable cause to suspect is an abused or neglected child"

Page 5, line 18, replace "staff" with "employee"

Page 5, line 28, after "board" insert "and school administrator"

Renumber accordingly



2007 HOUSE HUMAN SERVICES

SB 2100

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2100

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 13, 2007

Recorder Job Number: 4983

Committee Clerk Signature

*Judith Schock*

Minutes:

**Vice Chairman Pietsch :** Calls the meeting to order and we will open the hearing on SB 2100.

**Tara Lea Muhlhauser, with the Department of Human Services:** See attached testimony and proposed amendments.

**Representative Weisz:** You are saying you are now going to ask the veterinarians to make a judgment call for animal abuse supposedly because it has to do with child abuse? Generally I didn't think veterinarians saw children in the process. I am curious what road we are going down here?

**Ms Muhlhauser:** Our expectation is that veterinarians would be mandatory reporters when they suspect child abuse or neglect, when they have a suspicion of child abuse. Typically for any of our other reporters that means that they see a child and have suspicion that abuse or neglect or they hear something that leads them to believe a child has been harmed. I don't think you can make an immediate jump when you see animal neglect and they might be a victim of child abuse and neglect. They would have to see the child with a bruise or black eye.

**Rep. Porter:** What is the penalty for not complying? In section 6, if I am a next door neighbor of a child I think is being abused than my identity is not protected? It really limits the identity of

the person supplying the report. If you supply the initial report as a next door neighbor I don't see the protection of the identity. It limits just those that are required to report.

**Ms. Muhlauer:** It is a b misdemeanor to fail to report. If we were to come to you and you were not the reporter of the case, we would ask you if you have seen anything. Right now we could not maintain any protection or your identity. Because you are not the reporter, you are the information supplier. The existing law right now we have specific protection for the name or the details around the reporter, and the confidentiality in section 50-25.1-11 that you don't have in front of you in the bill. We have in the past told reporters we can protect you until we go into court process, than we may have to call you forward as a witness. We are feeling like we don't have statutory language to protect those suppliers right now.

**Rep. Porter:** On page 4 section 2 sub section 2 you talk about any other person. I am looking at veterinarian now may report such circumstance. As we start picking and choosing in sub sec 1 to add other individuals, why not just change the word may to must and require it from everyone. Just looking in sub section 1 I help coach kids in basketball. I don't see I am covered in that. I am not a school teacher. I am a life guard and see kids with less than street attire and I am not mandated to report if I see one with belt marks on his back. I see a lot of loop holes.

**Ms Muhlauer:** I don't disagree with that. I think it is just a difference in theory. When we think of mandatory reporters we think of people we have specifically charge with a professional duty to report. I am certainly willing to go down that path of charging everyone with that duty. Professionals are lifted up to a special duty as opposed to the general public I don't disagree with you I would want you as a coach and a park and rec person to report that. We have not had foster parents in here as a mandate until now.

**Rep. Porter:** Has anyone since this law has been active, been charged with a class b misdemeanor?

**Ms Muhlhauer:** Yes, a physician was charged and went through trial. The trial was unsuccessful. I think there were a couple other scenarios in the state. I am not familiar with the results.

**Rep. Weisz:** Why are we protecting the professionals, and they are held with higher standards? Why change anything when it has always been mandated for the professionals to report.

**Ms Muhlhauer:** The parent gets a copy of the complete assessment report. The name of the reporter is blocked out. The reporters have said they are uncomfortable with parents knowing who they are and where they may be found in the community. They don't want to face harassment, and unpleasant contact.

**Rep. Conrad:** Do you or the department do anything different with those folks? What makes it important to identify some one in a mandatory report? In the training I would think it would make them sensitive to signs of child abuse.

**Ms Muhlhauer:** the significance of identifying is a professional mandate. So for us to identify them in this law means that they are mandated reporters. If they have knowledge of, or suspicion they must report. We do lots of education on mandated reporting. If they are just not sure we ask them to tell the child protective services social workers who are professionals in this. We look at the details they provide and make a decision. We are not out in the community looking for business. We have to rely on the other professional groups to be our eyes and ears.

