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ROLL NUMBER

DESCRIPTION

2256

2007 SENATE JUDICIARY

SB 2256

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2256**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1799

Committee Clerk Signature

Moina L. Salby

Minutes: Relating to sex offenders on school property.

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:

Sen. Fiebiger introduced the bill (meter 40) – Att. #1 and referred to the Statute in relationship to this bill Century Code 12.1-35-15 – Att. #2

Spoke of an amendment on line 8, at Elementary insert "middle school" discussion on the language (meter 6:40) **Sen. Lyson** spoke of (meter 7:37) spoke of the importance that when a school board adopts a administrative "policy" the importance of including local law enforcement in the decision, keeping it legal and enforceable. **Sen. Olafson** was concerned (meter 9:14) that there would be proper notice to each sex offender of the school policy. While it is done at the P.T.A.'s it needs to get to the offender.

Sen. Mathern – Dist. 11 (meter 10:49) Gave Testimony – Att #3a and provided committee with a copy of a seminar he is to attend – Att. #3b.

Rep. Jasper Schneider, Dist. #21 Spoke in support of the bill. Different school locations seem to all have different requirements.

Dan Huffman, Asst. Super, Fargo School Dist. (meter 18:06) Gave Testimony Att. #4a and provided committee with a copy of there policy on sex offenders on school properties.

Jack McDonald, Lobbyist State assoc of Non Public Schools (meter 25:51) The schools are in support of the bill and were part of the process of making the bill. We share the same "notification" process and would work with the sponsor of the bill to make an amendment. Access to information is very easy to access, they are on the internet and that is public notice. The placing of the notification on the small schools would be very burdensome.

Keith Ternes, Fargo Police Dept. (meter 27:30) Reviewed what happened an there law enforcement meeting with our local legislators in how the offenders still pose a problem to our children. Discussed school boundaries in relationship to the sex offender. Concerns are that they do not want to create a "leopard" colony for the offenders. Reviewed an Iowa case.

Sen Lyson (meter 33:49 spoke of the chiefs involvement with the policy making decision and asked **Mr. Ternes** of his opinion of this and they discussed along with the importance the schools ability to make there own decisions due to small town vs. big town and other issues.

Bev Nelson, ND School Board Asscoc. (meter 33:49) We have some of the same concerns others have spoke of, school notification, what if a school is to lenient. She would like more of the policy to be "law" so the schools would be more uniform.

The committee discussed the liability of the school and they should be strongly concerned on what a school policy should be. (meter 36:44) **Sen. Lyson** spoke at length of the importance (meter 37:39) of the school having there own policy verses the law enforcement making it- though it should still up hold the law. Discussion of Juvenile offenders who are required to go back into the school system.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2256**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3050

Committee Clerk Signature *Mona L Solbey*

Minutes: Relating to sex offenders on school property.

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

Sen. Fiebiger reviewed the amendment for the committee – Att. #1. Spoke of what other states do and his concern about legislation driving the sex offenders underground for being too stringent. Spoke of a student who was a sexual registered offender attending high school. The Attorney General's office would not have a problem with assisting the schools in putting together a draft policy. He also spoke of the immunity provision and education process. This amendment makes the policy clearer, it allows the local school boards the authority to decide on their own how they implement this, still has a penalty and it provides the school board some cover for the school board when they make these tough decisions. It also gets rid of the notification portion. (meter 4:00) Spoke of A.G.'s notification system and more detail of the amendments.

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger made the motion to Do Pass Amendment Att. #1 changing the page number on the amendment and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger made the motion to Do Pass SB 2256 as amended and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

HH #1
2-7-06

PROPOSED AMENDMENTS TO SENATE BILL NO. 2256

Page 1, line 1, after "chapter 12.1-20" insert "and amend and reenact subsection 14 of section 12.1-32-15"

Page 1, line 6, after "A" insert "high risk"

Page 1, line 8, after "elementary" insert ", middle"

Page 1, line 10, replace:

"The school board or governing body shall adopt a policy and provide notice of the policy to each registered sexual offender with a residence address within the district of the school board or the co-located district of the private school."

with:

"Any other registered sexual offender who is a parent or guardian of a student attending the school may enter designated areas of the school allowed for activities involving the sexual offender's own child with advance notice and approval of the school board of a public school or governing entity of a private school or if the sexual offender is present for purposes of voting in a school building used as a public polling place."

