

MICROFILM DIVIDER

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



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. Solby*

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 #

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. Remose

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

because then she gets ridiculed by her peers at school. That's the kind of situation that we have to be able to sensitive to so that this child who was victimized by the uncle or grandfather, doesn't get ostracized by her classmates. How do you deal with that complicated situation. Well I think some conversation in the school board, conversation with the probation officer, so we figure out how we're going to deal with this situation. Now maybe he shouldn't be there ever, well then that decision would be made. Maybe it's some old guy that is making incorrect decisions that needs to be straightened out versus having a policy where everyone then learns of this girl's family situation and she becomes the butt of all the jokes.

Chairman DeKrey: Thank you. Further testimony in support.

Keith Ternes, Chief of Police for city of Fargo Police Department: I am here in support of this bill. We are all being challenged by the wide variety of issues relative to sex offenders and this would include, but are not limited to, are we monitoring/keeping track of registered offenders that are in our community and try to ensure that they do not reoffend. But arguing it in open court is an issue that we need to deal with relative to sex offenders is how we protect our children from sexual predators that are out there. Just to give you a little historical perspective of how this started. Earlier this summer, Sen. Matthern and Sen. Fiebiger and several other representatives from Fargo sat down to talk about how we could draft legislation specifically to protect our kids from sexual predators in the school environment. The initial thought was to do what a lot of other communities and jurisdictions across the country have done, and that is to restrict where sex offenders could live in proximity to our schools. Many jurisdictions have established buffer zones and certain residence restrictions such as not allowing offender predator sex offenders to live within 1000 ft, - 1500 or 3000 ft. of a school. Through our discussions this summer, we discovered that that presented some questions about security for us because it did nothing in terms of the offenders who may not live next to a

school, but would also be in close proximity. In other words, we may prohibit an offender from living within 1,000 ft. of a school, but we did nothing in terms of the offender who sat on the park bench outside the school and watched kids as they came to and from school. It did nothing about the offender who wanted to drive past a school, or otherwise loiter around the school. So we changed our direction just a little bit, and discussed ways of saying that maybe the most appropriate way would be to say, let's prohibit offenders from actively encroaching or trespassing upon school property. Hence, you have SB 2256. This bill will prohibit offenders from approaching or otherwise trespassing on school property, thus providing children in the school environment, security that they deserve while they are attending school. It will also provide parents with the knowledge that their kids are safe while they are in school. But what the bill won't do, nor should it attempt to do, and that's to remove or eliminate the vigilance that both parents and teachers must continue to exercise towards ensuring our kids are safe from sexual predators while the children are in school. Make no mistake, there are sex offenders out there, some intending to prey on children; however, kids, parents, teachers, or the community as a whole, should not have to fear having an offender go into a school or on school property intending to victimize a child. A parent must continue to educate themselves as to who the offenders are that live in our communities and need to know where the kids are and who they are with. In my opinion, that is the best preventive measure that we can come up with in terms of having sexual predators prey on our kids. I understand that the school administrators have expressed some concern, and I have heard some of those concerns reiterated during the discussion this morning, relative to mandating a policy or how that school policy would regulate offenders from trespassing on school property; although I can't speak for the school officials, I know that law enforcement across the state are more than willing to work

very closely with the school boards and the school administrators in terms of helping them develop their policies.

Rep. Delmore: As you look at this bill and how it's separated out with high risk sexual offenders and other registered sex offenders, do you see a good reason for having two separate sections to this to section 1.

Keith Ternes: In my opinion, no, I do not see any reason to have separate categories. The thing that you have to guard against is this idea or suggestion that simply because you are rated as a high risk offender versus a low risk offender, that you should have a stronger sense of security simply because you were rated as a low risk offender. I think the thing that we need to keep in mind is that the assessment tools that are used. The offenders themselves will acknowledge that this is not an exact science when we attempt to assess sexual offenders, simply because somebody has been rated or assessed as a low or moderate risk to reoffend, in no way is a guarantee that it will not reoffend. In contrast to that, if a person is assessed as a high risk offender, that's not a guarantee that they will reoffend. That's information that we as law enforcement, you as lawmakers and really citizens in general, that information is there to provide them with the information they need to make the best decisions for themselves. If a high risk offender lives down the street from me vs. a low risk sex offender, knowing where that offender was assessed might cause me to impose measures on my children about where they go, how they get there, are they allowed to be in that particular park. No, I don't see any need for there to be a separation between the high risk offender and the low risk offender within the statute.

Rep. Delmore: In Fargo, you've had an incident in one of your schools where one of the students actually was accused, what do you do especially with a student that's been accused of a charge, no convicted on it. Would you leave that to each school to decide what to do.

Keith Ternes: That, as with all criminal cases, accused not convicted certainly raises some issues in terms of how information is publicized and what people do with that information once they have it. Of course, a student who is charged, but not convicted of a sexual offense, that in my opinion, would have to be left up to the administrative authority of that individual school district, how they want to handle the student. A conviction, of course, in Fargo we've actually had three incidents over the last three or four years, where a student has been convicted of a crime, and had to register as a sex offender. The school administrators have looked at those cases on an individual basis, recognizing that they have a requirement to provide that child with an education, in some cases they have tried to find alternative methods of providing that student with that education as opposed to having him actually attending classes.

Chairman DeKrey: Thank you. Further testimony in support.

Bev Nielson, ND School Board Association: Support. We think it is quite simple, simply stated, it isn't too broad and I figure if I can understand it, probably anybody can. I like the fact that the blanket statement is that they'll not be allowed on school property unless it is a formulation of policy by the board. In response to the question about two separate sections, I don't see a reason for two separate sections either. The board policy will take care of that, having said that, it doesn't matter if there are two sections, one is apparently a high risk and the other is for others, and in writing it that way, I think there is a sense that maybe there is a little more latitude with the non-high risk offenders, but in both cases, it is up to the determination of the board and their policy. We think that's a good thing. It doesn't address juvenile offenders specifically, and I am not that familiar with the particular section of Code that you're dealing with here, but a juvenile offender has to register under 12.1-32-15 or whether they are handled under another section, but certainly the board policy is that they are to be treated the same if they were convicted.