**Rep Kaldor:** What happens in the case where someone does report, and it is investigated and you determine there really isn't anything going on. How do the parties involved get affected by that?

**Ms. Muhlauer:** What happens when you get a report typically a social worker will read it or supervisor. They will do the analysis, does it fit under the law, do we have jurisdiction. They also will look if we have on going involvement with the family. Do we need to see the child first, what is the protective issues, when and why do we need to see the parent or subject. Is there a crime involved, is the child injured, do we have an immediate safety concern that we have to attend to with the out come of the report. Depending on the out come of the analysis the Social worker has a number of decisions they need to make about how to proceed. We would ask for removal if we can't protect the child any other way.

**Chairman Price:** What is the penalty if someone intentionally reports when there is nothing and they are doing it just to get back at a person? I had two complaints in the last year.

**Ms. Muhlauer:** 50-25.1-13 it is the penalty to fail to report, and further penalty for false reporting. The law enforcement deals with the criminal issues. We do the safety assessment.

**Rep. Kaldor:** What if the report is a mistake, not a malicious accusation, not to get back at someone? How far does the process go?

**Ms Muhlauer:** I don't know that I could give you a black and white answer. It depends on the suspicion. We would check the facts, and check with the child.

**Chairman Price:** Is there a guarantee that all the counties and regions are doing the same things the same way? In the area I am talking about they never talked to the child at all. How do we protect the family if there is nothing going on and there was an incorrect removal?

Possibly you have an over zealous worker. If you get complaints from certain areas, what authority and steps do you take?

**Ms Muhlhauer:** We work hard at training and to follow the manual. On one has ever asked about getting complaints. I get on the phone to talk to the regional supervisor to find what their perspective is on the case. Talk to the county people. If I feel I need to review a trial I will review files to do the inquiry. It depends on the situation. We are writing policy tools to use administratively.

**Rep. Weisz:** Based on your testimony, you were saying a black eye is a reportable event?

**Ms Muhlhauer:** It depends on the details. I don't think it not just signally the black eye. The teacher may have knowledge that this is the forth black eye.

**Rep. Porter:** On the over sight of the department back to the county level. Is there any quality assurance process in place where a certain number of cases are reviewed at a pier level?

**Ms Muhlhauer:** We have two distinct qualities of assurance in the department. We have regional supervisor, who are out in the centers in the field. They review the files, and their findings. If they feel there is a policy violation or questions about the decisions that have been made, they will ask the county to provide them a plan to address some of those issues.

**Valarie Fischer, Director of School Health for the Department of Public Instruction.** See attached testimony, and proposed amendment.

**Rep. Conrad:** I always thought it odd we did investigations on teachers. I am wondering why you would want to keep that in there. The school board and administrator should know what is happening in the class room. When we do child abuse evaluation the assessment of the family is different than a class room. You are kind of mixing 2 situations. Shouldn't the school board be responsible for what happens in the school?

**Ms Fischer:** We want schools and employees to be considered in there because they are talking about the best interest of the children and the child's welfare. Yes, that is what we are talking about by including the board.

**Rep. Porter:** there are a number of schools that hire coaches that aren't necessarily school teachers. By my reading of this bill there is no mandatory reporting of that individual that is an employee of the school and is not a teacher. Should there be?

**Ms. Fischer:** Yes, there should be, and again I believe it would be how it would be interpreted.

**Bev Nielson: With the ND School Board Association:** I am here to support the Department of Public Instructions amendments for this bill. Certainly when things come to our attention about children and employers in our school we look into them. I sat an hour and 15 minutes listening to a lady telling you the training required being into these things, and the other things required for determining if in fact child abuse has occurred. I don't want our school administrator tied up in types of investigations. We aren't an investigative unit. If an assessment is done and it is not the parent, and they think it might be at school our position is that the investigative unit is to determine that, not us. If we need to dismiss, or terminate the person that is one thing. We have no problem being reporters. We just aren't investigative agencies. After listening the last hour plus, I know we don't want to do it. We have our own type of punishments. We would hope the majority of our time would be spent on educating kids.