Page 1, line 13, replace "C felony" with "A misdemeanor"

Page 1, after line 13, insert:

SECTION 2. Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or school district or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, adopting policies governing or permitting sexual offenders' presence on school property as provided for in chapter 12.1-20, or for disclosing or failing to disclose information as permitted by this section.

Re-number accordingly

Date: 2-7-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2256

Senate _____ Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amend. Att #1 Changing pg 2 to 1

Motion Made By Sen Fiebiger Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fiebiger	/	
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Date: 2-7-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2256

Senate _____ Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Fiebiger Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebiger

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

REPORT OF STANDING COMMITTEE

SB 2256: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 00 NAYS, 0 ABSENT AND NOT VOTING). SB 2256 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to sex offenders on school property;"

Page 1, line 6, after "A" insert "high-risk"

Page 1, line 8, after "elementary" insert ", middle,"

Page 1, line 9, after "elementary" insert ", middle,"

Page 1, line 10, after "elementary" insert ", middle," and replace "The school board or" with "Any other registered sexual offender who is a parent or guardian of a student attending the school may enter designated areas of the school allowed for activities involving the sexual offender's own child with advance notice and approval of the school board of a public school or governing entity of a private school or if the sexual offender is present for purposes of voting in a school building used as a public polling place"

Page 1, remove lines 11 and 12

Page 1, line 13, remove "of the private school" and replace "C felony" with "A misdemeanor"

Page 1, after line 13, insert:

"SECTION 2. AMENDMENT. Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or school district or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, adopting policies governing or permitting the presence of sexual offenders on school property as provided for in chapter 12.1-20, or for disclosing or for failing to disclose information as permitted by this section."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2256

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2256

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4833

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2256. Have you looked at the bill passed earlier in the House.

Sen. Tom Fiebiger: Yes, it is on the same topic. I think the main difference is that our bill give more local control. It gives them the opportunity to set and outline exceptions that they may want to place as opposed to the House bill version that sets up the specific exceptions and limits what local authorities can do. I don't think it allows them wiggle room. In other words, if they come up with a new idea that hasn't been thought of and not in the bill or in the statute as enacted, then they can't do it.

Chairman DeKrey: Do you have that bill down in your committee right now.

Sen. Tom Fiebiger: I believe we're going to have it tomorrow. We'll have that discussion tomorrow I think in the Senate Judiciary.

Chairman DeKrey: We've got to get these two bills on the same page.

Sen. Tom Fiebiger: I don't disagree with you, I think that's true (see attached testimony).

Rep. Dahl: On the House bill, the reason that we specifically set it out in Code, was because law enforcement wanted a consistent policy so that if they were called to a school, that they wouldn't have to go through the school board policy to figure out whether an individual should

be there or not. They would already have the knowledge from the statute of who could be there and who couldn't.

Sen. Tom Fiebiger: I understand that on one side the thinking behind that, but with this particular bill I don't think that it will be all that dramatic to have them read the policy before they came in, or they could present it to the local law enforcement officials. Quite frankly, each community is somewhat different in terms of their comfort level as to what they may or may not allow. That was the reason behind it. I understand the explanation that you've given, but I think there is a difference in philosophy and I believe Chief Ternes from the Fargo Police Department may speak to that as well.

Rep. Koppelman: In the original bill, did this have the buffer zones where sex offenders live, is that in the original bill.

Sen. Tom Fiebiger: No it did not.

Rep. Koppelman: In the amendment.

Sen. Tom Fiebiger: Well the amendment basically deals with section 2 that allows for the idea of having immunity. The other amendment was under sex offenders on school property. The amendment basically says just those two points; it allows sex offenders to be on school property for specific events related to their students/children. There is also another provision in the original bill on the part of the schools to give notice to all sex offenders in the district that appear to be cumbersome to the school districts, they said we don't want to be the sex police and worry about who's on our property, we don't want to give notice to people, so we took that provision out. We did change the penalty provision from a Class C felony to a Class B misdemeanor that was another change.

Rep. Koppelman: Do you see this creating any kind of liability exposure for a school board, with each school board taking a different approach. If you put something in state law, and it

allows for a specific exception that's one thing. But if you pass this and this is going to be a state law and it will be for what was written unless it says something different. Does that put that board in jeopardy if they were to adopt a policy, for example, that was relatively rudiment, and then the sex offender were to come on that property and commit a crime, would there be liability.

