

2009 HOUSE JUDICIARY

HB 1159

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1159

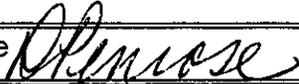
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/14/09

Recorder Job Number: 6948

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1159.

Tara Lea Muhlhauser, Director of Children & Family Services, Division of Human

Services: Sponsor (attachment).

Rep. Koppelman: Is there another way to go about this.

Tara Lea Muhlhauser: We have spent some time looking at this and we've determined that we just can't quite do that. Because of the way the law is written, it requires us to destroy every reference to that particular child. For us, while we may be able to destroy some of those records, there are other records which we can't destroy because we are still actively working with that child, such as treatment, etc.

Rep. Koppelman: Is this a federal or a state law that requires this.

Tara Lea Muhlhauser: It is the state law, under the Juvenile Court Act, that orders us to destroy all references or indications that the child was somehow involved with any kind of juvenile court activity; for us that means pretty much the child's foster care records, because to be in foster care there usually has to be some kind of court order.

Rep. Koppelman: So why not attempt to change that state law, which you've just described, instead of saying "all references" and say "except for that necessary data that is non-specific.

Tara Lea Muhlhauser: Actually we didn't think it was our province to do that. We would like our record retention policy follow behind the federal guidelines and we will destroy those records on our cycle as opposed to your order.

Rep. Koppelman: You're asking us to trust your department to destroy those records.

Tara Lea Muhlhauser: Essentially yes; however, we have strong confidentiality provisions around our records as well.

Rep. Delmore: Are we talking about the electronic information, as well as hard copy information.

Tara Lea Muhlhauser: Yes, both hard copy and electronic systems.

Rep. Delmore: Are there any records that you are keeping for juveniles that really are mandated by the court that they need to go away, because of restrictions on age and sometimes because they are either sealed or destroyed at a certain age. Are any of those types of records what you are holding on to.

Tara Lea Muhlhauser: I don't know that I could answer that with a definitive yes. I think that may take some research. The difficulty with this position, is that this statute has been in place for a long time. Until this last two year period of time, no one has ever used it to ask for records destroyed in this manner. We have typically been able to use our institutional or department cycle to destroy these records. Because it says any and all records, do we have a piece of information somewhere in a child's background or history that refers to the fact that they were in foster care, we might. If it refers to the fact that they were in foster care, the only way to get to foster care is through a court process.

Rep. Delmore: Do you have information on how long you keep the information on the child, can you hold onto the records for 50 years.

Tara Lea Muhlhauser: I'm probably not the best person to speak to the various record retention schedules because there really are a number of different cycles of how long to keep records, such as the Child Welfare program and other regional service centers. Could we hang onto a child's records for 50 years, I think our records retention schedule would tell us "no". Does it happen? It might.

Rep. Delmore: Is it possible to see a timetable of the retention schedules that you use.

Tara Lea Muhlhauser: I will put together that information for you. The county social service, a lot of times, have their own records retention policies.

Chairman DeKrey: I have a special needs daughter, so she is going to be tied up in the system for the rest of her life. She doesn't have a juvenile record, but if she did, I could see where there would be a justification of a case that you should have those records for 50 years or better. So is this exemption going to solve the problem for you. I don't want you to destroy her records, because we have a lot of history that comes up to this point. She is going to be in the system directly until she is 21, and then after that be in something else. Would this help that kind of situation.

Tara Lea Muhlhauser: Yes and no. If there is a need to keep those records for 50 years, I don't know if this provision would necessarily do that, although it would assist in that, because if there was a juvenile court record, it would at least give us an exemption to make that decision and to use those record retention policies to determine whether that information was essential to her current treatment. That's not really a clear answer to your question, but I think we would have to know the program as it happened.

Chairman DeKrey: We have been involved with Special Olympics as parents and so I know for a fact that a long of these kids have had many contacts with law enforcement, not necessarily because they are bad kids, but because they have other problems. I don't really

see the value, because the records are confidential anyway, of destroying the records in the first place.

Tara Lea Muhlhauser: Usually juvenile court records have been held tight and record destruction or retention of them has been a very firm process because we don't always want the history of a child's criminal actions to travel with their records. The difficulty we have here, because we have a juvenile court system that deals with deprived kids as well as delinquent kids. We're not out there dealing with criminal records. We're dealing with records involving deprived kids; even though a number of our deprived kids come to us as both deprived and delinquent. They bring those kids through the foster care and all the treatment programs that we provide for them as young adults and into adulthood. So that's part of the reason why this becomes so complex.