**Rep. Porter:** I love the school personal language. I was a volunteer, none contracted inside of a school after hours helping out a 4<sup>th</sup> grade basketball team. I would not consider my self school personal. If this is truly going after the broad range does it need to be more specific?

**Ms Fischer:** As a volunteer you are under our liability insurance so you probably would. I am not in a position to speak on how broad the reporting to be. I would leave that up to you.

**Mary Wahl, representing the ND Council of Education:** We stand in support of the amendment from DPI. What we think is really important is there is some consistency with in the investigations that take place. School personal and administrators are not trained to be

investigators. The skilled training is really important. We hope the people that are so designated to do this work are supported in those efforts.

**Kathy Hogen, ND County Social Service Director:** this is the ugliest piece the counties do. People are always mad at you. In terms of supervision we never remove a child with out court action in 72 hours. There is a fairly intense process. There is a legal process as well as a social process. Should the counties be involved in investigating allegations in the public schools? The counties were supportive of 2100 as was originally drafted. We did not know the amendments were going to be proposed this morning. Should the child protection be part of the school system? We were pleased the schools thought we did a good enough job and that they wanted us to be a part of the decision process.

**Jim Jacobson, Division of ND Protection and Advocacy Project:** I want to comment on the proposed change by DPI. I think it is a big mistake to eliminate schools from that care taker definition. I can be sensitive to the resource issue but it is based by the counties. I do think an effective investigation is a critical piece.

**Rep. Conrad:** How about residential homes? .

**Mr. Jacobson:** I am not comfortable with that either. If a parent feels at risk because child protection has become involved that tells me that parent must really care about the child.

**Rep. Kaldor:** Seems to me the DPI amendments in section 1 put them back, but you do not support the deletion of them as investigators?

**Mr. Jackobson:** Yes, and I support the DPI amendments. I can't speak against the position being taken by the counties. We get involved in some cases. Most investigation do not have parents there.

**Chairman Price:** Anyone else to testify for SB 2100? Hearing none we will close the hearing on SB 2100



## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2100

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5097

Committee Clerk Signature

*Judy Schock*

Minutes:

**Rep. Price:** There are a couple of sets of amendments that have been proposed. Let's look at the one that deals with section 5.

**Rep. Porter:** I certainly understand why the school board and administrators do not want, nor have the expertise to do the investigation.

**Rep. Price:** I think you are looking at a wrong amendment.

**Rep. Porter:** Oh I don't have a comment on the other one.

**Rep. Price:** Are we ready for a motion?

**Rep. Conrad:** I move the amendment.

**Rep. Porter:** I second that.

**Rep. Price:** Is there discussion?

**Rep. Porter:** I talked to Mr. Mullin when we were done yesterday. IT is something that needs to be done to cover the crossover between the agencies.

**Rep. Price:** All in favor say 'aye' all opposed say 'no'.

**Rep. Porter:** I certainly understand where the local school boards and school districts are coming from. They do not want to have this obligation for responsibility to investigate and dispose of a report implicating someone. I couldn't imagine that. When we heard from Social

Services and employees on the amount of training that they do in order to get to the level of proficiently doing this work and that everyone is at a social workers level which now is a master's degree. I just can't imagine that you would take that and put that upon a school board made up of elected officials or a local school district. I would move that we overstrike on page 5 line 29 the new language "or to a local school board or administrator".