Sen. Tom Fiebiger: I think that's what the immunity provision is designed to do. I think it also gives the local people a little more control, that's one of the concerns that we heard too. A school board, under SB 2256, if they choose to, they can come in and say no sex offenders can be on school property and that's our policy, and that's close to what the Fargo school districts have right now. The way the House version is, I don't believe that they can do that.

Chairman DeKrey: We have an exception in there for voting.

Sen. Tom Fiebiger: There are several exceptions in the other one. I know there is another one for church situations, but in this one, the individual institution can design how and again the AG's office has indicated a willingness to work with them. I think the immunity provision takes care of that.

Rep. Koppelman: I believe you're right.

Rep. Boehning: I think there are a lot of daycares or preschools that are in church buildings.

Sen. Tom Fiebiger: This does not address daycares and that type of thing. This is limited to schools, elementary, middle or high schools. Typically I know that they have their own policy, about who can be on the property, pick up children, etc.

Rep. Boehning: If these school boards would set their own policy, out in the rural areas, in the local small towns, how are they going to know how every school board sets their policy, how are they going to enforce that. I think we should have a set standard across the state.

Sen. Tom Fiebiger: I think what's going to happen, is if you have one set policy there won't be an opportunity for exceptions. In certain circumstances, if the school district and the people feel that is appropriate, they will have no authority to do that. In terms of the notice provision, I would hope that the law enforcement would be working in tandem with their school district, so that they would even have on file the current policy so that they would be able to monitor it. I think flexibility seemed to be important, because each school district is different than the next one. They have different needs. They would each have their own comfort zone in their schools.

Rep. Klemin: As I read this bill, they are really talking about two separate categories of sexual offenders. The first sentence covers high risk sexual offenders and do I understand then, and the second sentence, starting on line 13, covers any other registered sex offender. So you've got two categories. So do I understand that the school district only has to have a written policy on the high risk sexual offenders and are they not permitted or not authorized to have a written policy on the any other sexual offenders.

Sen. Tom Fiebiger: No, the intent was that there be a policy by each school district that addresses all sex offenders. The way the bill was written, it was designed to provide any other sex offender, other than a high risk sex offender is entitled to have that opportunity to be on the property, if they are a parent or student attending the school, entering the area. What we're trying to do is remove the high risk sex offender from having that opportunity and limiting it.

Rep. Klemin: The high risk sex offender is not authorized to be on school property at all, unless there is a written policy that allows them to be there under certain circumstances.

Sen. Tom Fiebiger: Yes, that would be correct.

Rep. Klemin: But any other registered sex offender, other than the high risk sexual offender can be on school property for the reasons specified in the second sentence of this bill, whether or not there is a written policy.

Sen. Tom Fiebiger: No, that's not the intention. I believe they are still allowed to be on the property, and I think that's covered on line 15. So they still have that authority, like I indicated earlier, that the school board can come in and say we're going to have a no sexual offender on school property policy. So it gives them that flexibility. The intent was that it gives them that option to set up a policy that would allow people, with a child playing in a band concert, and they are a low level sex offender and if the parole/probation officer have said it's okay; however, they want to do it. It gives them a little more flexibility to make that determination.

They can still have the final approval at the local level.

Rep. Klemin: Let's say a school has a written policy on high risk sexual offenders and they don't have a school policy on the other sexual offenders, those other sexual offenders would need the advance notice and approval in order to come on for the reasons specified, and would they have to give advance notice and get approval to go on there and vote.

Sen. Tom Fiebiger: I don't believe so. I believe the voting provision is addressed on line 17. I think it would be our expectation that there would be a written policy that they would come up with to address those specific issues, and allows them the flexibility to determine what they want to add to that or change it at the time.

Rep. Koppelman: If I'm reading this correctly, that second section that he was referring to, says that if you're not a high risk offender, in other words you are a different class of sex offender, you can come to the school for these other reasons involving your children, etc. if you ask a school board in advance and they approve it, or if you trying to vote. I think you are

entitled to come and vote, if you're not a high risk offender. What about the high risk offender, are they not entitled to vote.

Sen. Tom Fiebiger: Well, I think the written policy would hopefully take care of that. I think that's an issue that the school districts are dealing with now, in terms of letting people on the property.