Chairman DeKrey: Thank you. Further testimony in support.

Jack McDonald, State Association of Non-Public Schools: (see attached testimony). We kind of like the exceptions in HB 1472. There are some concerns that really aren't addressed by this bill, in any of the private schools, for instance, are on church property. School property and church property are probably one and the same. You have problems then of people who are going to church on Sundays and religious holidays. I think if you look at the exceptions in HB 1472, sections a-f in section 2, I think those would maybe fit in to this section. I think there is a lot to say, that you allow the local school boards to make policy under SB 2256. I think that's good, we think that provision is good. I think there could be some of those exceptions in the bill. If you left the first part of SB 2256 and took the exception part of HB 1472, you might have a change to go forward. HB 1472, has the 50 ft. barrier. We don't see how that will work again, because you don't know where the 50 ft. starts from, does it start from the front door, from the playground, from the edge of the gymnasium. How does it affect public streets, those were some questions that were raised. We do feel that we need to take into account that private schools are on church property most of the time. We are in general support of SB 2256, but we would like to see you consider some of these amendments, perhaps the exceptions that have been set out in HB 1472.

Rep. Delmore: Do you like the separation of high risk sexual offender vs. other registered sexual offenders. We really can't be sure that one of these people have committed a worse crime to begin with, but that doesn't necessarily mean that someone not by risk wouldn't put citizens at risk.

Jack McDonald: I think it probably just confuses the issue a little bit. You are just creating two categories, it's going to be difficult enough to draft a school board policy, without the exceptions, but then if you say that this is only for the one risk, but for the second category we

have a different set of rules, I think personally that might be a little more difficult. I think in this case, you probably should just have one general law, one general policy to cover all sexual offenders, and if you want to, if it turns out that there is a need later on to pars out these certain levels, I think we can do that later on.

Rep. Delmore: This bill seems to give more latitude for local control. The sponsors talked about the fact that, as you may know, that any time you make a laundry list, there are things that you can miss. You seem to favor the laundry list, can you tell me why.

Jack McDonald: We kind of favor the laundry list because I think the laundry list covers some of the essential areas that we have concerns about, specifically the religious services. We think that there should be something in there about that. I think if you don't have the basic laundry list, at least the basics, then you are going to have the law enforcement having difficulty in knowing what is or isn't covered under school board policy. I understand that in most places they will give the school board policy to the local law enforcement so that they may follow it. We think it is wise to start out with some of the basics of the laundry list is not a bad thing to do. You're right, however, that you miss something. You are going to be back in 2 years from now, you can handle it then.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

D'Joyce Kittson, Volunteer Prison Advocate: I'm not really opposing it but I'm not really for it. I mean I'm for it, by way of opposing it. The reason why I'm here is because there are people who fall through the cracks, vulnerable adults. This bill, whether you are for it or against it, I would like you to consider hidden disabilities of traumatic brain injury, whether mild, moderate or severe. People don't see them. There are sex offenders and criminals that come into our communities that are in our relatives and our families and neighbors that have the inability to self-monitor, to organize and plan, guidelines for the future. They grew up in a

home that is full of humiliation, shame and rejection, and controlling and abusive parents.

They grew up and came into the school system. Right now, I am dealing with a person who got out of prison, who wants to be a stepfather, he has a little stepkid in the home. He's going to want to go to school to see his stepson. Because he is taking on the characteristics of the gay type, he is physically bullying my grandson and another person and hurting them. He's bigger than them and tougher, and he's kissing them on the lips and has a little bracelet that says I like guys. I really think that there needs to be some type of consideration in the school system for people. If you are going to punish sexual offenders, high risk, moderate and low, there really needs to be a consideration of some type of program in the system where family members are...this just came up to me recently, this issue. I'm a Christian, I believe in the Bible, I pray for everyone, always. In my life, I was in a bible college years ago, and a spiritual leader, board member who was on that school that was sexually molesting a little girl on the church property. That would never have come forward if it wasn't for the simple fact of persons that are Christians, believe in God, and I had asked God to show me things were a danger and that happened. God showed me through a vision about this man molesting this little girl. I think that what people forget, is that there are fears out there, but there are other people that believe other ways to protect their children. When you humiliate these people that are already coming from a background of humiliation, shame and rejection and ostracize them, which I have had to pick up a sex offender who didn't commit the crime but was punished for it outside a 7-11 here because a hotel didn't want him, they fired him, and he was wandering the streets. What I am saying is that if you are going to punish through laws and legislation and leaders, whether you believe in God or whether you don't believe in God, you need to take a look at the fact that there are people that do not have a place to live, and they get fired from their job, and they are hurting people, and if you are going to stop recidivism, there needs to be

some place and a plan that these people can know. There needs to be. If you're going to create such a hated, unforgiving and harmful attitude, and hate like that, whether he is a mild, moderate or severe sex offender, he's got family, he's got grandchildren, he's got relatives out there, all over the state, his family probably pays taxes. Where is the true rehabilitation for these sex offenders, whether they are high risk, moderate or low. Where is it. It's not there. They wander the streets, because this job fired them. I want you to consider that fact, where do they go.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2256

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/14/07

Recorder Job Number: 5021

Committee Clerk Signature *D. Penrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2256. What are the committee's wishes.

Rep. Klemin: We passed out of here HB 1472, which is a better bill. This one has quite a few problems with it that we brought up during the hearing. I move a Do Not Pass.

Rep. Kretschmar: Second.

Rep. Delmore: I think there are enough differences and I think this bill provides for some local control. We've fixed up a lot of bills in way worse shape than this one.

Rep. Klemin: I think that may be all true, but I'm not quite sure why we would want to go through all the trouble of taking care of all the problems in this bill when we actually have the other bill.