Chairman DeKrey: My fear is that a juvenile records is going to be a very integral part of the treatment that you need to provide to the parents or the guardian. In our case, the court-appointed guardian, that you're going to destroy records that we need. I can tell you from experience, it's not hard to find out information, even when it's in your own family.

Rep. Zaiser: Do you have any system of criteria that you could use in keeping the records.

Tara Lea Muhlhauser: Again, I am not a records retention expert, particularly when it comes to records retention of human service centers. I don't know whether they have those kinds of qualifications, or those kinds of criteria. I can tell you that in child welfare, we really don't have those kinds of criteria, it's a pretty solid line. So when we say that records are destroyed in this particular category after 3 years, they are destroyed, but human service center records might be slightly different. We can get some information on that.

Rep. Zaiser: I think Ch. DeKrey pointed out a need to keep some records.

Tara Lea Muhlhauser: I think in that situation, if a custodian sends in a request and has a reason for the records to be kept, I can't imagine that we wouldn't work with them to save them.

Chairman DeKrey: She is over 18 now.

Tara Lea Muhlhauser: I think there are ways that we could work with that, such as a custodian request, etc.

Rep. Kretschmar: When you are seeking the new language on lines 21 and 22 about the records retention policy, have you checked for an administrative rule or is this a Dept. directive.

Tara Lea Muhlhauser: These are internal policies.

Chairman DeKrey: Thank you. Further testimony in support.

Leann Bertsch, Director, ND Dept. of Corrections and Rehabilitation: Support (attachment). Explained the amendment.

Rep. Koppelman: If we are talking about juvenile court records and current law exempts the Dept. of Transportation, and we're also going to exempt the Dept. of Human Services and now you're asking us to exempt the DOCR, wouldn't it be easier to repeal this law.

Leann Bertsch: There is a need to destroy records after a certain time period, and that's what the law does. But as Ms. Muhlhauser pointed out, different agencies have conflicting policies that go above and beyond what that order may be. A number of people touch any one juvenile that might be coming through juvenile court, so we just can't send out an order saying that everyone that touched those records should destroy them. I understand the need for this law, but there is also going to be some exceptions that need to be made.

Rep. Koppelman: My concern is in approaching the solution in this way, to exempt you from the law, you don't have to destroy records. You're dealing with the lion's share of the records for the juvenile, and why not approach it instead from the standpoint that you are required to

destroy all records just like the law says, unless it conflicts with another section of law, which would deal with variations I would think. Yet, it would cast a broad net to destroy records that I think you shouldn't hold on to.

Leann Bertsch: We have tight control over records. There is a need for the exemption.

Rep. Koppelman: That may be true, but this goes much further than the need that has been expressed.

Leann Bertsch: The DOCR has very tightly held confidential requirements as well, particularly with our juveniles. I don't think that the exemption is going to harm anyone by maintaining the information that is critical to carry out public safety. On occasion, sometimes the juvenile goes into adult court and the records are there. However, as it has been pointed out in earlier testimony, there are a number of reasons why these records need to be maintained. If the child attends YCC, they wouldn't want their school records destroyed, just because they were part of their juvenile record. This might have potential negative impact, with unintended consequences.

Rep. Koppelman: Are school records considered juvenile records.

Leann Bertsch: If there are records, they are juvenile court records because students wouldn't be at the youth correctional center, except for being sentenced to go there by a juvenile court order, so that becomes part of their record.

Rep. Koppelman: If the court orders a juvenile, who has a problem, and you put that juvenile in school, it seems to me that an academic record is something quite different from that court record to indicate that they were in your custody.

Leann Bertsch: The law as it stands, it says all records. Any reference that a child is attending one of our schools, it is pretty clear that they have been adjudicated under the Juvenile Court Act and so the records would have to be destroyed.

Rep. Zaiser: It seems to me like you have a criteria based system, for the destruction of records.