**Rep. Price:** Do you want to do all of that? On the front page too?

**Rep. Porter:** Sure. I would do it all as one motion.

**Rep. Kaldor:** I second that.

**Rep. Price:** All in favor say 'aye' all opposed say 'no'.

**Rep. Porter:** When you look at this, and I know that this is a very difficult subject even for us to discuss. I think that as you look across the state, parents in general are doing what is best for their kids. I think that child abuse is out there. We do have to protect those who don't have a voice and can't protect themselves. I look at this bill and I don't necessarily agree or disagree that you start to keep expanding the list of people to require to permit or report. It really doesn't do anything. It is really hard to prove that you knowingly failed to do it. I think they can cite one case that happened a long time ago that really wasn't a knowingly case. Someone thought someone else had made the report in the medical practice. That to me still isn't knowingly avoiding the responsibility to report. Expanding the list to school personnel, school bus drivers, and foster parents. If you start thinking about this list, it goes on and on. I look down on subsection 2 on line 28. Really you can get rid of subsection 1 by just changing that word to shall. Any person having reasonable cause to suspect that a child is abused and neglected shall report the circumstances to the department. I was trying to think who we are missing in subsection 1. Someone that has contact with kids. I do have a concern that school personal does not include volunteer coaches. Section 2 just bothers me. I think that every time we look

at it we are trying to pick a person here or there that may or may not come into contact with kids who are abused. I believe that a law that says if you think someone has been abused; here is the number to call. Just call and report it. Let us as professionals take over. We don't need to start picking and choosing people that have to report in a law that is almost unenforceable. I may just be venting about section 2 because I think the more we try to capture everybody the more we should just change subsection 2 to shall and just be done with it. When we look at subsection 1 we certainly haven't covered all the basis that we probably should cover. It is something that we should do every 2 years. I don't know.

**Rep. Conrad:** I started practicing Social Work in 1974 and this law was passed in 1975. It has changed the whole world of Social Services because of the mandatory reporting. Prior to that it was that number 2 and that was it. Until there were mandatory reporters there were no reports because people said that other ones were responsible. I remember going to my mother and she said that they will go to Public Health and they will investigate. That wasn't true it was just her perception of what happens. It was only because of the mandatory reporting that we have had these issues addressed. IT has taken a long time and it has been a rocky road for the full process. We can't throw out mandatory reporting. That would take us way back.

**Rep. Porter:** I'm not sure if you were listening, we weren't throwing out subsection 1 without changing subsection 2 to 'shall' so the mandatory reporting is on everybody in the state.

**Rep. Conrad:** The problem is that no one will because everyone assumes everyone else is doing that. This way these particular people that are in a particular situation of coming in contact with children are required to report. They can't look around and think someone else did it.

**Rep. Kaldor:** I can understand that point. However, I have to agree with Rep. Porter about this list. Next session there are going to add more people. I mean they have veterinarian on there. I

think I completely agree with the positions of someone that is absolutely trained in these areas. It would be terrible. It is morally wrong if they don't report it. There are a lot of people on the list to discern what is really going on.

**Rep. Schneider:** I spoke to Rep. Pinkerton and their association did not support having a veterinarian on this list. They can't tell what went on. It would be a stretch for them to make that determination in children.

**Rep. Conrad:** This list has not really been changed since 1975. I wonder why we have to have school bus drivers and well as school personal. Let's just not go to the whole world.

**Rep. Porter:** Rep. Kaldor is absolutely right. We are missing a whole other group of people. You drop your kids off at the YMCA for swimming lessons, do they have a responsibility or should they? What makes them different then school personal? Or the park board when you drop your child off for baseball practice. The problem is starting to make a list. I don't necessarily disagree with Rep. Conrad that the first part of the list is just reminding those people that they have to report. Once you start adding little pieces here and there you are missing so much of where kids are. You are missing the course.

**Rep. Weisz:** I think we live in a much different world than in 1975. First of all we are much more aware of what is going on in the world that we live in. Rep. Kaldor asked the question on what happens to these families that are reported. Do they go down that road and there is no child abuse? What happens to that families? I know of families that have been absolutely devastated by this process. I am a little reluctant to keep adding names to this list. If that increases the reporting so that we get to those situations that we currently should be. I think we have gone far enough here. It could be endless.

**Rep. Uglem:** I do see a very close relationship between animal abuse and child abuse. There is some reason why they are including vets. Also in section 2 they are changing that and it

would include siblings that are probably being abused themselves. That would be jeopardizing their own safety.