Chairman DeKrey: If we Do Not Pass this bill, I'll go talk to Sen. Nething and tell them whatever they really couldn't live without in this bill, they are going to have to amend it on our bill and then we'll conference committee on it, because I'm sure that, I gathered when the Senate was up here, was that there was a lot in this bill that they really liked. I think if I tell them that we will have to conference on HB 1472, I think we can probably make the changes then. I guess that's my thought.

Rep. Kretschmar: I liked the part in the House bill that sets out some criteria, this one just gives the school board the authority to do it. I think another one of the criteria should be that the school board can set some rules too, if they want to.

Rep. Boehning: There are a lot of schools in Fargo and have two school boards within one city, and how are the citizens going to know what is the policy if there isn't a standard policy for everyone across the board. With the other bill, it sets it out better, and then the school board can do something more stringent if they want to.

Rep. Delmore: All of that may be true, often times we have talked about local control being the issue, and I think school officials are elected just as we are, to make those types of decisions. I think you probably wouldn't see a great number of differences within their policy, but I think that's a school board decision to make for their school. What works in West Fargo, may not work in Ellendale, and I think that is shared by all the schools in the state. I just think there is a place and time for local control. As legislators we always push that, until it is inconvenient for us. I am going to reject the Do Not Pass.

Rep. Klemin: I guess I can understand the concerns here. The concern I have is that this is going to take some amending to take care of the problems. Even Sen. Mathern came in and said the bill is confusing but it has some positive features. There are high risk voting issues, the school could have a policy not preventing it, or if they don't have a written policy, then in which case everybody wouldn't be able to come in there. Keith Ternes, the chief from the Fargo Police Department, came in and said he supports the bill, but there shouldn't be two categories of offenders like there is in here. Jack McDonald came in and said they preferred HB 1472, we've addressed the issues on church property and the non-public schools in there and he was suggesting that if you are going to have this, we should combine it with HB 1472. I

think that if this is amended, we'll end up amending it to look pretty much like HB 1472. We may as well as use that as the vehicle to start with.

Chairman DeKrey: The clerk will call the roll.

9 YES 4 NO 1 ABSENT

DO NOT PASS

CARRIER: Rep. Kingsbury

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2256

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/5/07

Recorder Job Number: 5756

Committee Clerk Signature

D Penrose

Minutes:

Chairman DeKrey: We will call the House Judiciary to order. Clerk call roll. Reps. Dahl and Griffin, please explain your amendments.

Rep. Griffin: This amendment would basically take SB 2256, and amend the bill we just passed and signed by Governor...

Chairman DeKrey: I don't think it was signed by the Governor yet.

Rep. Griffin: It would amend that version of the law to put it in the form that we had passed out earlier.

Rep. Klemin: What was the number of the other bill.

Chairman DeKrey: HB 1472.

Rep. Griffin: You will see at the top it says a new section created by HB 1472. That part was amended.

Rep. Dahl: This essentially puts state policy in and allows the flexibility for school boards on top of that to do additional things. We felt that this should go to conference...

Chairman DeKrey: Did you take care of the offender when he's a student at the school.

Rep. Dahl: Yes, in subsection 2 (d) and also the situation of attending a religious service, attending parent/teacher conference and they are allowed to go to other school events, but

they have to have written notice or written permission in subsection 2; at least advance permission. We also put in some language about trying to encourage dialog between the school board and law enforcement.

Chairman DeKrey: I see there, that they have to provide a copy to local law enforcement, on #1 at the bottom of the first page. We don't need to reconsider this because they sent it to us from the Floor.

Rep. Klemin: Can we sort of review what happened here. I see originally SB 2256 we gave a Do Not Pass recommendation to it and sent it back to the Floor. HB 1472, I presume we gave it a Do Pass, now didn't that go over to the Senate and they amended it. Then we concurred with their amendments.

Chairman DeKrey: Sort of.

Rep. Klemin: So what we're doing here is basically changing this SB 2256 into HB 1472 the way it was when it left the House.

Chairman DeKrey: Correct.

Rep. Klemin: I mean more or less.

Rep. Dahl: I move the amendments.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Meyer: Second.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2256

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/9/07

Recorder Job Number: 5845

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2256.

Rep. Dahl: I move that we reconsider our actions by which we passed out SB 2256.

Rep. Klemin: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us.

Rep. Dahl: Essentially these amendments seek to clarify and dovetail with HB 1472. There weren't any changes in subsection 1, but in subsection 2, we just thought to further clarify that if the school board does not have a written policy on sex offenders, then essentially this would be the default rule, and then in subsection 2a, we just included the words "with written permission of the principal or administrator" for conferences, to essentially give the school a little bit more control over the situation.

Rep. Klemin: Just to elaborate just a little bit, I think we've already got HB 1472, which is passed, which allows the school board to set a policy. Basically, what we're trying to do is to have a default provision, in HB 1472 it says "except for voting, no sexual offender is allowed on school property unless the school board has adopted a policy" and what this would say, in subsection 2, if they don't have a policy then this is the default rule. These amendments to SB 2256 would not apply if the school board has adopted a policy. I'm thinking that this makes it a

little clearer to try and dovetail these two bills together. That is my understanding for the reason for this.

Chairman DeKrey: Rep. Dahl moves the amendment and Rep. Klemin seconded it. Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Koppelman: Second.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

Date: 3/14/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2256

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Klemin Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging			Rep. Onstad		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 10:42 a.m.

Module No: HR-48-5264
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2256, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2256 was placed on the Fourteenth order on the calendar.

**House Amendments to Engrossed SB 2256 (70462.0201) - Judiciary Committee
04/06/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. The new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

Sexual offender presence near schools prohibited.

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.
2. This section does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has filed with the school written permission from a probation officer allowing the offender's presence at school functions where other adults are present with the students.
 - c. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender is not on supervised probation and has requested advance permission from the superintendent or school board allowing the offender's presence at school functions.
 - d. The offender is a student at the school.
 - e. The offender is attending a religious service at the school while the school is not in session.