Rep. Koppelman: So would the school districts make a decision to allow them in their facility, and you understand how it deals with sexual offenders, not high risk from the second sentence, but it appears to me that the first sentence, that the school district could make a policy that certain people would not be allowed to vote there, or they could make a policy that those people could be allowed to vote. It would be in the hands of the school boards.

Sen. Tom Fiebiger: That is correct.

Chairman DeKrey: Thank you. Further testimony in support.

Sen. Tim Mathern: (see attached testimony). I think that the bill reflects a changing public policy awareness, it reflects the changing public policy research base and reflects the need to go slow in this area. I attended a Council on State Government's workshop wherein there was research brought to us as legislators saying that some of these laws that we had put in place are, in fact, creating more problems than it is solving. For example, one of the things about this bill, though it is confusing, is the difference between a high risk sexual offender and the low risk offender. The national research is now telling them if you treat low risk sexual offenders the same way you treat high risk sexual offenders, they become high risk sex offenders. So treating all of these people the same, actually creates more safety problems for our children and communities, than having different policies. Evidently, what happens is that low risk sex offenders being subrogated to very restrictive requirements, essentially they disengage from the community, they disengage from their family, they disengage from their

employers, they disengage from all of these social situations that support healthy functioning, so when they disengage they actually pick out the problems, and they become high risk sexual offenders since they don't have these means of support. The confusing part of this bill, I think, is kind of a positive part of the bill. I think it is important that we change the public policy here to put the least amount of negative unintended consequences. As such, I think it is important that we have these different rules for low, middle and high risk sex offenders and I think this bill is attempting to do that. I suspect in 10 or 20 years, we will have some different ideas about how to address this. I think this bill moves us forward without creating more problems; even though we passed a bill like this, that we recognize the other two issues that are mentioned in here. One is primary prevention, what are we doing to make sure that we aren't creating sexual offenders. Most of these sexual offenders are boys, males, what is it about our society that people become sexual offenders. We have to do something about that. The other thing is secondary prevention. What are we doing to make sure that these people who have charges in this regard either get some sort of treatment or are incarcerated in such a way that they aren't involved in further crimes. There are those issues too.

Rep. Delmore: How do we create sex offenders. I guess I find that a very interesting comment. Do you feel that society as a whole, that it is how children are raised, sociological impact?

Sen. Tim Mathern: Evidently there is some research that indicates that kids that have certain confusion about sexual things, at a certain time in their life, and if they can get the proper information to help them with that, it can be prevented. There are things that we can do in our schools that we aren't doing that would be useful. There are things that we can do in our parenting. Parents don't know how to deal with issues of certain kinds of curiosity about sexual matters at a certain time and how do you direct in a proper way. There are things like

that that we can do in our culture that we're not doing a good job in. We understand, for example, that there are certain kinds of computer games, certain kinds of entertainment that actually are destructive to children at a certain part of their sexual development, that if we can change some of that, it helps prevent some of the sexual offender behaviors.

Rep. Delmore: The high recidivism rate for the sexual offenders is higher than for other groups of offenders. I think, depending on what study you're going to look at when you're designing a system, this is very interesting information but I think we have to temper some of that with what we can do as a legislative unit, especially with family upbringing, etc.

Sen. Tim Mathern: I think you are correct, and I did review those articles also. There are some indications, however, that if you have a low risk sexual offender in a treatment group with a high risk sexual offender, sometimes there is evidence that you can't do the treatment. There's no evidence yet that it actually works for high risk offenders. But just that contact between the low risk and high risk offenders provides some transfer of ideas and so we have to stop some of that kind of treatment.

Rep. Dahl: Don't school boards already have the authority to determine how to deal with high risk sex offenders and low and moderate risk offenders or any others. Can't they already say that you can't come on the property or this is how we're going to deal with you.

Sen. Tim Mathern: I think school boards have that kind of responsibility and authority. However, I don't think that they believe they do. I think that they are looking for sort of guidance from the legislature, in a sense giving them the support in terms of how to address this. I think there is a lot of pressure that school boards are dealing with. I think they are looking for some kind of movement towards a statewide policy. I think that this is what this is. I think this bill essentially says, let's work together on this deal. Let's, as a state, provide some information, but let's get the school boards involved in some decision making and that will help

us over the next four or five years to learn what really is helpful to children in protection and what isn't.