**Rep. Hatlestad:** On line 14 and 15 we put the word any other medical or mental health professional. Why are we not able to do the same thing with the police or law enforcement officer? Why do we need to have juvenile court and probation officers position of juvenile services when they all fall under 'law enforcement'? The same thing is with school teachers. If we are going to make it all encompassing, make it all encompassing. If we are going to pick and choose then pick and choose. I just think that if you are looking at this and one day you look at it and your not on the list, and the next day you are. The legislator meets again and you are off and on and off and on. To me we just have to make it so that there are people that are required to report it and be done. By looking at this there would be an argument because of the volunteer EMT is a Para profession under a position. They wouldn't have the duty to report under this right now. The way it is written it says medical or mental health professional. In my estimation they would not have a duty to report.

**Rep. Conrad:** One of the differences between a professional and a volunteer is that you can be sure that the professional would have the training and the kind of reporting to do. The County Commissioners would appreciate it if we would limit the number of neighbor reporting as much as possible. Not to say we don't want neighbors to report. We should have a good, solid report. What she is saying is that then they would get themselves trained.

**Rep. Hatlestad:** Why would a school teacher and an administrator not be considered school personal.

**Rep. Porter:** It would certainly include all of the people. Are they going to be trained for everyone? Now they have a duty to report and they don't know what they are reporting? Are

we going to send them all a letter and tell them they have a duty to report or they are going to be subject to a class B Misdemeanor after August 1?

**Rep. Conrad:** That is what it is doing.

**Rep. Price:** Do we want to make the motion right now?

**Rep. Porter:** I would make a motion that on section 2 that we would remove the word veterinarian that we would remove the word or school personal, school bus driver, and I would leave it at that.

**Rep. Kaldor:** I second that.

**Rep. Price:** Any discussion?

**Rep. Potter:** I am under the same opinion as Rep. Uglem. I think there is a connection between animal and child abuse. From everything I read there is a definite connection and I hate to see that taken off.

**Rep. Schneider:** There is no doubt about it that there is a connection. When you have a veterinarian that doesn't see the children. What I would like to see as if a vet suspects there is animal abuse, he has a duty to report animal abuse and law enforcement can draw connection.

**Rep. Uglem:** I would assume that it means when someone brings a pet to the vet and the child comes along. The vet sees the child and then reports it.

**Rep. Porter:** I would agree with that. If the vet sees the child that they think has been abused, under subsection 2 they may report those circumstances. That is every citizens and the states responsibility to care for those kids that can't speak for themselves. If you put a class B Misdemeanor it is wrong. It encourages them in subsection 2 that they should report it. In subsection 1 we are telling them the penalty. I think that is a stretch and it is wrong.

**Rep. Price:** All in favor say 'aye' all opposed say 'no'.

**Rep. Kaldor:** How many have read lines 24-26?

**Rep. Price:** I'm not sure.

**Rep. Porter:** I don't know if the juvenile court personal, my understanding is does this go far enough under the law enforcement to include the judicial branch? Maybe that is where we should be. To pick up the judges and barristers. We have law enforcement. Maybe we should pick them all up? A probation officer is an officer of the court. I'm thinking that a juvenile court personal is an officer of the court system also.

**Rep. Hatlestad:** Does an attorney have a responsibility to report it if his client were to say something, or is that confidentiality?

**Rep. Schneider:** We would fall under subsection 2. Ethically, no. Anything they tell us is confidential. It is a judgment call that every attorney has to make. The burden would be to break that confidentiality and most won't.

**Rep. Price:** Is there any more discussion? What are your wishes?

**Rep. Conrad:** I move a do pass as amended.

**Rep. Schneider:** I Second that.

**Rep. Price:** Is there any more discussion? If not we will take a roll call vote on a do pass as amended motion for SB 2100. The motion passes 11-1-0. Is there a volunteer to carry this?

**Rep. Porter:** I will.