3. An individual who violates this section is guilty of a class A misdemeanor."

Renumber accordingly

Date: 4/5/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2256

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller					
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Griffin

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

REPORT OF STANDING COMMITTEE

SB 2256, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2256 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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2. This section does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has filed with the school written permission from a probation officer allowing the offender's presence at school functions where other adults are present with the students.
 - c. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender is not on supervised probation and has requested advance permission from the superintendent or school board allowing the offender's presence at school functions.
 - d. The offender is a student at the school.

e. The offender is attending a religious service at the school while the school is not in session.

3. An individual who violates this section is guilty of a class A misdemeanor."

Renumber accordingly

**House Amendments to Engrossed SB 2256 (70462.0202) - Judiciary Committee
04/09/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the principal or administrator of the school, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has filed with the school written permission from a probation officer allowing the offender's presence at school functions where other adults are present with the students.
 - c. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender is not on supervised probation and has requested advance permission from the superintendent or school board allowing the offender's presence at school functions.
 - d. The offender is a student at the school.

e. The offender is attending a religious service at the school while the school is not in session.

3. An individual who violates this section is guilty of a class A misdemeanor.”

Renumber accordingly

Date: 4/9/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2256

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Griffin

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

REPORT OF STANDING COMMITTEE

SB 2256, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2256 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

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2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the principal or administrator of the school, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has filed with the school written permission from a probation officer allowing the offender's presence at school functions where other adults are present with the students.
 - c. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender is not on supervised probation and has requested advance permission from the superintendent or school board allowing the offender's presence at school functions.

- d. The offender is a student at the school.
 - e. The offender is attending a religious service at the school while the school is not in session.
3. An individual who violates this section is guilty of a class A misdemeanor."

Renumber accordingly

2007 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2256

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2256**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: April 19, 2007 #1

Recorder Job Number: 6147

Committee Clerk Signature

Maura L. Solbey

Minutes: Relating to sex offenders on school property.

Senator Olafson, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen Olafson requested a House member to explain there amendments.

Rep. Griffin reviewed the amendments stating the bill is adding language that they thought the schools would do any way not mandating it, but forcing them to do one or another. Spoke of the exceptions from the standardized ruling for a school board to make there own.

Rep. Klemin stated that this bill dove-tails HB 1472 and gave the details (meter 1:42) citing that if a school does not make there own policy then they can use this default ruling in great detail.

Sen. Fiebiger responded that when SB 2256 came to our committee we had testimony from law enforcement and the school board in support of that bill. We did not see them here on HB1472. What were the problems on 2256 from the Houses stand point that we did not see when we heard from these people in the Senate side?

Rep. Griffin stated that the "standard" was amended by the Senate to try to make the bills look the same as 1472.

Sen. Fiebiger asked why this bill took so long to get to conference committee. He also added what was problematic with 1472. SB 2256 forces the schools to comply with a mandate if they

do not have a written policy. I am not sure that this addresses every factual circumstance and they may comply with things they may not want to comply with. Spoke of how difficult it would be to address every incident. SB 2256 does not give them flexibility and we are tying their hands.

Rep. Dahl replied that she did not think that this ties their hands at all because it is within their province to adopt a policy and that is their prerogative. The A.G.'s office stated that they would be willing to help the schools in adopting a policy. We are saying that if they do not adopt a policy then default rules. In HB 1472 we do not talk about what happens if they do not adopt a policy. She spoke in detail of the default rule provision.

Sen. Fiebiger stated that what if the offender is a student at the school and the school does not want the student back? What if there are mitigating circumstances that don't allow that to happen, is the student then allowed to go to any school they want to. They spoke of what the policy states.

Rep. Dahl stated that they go to alternative schools.

Sen. Olafson spoke of rural schools that have no need for any of these policies and we are mandating them to do it.

Rep. Klemin stated that not making a choice is a policy.

Rep. Lyson replied that we are playing big daddy saying to a political subdivision to do something.

Rep. Dahl spoke of working with the law enforcement and how they stated that it was important to them that the schools address this and schools all doing something different.

Sen. Lyson appreciates law enforcement's input but they already have policies on how to deal with what they have to do regardless of a school policy.

Rep. Dahl stated that we are not making their policy, we are allowing them to.

Sen. Lyson replied that we are sticking our noses into other peoples business.

They discussed the different levels of sex offenders, zoning in animal feed lots and how a small community would be unable to spend the money to hire an attorney and will be forced to do this by default. Most areas have so few offenders and should deal it on a case to case bases.

Rep. Klemin stated that if HB 1426 concurred and passed by the house if we change this back then we will have two different bills and the last one standing would be the prevailing one.

Sen. Fiebiger spoke again at the lack of police representation when they heard the bill and why would we mandate something with so little representation.

Rep. Griffin spoke of removing Sub Sec. B of Section 2 and add onto d and e the language "with written permission of the school" as a default language.

Sen. Lyson stated that a probation officer would not give permission and they discussed who would give the authority. **Sen. Fiebiger** stated again how difficult it is to make a blanket mandate when there are too many different situations and **Rep. Dahl** replied that they have the opportunity to do this at any time. They discussed non public schools, the YCC, and the diversity in religions.

Sen. Lyson stated that if you leave the language in you will have the reservation schools having issues with it and they discussed this in great detail.

Rep. Klamin asked if we delete 2b and amend 2d adding with written permission of the superintendent of a school, delete 2e. They adjourn to create an amendment for the committee to review.

Senator Olafson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2256**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 19, 2007 #2

Recorder Job Number: 6175

Committee Clerk Signature

M L Solby

Minutes: Relating to sex offenders on school property.

Senator Olifson, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen. Olafson reviewed the new draft of amendments Att. #1 that the committees were in agreement from the morning meeting. They discussed what language they should use for consistency through out the bill.