Rep. Koppelman: I heard a while back that some of the schools not allowing voting any more in some precincts. But does the first sentence of the bill here, if I'm reading this correctly, it seems to me that what we're saying is, if we pass the bill in this form, we'd be making a state law that a high risk sex offender could not enter school property, and I assume that would mean voting, unless the school board made a policy to allow that, so does that put the school board in charge of deciding who votes.

Sen. Tim Mathern: The way that I interpret that, I would hope that a school board would say, in our county is there a polling place open, regardless of whether or not it is a school. For example, in Cass County, we have a polling place open in the County Auditor's office for any precinct so that a person could go to the county auditor's office and vote, even though they are from a precinct voting place at a school. I would think that in that county, that school could make that policy to say you can't come here if you are a high risk sex offender because, there is an alternative for voting. Another county might say, that we have a mail in ballot. Another county might say, the only place that someone can vote is here at the school, so they might say, in our situation, if you're in that category you would only be able to vote at this time, when there is supervision or something. I believe there is room here so that each county, with its schools, could make policy that fits their area.

Rep. Koppelman: I agree that if we were to use common sense that it should work.

However, I worry about the language in the bill from the standpoint that, in the last county, if there wasn't any other place to vote, and if that school board for whatever reason said we're not going to allow a high risk sex offender on our property, and a state law gives us the

authority to say that, in effect, they are saying that person can't vote. Does that create other problems.

Sen. Tim Mathern: I appreciate that concern. I think every county has the ability for a person to come to the county auditor's office, but I'm not sure. That would be a thing that we can sure check out.

Rep. Klemin: How does this bill address sexual offenders who are themselves students.

Sen. Tim Mathern: I think this bill addresses that situation by permitting a school district to review the case situation before them. I would think that that school would have a policy that students who are sexual offenders are able to attend school and they might have some sort of conditions in place, you know that they are seeing their probation officer or counselor, seeing them on a regular basis so there would be some sort of special circumstances that the school district would apply so that it would permit them to say this student can go to this school.

Rep. Klemin: The first sentence applies to the high risk offenders and let's say we have a person who's not a high risk offender, the second sentence only applies to those offenders who are parents and guardians, according to line 13.

Sen. Tim Mathern: Well, I guess those parents and guardians would need to be involved, I am assuming the student would be under the authority of some parent or guardian.

Rep. Klemin: Well in just reading the language here, "any other registered sexual offender who is a parent or guardian of a student", that's what the second category applies to and what I am talking about is the sexual offender who is a student. I don't see him being addressed here in this.

Sen. Tim Mathern: I think that all of the students who have some charge or conviction as being a sexual offender, are in fact in a situation where they can attend school and not be considered dangerous. If they are considered dangerous, they are in fact, remanded over to

the juvenile court system, and probably would be at the Mandan facility. If they were a danger to a child, they would not be in that community. They would be charged and delivered to a juvenile facility.

Rep. Wolf: Do you consider high risk offenders are generally people whose victims are children. Is that pretty accurate.

Sen. Tim Mathern: I don't know that number.

Rep. Wolf: If they were, wouldn't it be a condition of their probation that they couldn't have contact with children, or wouldn't they be putting themselves at risk of a probation violation to go to a school to vote, so wouldn't the probation restrictions tell them where they could vote.

Sen. Tim Mathern: I think that's the important part of this, to make sure that the school board is talking with the probation people about the situation. It is interesting, we have had an assumption that there are these classes of people out there and that they are different than all the rest of us and our relatives. But most of the sexual offense in our culture, relate to family members. If a grandfather inappropriately touched this grandchild, and that happens and there is a crime committed and a conviction, and there is a finding that this grandfather never violated the touching provisions in our culture with anybody else other than this person. That is the kind of thing that we assume that this is a group of deviants, but it really is many citizens in our culture. Some of these people get into some sort of situation that is inappropriate but it doesn't mean that they are violating all the children in the neighborhood. In fact, there is evidence that the victim often times is revictimized in that the victim and victim's parents are often are asking that there be some continued sort of contact. If this sexual offender, who was part of this family system, is told that they can no longer go to the school or to work, all of a sudden this young girl becomes identified as a victim and she then is revictimized. It's been found that it is actually better for her that this not be public in terms of this one family member