Sen. Fiebiger stated that Sec. B took out sex offenders on probation and they (meter 4:20) reviewed this. They discussed within the two bills what language stays and what changes, also at great lengths of using the word superintendent, school board or governing body and having all three bodies' permission may cause a conflict. They decided to leave out superintendent but he could be included by policy if the school so choose. Rep. Klemin stated that they are not trying to supersede the school by making them do this. **Sen. Fiebiger** reiterated the case by case bases verses the default language that you will be operating under once this is law and until they have the time to formulate there policy, this is likely to be the law as well as the policy for many schools, and why are we mandating this. Even with the short time we have spent on this we have found so many exceptions and this is only the beginning- they discussed this.

Sen. Lyson questioned what would happen in the case of a military funeral of a person who died in Iraq. The funeral was held at the school. Are they going to run for permission not that? If we pass this it is the law not a policy. The committee discussed; parent or guardian, mandating the school board to make the policy, compared what would take the precedence in the law between 1472 and 2256.

Senator Olafson, Chairman closed the hearing pending a written copy of the amendment for the committees review before taking final action.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2256

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 19, 2007

Recorder Job Number: 6181 #3

Committee Clerk Signature

Marie L. Salby

Minutes: Relating to sex offenders on school property.

Senator Nething, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen Olafson requested Sen. Olafson to review his amendments for the committee – Att. #2

Rep. Klemin stated that the bill is only referring to Sec. 1 He and Sen. Olafson referred to

there visit with legislative council and they stated that 1472 would not change any other section of the bill then Sec. 1.

Sen. Fiebiger stated "designed of board of body"-legislative council put in through out the bill.

Spoke of using "upon" the request of the board of body (meter 2:27) and who makes what request.

Rep. Dahl had concern that the language was broad enough.

Sen. Lyson reviewed for the committee that this is only if they do not have a policy.

Rep. Klemin made the motion that the House recedes from the amendment and further

amends –Att. #2 and **Rep. Griffin** seconded the motion all members voted for the motion and the motion passes.

Senator Nething, Chairman closed the hearing.

April 19, 2007

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2256

That the House recede from its amendments as printed on page 1385 of the Senate Journal and pages 1545 and 1546 of the House Journal and that Engrossed Senate Bill No. 2256 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. The new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

Sexual offender presence near schools prohibited.

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.
2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the principal or administrator of the school, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender is not on supervised probation and has requested advance permission from the superintendent or school board allowing the offender's presence at school functions.
 - c. The offender is a student at the school with the written permission of the superintendent, school board, or governing body.

3. An individual who violates this section is guilty of a class A misdemeanor.”

Renumber accordingly

JK
4-20-07
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2256

That the House recede from its amendments as printed on page 1385 of the Senate Journal and pages 1545 and 1546 of the House Journal and that Engrossed Senate Bill No. 2256 be amended as follows:

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2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.
 - c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.

d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.

2 of 2

3. An individual who violates this section is guilty of a class A misdemeanor."

Renumber accordingly

Date: 4-19-07
Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2256

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____ House Precedes from Amend

Action Taken Do Pass Amend Att # 2

Motion Made By Rep Klemin Seconded By Rep Griffin

Senators	Yes	No	Representative	Yes	No
Sen. Olafson	✓		Rep. Klemin	✓	
Sen. Lyson	✓		Rep. Dahl	✓	
Sen. Fiebiger	✓		Sen. Griffin	✓	

Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

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

REPORT OF CONFERENCE COMMITTEE

SB 2256, as engrossed: Your conference committee (Sens. Olafson, Lyson, Fiebiger and Reps. Klemin, Dahl, Griffin) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1545-1546, adopt amendments as follows, and place SB 2256 on the Seventh order:

That the House recede from its amendments as printed on page 1385 of the Senate Journal and pages 1545 and 1546 of the House Journal and that Engrossed Senate Bill No. 2256 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

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2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.

- c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.
- d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.

3. An individual who violates this section is guilty of a class A misdemeanor."

Renumber accordingly

Engrossed SB 2256 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2256

A# #1
1-24-07

SB 2256

Chairman Nething, members of the Senate Judiciary Committee, I am Tom Fiebiger, Senator, District 45, Fargo. I am here today to testify in support of SB 2256.

This legislation is designed to help keep our children safe from registered sex offenders and provide local school boards the local control, latitude and flexibility to determine what exceptions to the requirement may be appropriate for their community. Local school boards or governing bodies in cases dealing with private school would be required to adopt a written policy and provide notice to each registered sex offender with an address within the district of the policy.

The legislation also makes it a class C felony for a sexual offender who violates this statute.

It is my understanding that currently 18 states have laws prohibiting sex offenders from living within a certain distance (generally ranging from 1000 to 2500 feet) from schools, playgrounds and other facilities where children gather. There are also many local ordinances being enacted. Typically, there is rarely any argument against passage. It seems likely that a 1000 foot buffer zone in North Dakota may put everyone outside the city limits in many of our small towns. You also have the issue of what happens if the school district decides to build a new school. Do registered sex offenders living within 1000 feet of the new school need to move? Would registered sex offenders currently living within 1000 feet of schools need to move? What if they can't sell their home?

Some of the recent literature coming out suggests that our children are not safer by creating these set distance buffer zones. They call the buffer zones "feel good legislation." The sex offender will go somewhere where they have access to a victim. This distance provision may possibly put children in more danger by creating a false sense of security. One individual with the Department of Justice noted he certainly understands public sentiment to protect its citizens, but is concerned that buffer zones will have the effect of driving sex offenders underground.

Iowa has had a statewide law with a buffer zone restriction and they now have almost 300 sex offenders unaccounted for – an amount that is double the amount unaccounted for before the buffer zone went into effect. That does not keep the children safer. The Iowa County Attorneys Association has urged legislators to repeal the legislation. I think Fargo Police Chief Keith Ternes will be able to address this concern in more detail.

The Fargo Schools have relayed a few questions to me about the bill. I think most of their concerns are addressed in the provision that allows the local school board to adopt their own written policy. It might be helpful to add an amendment in line 8 by putting a comma after "elementary" and inserting "middle school." The thought was to keep the prohibition to the school property itself since trying to expand the definition to locations where school events may take place would be fraught with multiple definitional problems

of what constitutes a "school event." This suggested modification would be consistent with that intent and clarify that all children in our schools are protected under the law.

Segregating folks that communities are fearful of is a historical way of attempting to address problems. But sending registered sex offenders to some obscure location will not make our children safer, may lead to a false sense of security and may well make it harder for law enforcement to keep an eye on them. We are not interested in "feel good" legislation. While there is no perfect solution to this difficult issue and there are many other components to be addressed, this proposed bill is a balanced approach that takes steps to actually keep our children safer. It also gives local school board officials the flexibility they need to address their own unique community issues on a case by case basis.

Mr. Chairman, members of the Senate Judiciary Committee, I respectfully request a "Do Pass" recommendation on SB 2256.

AA #2
1-24-03

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.
 - f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within ten days of coming into a county in which the individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
 - 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 c.
 - b. 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 an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child,

and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- c. Is a juvenile 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 the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. 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 court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child 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, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been found guilty of, an 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; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
 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 e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
 5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the

department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval

determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. 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 a crime against a child or as a sexual offender, or an equivalent offense of another state or the federal government. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, 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 individual is an adult other than a parent of the victim, or an equivalent offense of another state or the federal government; 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.
9. An individual required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year. An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:

- a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sex offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The agency responsible for conducting the risk assessment shall notify the offender as to the level of risk assigned. An offender may request a review of that determination with the appropriate agency and may present any information that the offender believes may lower the assigned risk level.
13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
- a. Is required to register for a lifetime under subsection 8;
 - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
 - c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification to the victim of the offense and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

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 or for disclosing or for failing to disclose information as permitted by this section.
15. 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.

16. 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 August 1, 1999, 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.

12.1-32-16. Restitution to be required of certain offenders - Penalty. Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.

Att # 3a
1-24-07

SB 2256
Judiciary Committee
January 24, 2007

Chairman Nething and Members of the Judiciary Committee,

My name is Tim Mathern. I am the Senator from District 11 in Fargo.

After the session in 2005 a family in Fargo contacted me about a person in their neighborhood who was convicted of a sex offense. Her concern was that the person was living near their school and attending school functions. I met with school PTA groups at various schools and heard about parent concerns.

Initially I thought a bill outlawing living in a specific area around schools would be the way to handle this. However I learned that laws passed in other states had various outcomes, one negative outcome of laws that prescribed an area that prohibited residence, led to sex offenders going underground. The police new less about sex offenders' locations after the bill was passed than they new about their residence before the bill was passed. They saw it as less protection not more. I also heard from local law enforcement that they wanted laws they could enforce by keeping the whereabouts of sex offenders current and laws that created stiffer penalties for law violators saying the best protection is incarceration.

Members of the committee last session we had a bill on this topic that was defeated so we have some history on the concerns of the Senate. I think this bill moves us closer to protection of children, comfort to parents, and local decision-making by schools and law enforcement and has a real chance for passage. It is a first step toward safer communities.

Meanwhile we will still need to work on Primary Prevention- figuring out how to prevent persons from becoming sexual predators in the first place. We will need to work on Secondary Prevention- making sure people re sexual predators are treated where treatment has some likely success.

Others are here to add more testimony. I ask for your Do Pass recommendation on Senate Bill 2256. Thank you for your consideration.

AH #36
1-24-07

National Legislative Briefing

Sex Offender Management Policy in the States



Agenda

January 27—28th, 2007
The Peabody Hotel
Little Rock, Arkansas

Saturday, January 27, 2007

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| 7 am | Registration Desk Open |
| 7:30 am | Breakfast |
| 8 am | Opening and Welcome |
| | Speakers:
Assemblyman Jeffrion Aubry , <i>New York</i>
Mr. Ward Loyd , <i>Former State Representative, Kansas</i>
Mr. Drew Molloy , <i>U.S. Department of Justice, Bureau of Justice Assistance</i> |
| 8:30 am | Sex Offenders 101: Understanding a Diverse Population |
| | Speakers:
Ms. Madeline Carter , <i>Center for Sex Offender Management</i>
Mr. Robert McGrath , <i>Vermont Treatment Program for Sexual Abusers</i> |
| 9:15 am | Break |
| 9:30 am | A Snapshot of Sex Offenders: Juveniles vs. Adults |
| | Speaker:
Dr. Judith Becker , <i>University of Arizona</i> |
| 10:15 am | Participant Discussion—Managing Juvenile and Adult Offenders |
| 11:45 am | Plenary Luncheon |
| | Speakers:
Ms. Laura Rogers , <i>U.S. Department of Justice, SMART Office</i>
Ms. Patty Wetterling , <i>Child Advocate</i> |
| 1 pm | Sex Offender Management Policy: Understanding the Needs of Victims |
| | Speakers:
Ms. Elizabeth Barnhill , <i>IowaCASA</i>
Ms. Gail Burns-Smith , <i>National Alliance to End Sexual Violence</i> |
| 1:45 pm | Break |
| 2 pm | Legislative Trends—An Overview of State Sex Offender Laws |
| | Speaker:
Dr. Kurt Bumby , <i>Center for Sex Offender Management</i> |

3 pm Concurrent Breakouts
 Breakout #1—Exclusion Zones
 Speakers:
Mr. Tom Ferguson, *Black Hawk County Attorney, Iowa*
Secretary Roger Werholtz, *Kansas Department of Corrections*

Breakout #2—Electronic Monitoring of Offenders
 Speakers:
Mr. Matthew DeMichele, *American Probation & Parole Association*
Ms. Judith Sachwald, *Maryland Division of Parole and Probation*

4 pm Break
 4:15 pm Concurrent Breakouts
 Breakout #3—State Sex Offender Registries
 Speakers:
Ms. Randi Lanzafama, *Virginia Department of Corrections*
Ms. Phyllis Shess, *San Diego SAFE Task Force*

Breakout #4—Community Notification
 Speaker:
Detective Robert Shilling, *Seattle Police Department*

5:15 pm Adjourn for the day

Sunday, January 28, 2007

7:30 am Breakfast
 8 am Managing Sex Offenders: The Challenge for Community Practitioners
 Speakers:
Ms. Kim English, *Colorado Department of Public Safety*
Ms. Randi Lanzafama, *Virginia Department of Corrections*
Ms. Phyllis Shess, *San Diego SAFE Task Force*

9 am Break
 9:15 am Public Education: Promoting Community Awareness and Safety
 Speaker:
Ms. Maxine Stein, *Stop It Now!*

10:15 am Break
 10:30 am Looking Ahead: Sex Offender Management Policy in 2007 & Beyond
 Speakers:
Mr. Drew Molloy, *U.S. Department of Justice, Bureau of Justice Assistance*
Ms. Carol Ivy, *Up Your Image Consulting*

11:30 am Summary and Closing
 12 pm Adjourn

AH #4a
1-24-07

60th Legislative Session
State Senate
Senate Judiciary Committee
SB2256

Senator Dave Nething and members of the Senate Judiciary Committee, my name is Dan Huffman, Assistant Superintendent for the Fargo School District and I am here today to speak in support of the penalty provisions included in SB2256 and the attempts to limit offenders from being on school property. Safety of our students is and always has been a priority for our district. We recently went through a district process that attempted to write a policy that would accomplish this end. What we discovered is that it is impossible for us to draft a policy that would limit some and allow some offenders access to our schools because we do not have access to the assessment data that was used to classify the individual as an offender. Consequently, we decided that our policy would prohibit all adult offenders access to our buildings.

Senate Bill 2256 would provide for a felony conviction for registered sex offenders who enter public or private school property. As a school district we support this limitation on offenders being on school property. We do, however, have some concerns with the current language. We have shared these concerns with Senator Fiebiger who is a sponsor of this bill.

These are the concerns we have with the legislation.

1. The requirement for the district to notify the offender of the district policy would be difficult, if not impossible to fulfill. We do not know who these individuals might be unless we establish a person who would have daily contact with the police.
2. There also exists the possibility that the offender will be a student who we are legally required to educate.
3. The language needs to include kindergarten, preschool and middle school facilities.
4. There are Fargo residents who are in the West Fargo School District and there are Fargo School District residents who have Horace addresses.

One possible solution could be to eliminate the notification requirement and have the notification occur at the time they register. With this requirement removed the bill could be amended to read as follows:

A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

Sexual offenders on school property. A sexual offender who is required to register under section 12.1-32-15 may not enter on the real property comprising a public or private preschool, kindergarten, elementary, middle or high school. ~~unless allowed on the property through compliance with a written policy adopted by the school board of the~~

~~public elementary or high school or the governing body of a private elementary or high school with control over the property. 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. A sexual offender who violates this section is guilty of a class C felony.~~

Testimony provided by

Dan Huffman
Fargo Public School District #1

REGISTERED SEX OFFENDERS PROHIBITED FROM SCHOOLS AND GROUNDS

Adult individuals registered as sex offenders in North Dakota or any other state are prohibited from the premises, which includes buildings and grounds of any school in this district. In addition sex offenders are prohibited from the premises of other non-school properties during use for school activities and recreation. This policy is written as a safety measure for our students.

Employment

An individual listed by the state of North Dakota or any other state as a registered sex offender is ineligible for employment within the school district. Companies or vendors with whom the district may contract for services that would bring those entities' employees into school facilities will be notified of this policy and will be expected to abide by it.

Presence on School Property

No registered sex offender shall come on Fargo Public Schools' property except as provided below. If any employee of the school district becomes aware of any registered sex offender's presence on school property, he/she shall immediately inform the principal or administrator in charge of the facility or school function, who shall direct the individual to leave the premises immediately. Employees may become aware of a sex offender through a number of methods, personal knowledge, websites, or contact by a citizen of the community. Members of the community are also encouraged to contact school officials. The principal shall request assistance from local law enforcement authorities if offender resists the principal's directives. If the registered sex offender repeats coming on school property, the principal may confer with the Superintendent regarding possible legal action.

Community Notification

State law designates law enforcement as the entity responsible for notifying the community of the presence in the neighborhood of a registered sex offender. Neither this policy nor state law imposes any duty upon a principal or any other employee of the local school district to review the sex offender registry for individuals who may come on the property. Fargo Public Schools is not required to investigate who may be a sex offender, nor does the district have a requirement to advise the students, parents or the general public regarding the location of a registered offender. Parents and others may receive up-to-date information regarding registered sex offenders at the police web site, currently <http://www.cityoffargo.com/CityInfo/Departments/Police/E-news/>

Parents who are registered sex offenders

A parent of a school aged child who has been identified by the court as a sex offender is required to identify themselves to the school principal at the time the child is enrolled. Upon notification and investigation, the principal with the Superintendent's approval may modify the process of parental inclusion in relationship to direct educational programming and reports such as parent teacher conferences. Modifications might include providing another location such as the District Office or phone/computer access to reports and interaction with the instructional staff.

Principals shall speak with the parent upon learning of their status as a sex offender to communicate the restrictions of this policy and to establish open dialogue with the parent. The principal shall take all appropriate measures to protect the privacy of the sex offender's child(ren).

Chairman DeKrey, members of the House Judiciary Committee, I am Tom Fiebiger, Senator, District 45, Fargo. I am here today to testify in support of SB 2256.

This legislation is designed to help keep our children safe from registered sex offenders and provide local school boards the local control, latitude and flexibility to determine what exceptions to the requirement may be appropriate for their community. Local school boards or governing bodies in cases dealing with private school would be required to adopt a written policy.

It is my understanding that currently 18 states have laws prohibiting sex offenders from living within a certain distance (generally ranging from 1000 to 2500 feet) from schools, playgrounds and other facilities where children gather. There are also many local ordinances being enacted. Typically, there is rarely any argument against passage. It seems likely that a 1000 foot buffer zone in North Dakota may put everyone outside the city limits in many of our small towns. You also have the issue of what happens if the school district decides to build a new school. Do registered sex offenders living within 1000 feet of the new school need to move? Would registered sex offenders currently living within 1000 feet of schools need to move? What if they can't sell their home?

Some of the recent literature coming out suggests that our children are not safer by creating these set distance buffer zones. They call the buffer zones "feel good legislation." The sex offender will go somewhere where they have access to a victim. This distance provision may possibly put children in more danger by creating a false sense of security. One individual with the Department of Justice noted he certainly understands public sentiment to protect its citizens, but is concerned that buffer zones will have the effect of driving sex offenders underground.

Iowa has had a statewide law with a buffer zone restriction and they now have almost 300 sex offenders unaccounted for -- an amount that is double the amount unaccounted for before the buffer zone went into effect. That does not keep our children and grandchildren safer. The Iowa County Attorneys Association has urged legislators to repeal the legislation.

Senate Bill 2256 provides that local school boards or governing entity will make the final determination as to whether a sex offender may be allowed on the property for activities involving the sex offender's own child or for purposes of voting in a school building used as a public polling place.

The Attorney General's office assisted in modifying the bill to add the immunity provision in Section 2 to provide immunity to those individuals making risk determinations or adopting policies governing or permitting the presence of sex offenders on school property. The Attorney General's office has also indicated a willingness to work with local school boards to prepare a template for a written policy.

A sexual offender who violates this provision is guilty of a Class A misdemeanor.

Segregating folks that communities are fearful of is a historical way of attempting to address problems. But sending registered sex offenders to some obscure location will not make our children safer, may lead to a false sense of security and may well make it harder for law enforcement to keep an eye on them. While there is no perfect solution to this difficult issue, this bill is a balanced approach that takes steps to actually keep our children safer. It also gives local school board officials the flexibility they need to address their own unique community issues on a case by case basis.

Mr. Chairman, members of the House Judiciary Committee, I respectfully request a "Do Pass" recommendation on SB 2256.

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SB 2256
Judiciary Committee
March 12, 2007

Chairman DeKrey and Members of the Judiciary Committee,

My name is Tim Mathern. I am the Senator from District 11 in Fargo and cosponsor of this bill.

After the 2005 session, a family in Fargo contacted me about a person in their neighborhood who was convicted of a sex offense. Her concern was that the person was living near their school and attending school functions. I met with school PTA groups at various schools and heard about parent concerns.

Initially I thought a bill outlawing living in a specific area around schools would be the way to handle this. However I learned that laws passed in other states that prescribed an area that prohibited residence, led to sex offenders going underground. The police knew less about sex offenders' locations after the bill was passed than they knew before the bill was passed. Law enforcement learned the new laws as offering less protection for children not more. Local law enforcement in Fargo and West Fargo also told me they wanted laws they could enforce by keeping the whereabouts of sex offenders current. Schools also wanted some guidance about how to proceed.

I think SB 2256 takes us in a direction with the lowest risk of unintended consequences. I think this bill moves us closer to protection of children, comfort to parents, and local decision-making by schools and law enforcement. It is a step toward safer communities.

Meanwhile we will still need to work on Primary Prevention- figuring out how to prevent persons from becoming sexual predators in the first place. We will need to work on Secondary Prevention- making sure people who have sexual problems are treated where treatment has some likely success.

I ask for your Do Pass recommendation on Senate Bill 2256. Thank you for your consideration.

March 12, 2007

HOUSE JUDICIARY COMMITTEE
HB 2256

CHAIRMAN DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the State Association of Non-Public Schools (SANS). We support SB 2256 but ask that you consider amending it to include the exceptions you placed on HB 1472 that are attached.

We would suggest you add the exceptions starting on page one, line 13, where SB 2256 deals with other sex offenders.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

FIRST ENGROSSMENT

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1472

Introduced by

Representatives Clark, Berg, Dietrich, Thoreson

Senators Flakoll, Nelson

1 A BILL for an Act to create and enact a new section to chapter 12.1-20, a new subsection to
2 section 12.1-20-05, and a new subsection to section 12.1-20-12.1 of the North Dakota Century
3 Code, relating to the presence near schools of certain sexual offenders; to amend and reenact
4 subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to liability of
5 school officials; and to provide a penalty.

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

7 **SECTION 1.** A new section to chapter 12.1-20 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Sexual offender presence near schools prohibited.**

10 1. A sexual offender, as defined in section 12.1-32-15, who has pled guilty or been
11 found guilty of or has been adjudicated delinquent of a class A misdemeanor or
12 felony sexual offense against a minor or is required to register under section
13 12.1-32-15 or equivalent law of another state may not knowingly enter upon the
14 real property comprising a public or private elementary or high school except as
15 provided in this section.

16 2. An individual who violates this section is guilty of a class A misdemeanor. This
17 section does not apply under the following circumstances:

18 a. The offender is a parent or guardian of a student attending the school and the
19 offender is attending a conference at the school with school personnel to
20 discuss the progress of the student academically or socially, participating in
21 child review conferences in which evaluations and placement decisions may
22 be made regarding special education services, or attending conferences to
23 discuss other student issues, including retention and promotion.

Sixtieth
Legislative Assembly

1 14. A state officer, law enforcement agency, or school district or any appointee, officer,
2 or employee of those entities is not subject to civil or criminal liability for making
3 risk determinations, allowing a sexual offender to attend a school function under
4 section 1 of this Act, or for disclosing or for failing to disclose information as
5 permitted by this section.