Leann Bertsch: I think you might open up more room for error in asking that. We already have a number of different statutes that control our every aspect of our juvenile records, as well as other considerations. We have a definite records retention schedule that already references those things. This exemption basically allows our agency to continue work as we need to in providing the best services for the juvenile, as well as maintaining public safety. I don't believe that the exemption to this law is going to open up Pandora's box. We are not going to give juvenile court records to those not authorized to have them.

Rep. Delmore: What happens if a retained record ends up being leaked inappropriately.

Leann Bertsch: Very good point. Confidentiality rules are taken very seriously. There are sometimes criminal penalties attached to release of records when they're not authorized. This is reviewed, our staff reviews this, and we have the AG's office rules on when you can and can't release juvenile court records. We take this very seriously. We never want to make a misstep in that area.

Rep. Klemm: You said that the need for this exemption for the Dept. of Human Services came about because of recent practice and protocol changes within the ND Supreme Court. Under subsection 1 of the existing law, the Supreme Court has the authority to provide for rules and policies relating to the exemption of the disposal of juvenile court records. Is this the problem for your agency, too, because of what is happening in the Supreme Court on this.

Leann Bertsch: To this point, I'm not exactly sure and Lisa Gerhardt, Division of Juvenile Services director, could not be here. This would assure that we don't have those issues arising in the future by that. I'm not sure of the issues that we have encountered up to this

point with the Judiciary practice. But obviously we work very closely with our juvenile division of the Dept of Human Services. We are very interconnected.

Rep. Klemin: It would seem like the place to go with something like this is to the Supreme Court, it's something that the court has recently decided to do differently that is causing these issues.

Rep. Koppelman: You indicated in your testimony that one of the reasons you wanted an exemption is because of examples like sex offenders, etc. The statute that this would amend, begins by saying that except as otherwise required under section 25-03.3-04, all juvenile court records must be retained... That statute talks about retention of records that requires that, notwithstanding any other provisions of law, all adult and juvenile case files and court records of an alleged offense defined by in the section 12, must be retained for 50 years and be available to a state's attorney for purpose of investigation or proceedings listed in the chapter. So if you reference back to section 12, under the sexual offense section, so it seems to me that it is already provided for in law, that those records are retained. So that's not really a reason for the exemption is it.

Leann Bertsch: I still believe it is. It conflicts for one. We need to have the records of some of these juveniles for pre-sentence investigations on the sexual offenses, etc. It may not fall under a sex offender, but they end up going into adult court and also as far what I indicated for the school district, military, college, medical treatment, etc. We're basically providing a lot of the things other than just their criminal conduct. All references really put us in a dilemma when there are a lot of records that are intertwined. I don't think the exemption is going to put the juvenile court records at risk.

Chairman DeKrey: Thank you. Further testimony in support.

Ken Sorenson, AAG: Support (attachment).

Rep. Delmore: Aren't you already exempted at least for the sexual crimes that you can still have access to them as the law is written.

Ken Sorenson: They want it put into this statute to make it clear.

Rep. Delmore: Who would not be exempted if we look at the prison, Attorney General and Human Services. Is there a reason for the original law at all.

Ken Sorenson: Yes, for example if a juvenile is cited with criminal mischief and never gets to formal adjudication, he goes to either a diversion program, etc. that record is destroyed. There are a lot of those cases.

Rep. Koppelman: You are asking for something different than what the law currently states. This exempts the agency entirely from the records destruction statute.

Ken Sorenson: The records are needed when we do a check when someone wants a concealed weapons permit or firearms prohibition.

Rep. Griffin: What crime do you have to commit for the firearm prohibition to kick in.

Ken Sorenson: We look at all records in the AG's office and the crime lab.

Rep. Klemin: Why isn't this being taken up with the Supreme Court's rules and policies since they are the ones determining this whole subsection 2 of the statute which have been around for awhile. Ms. Muhlhauser said in her testimony that there have been some changes that the Supreme Court is requiring all of these things to be done which brings up the need for the statutory exemption. I guess I haven't heard what the changes are that the Supreme Court made or why they decided to do this, in view of these different issues that are being brought up this morning.

Ken Sorenson: I also sat on the Juvenile Policy Board, and this was brought up at a recent meeting, that there were agencies that were having problems with these changes. We need a consistent policy.

Rep. Koppelman: What does all index references mean?

Ken Sorenson: I don't know.

Chairman DeKrey: Thank you. Further testimony in support.

Mike Arnold, Juvenile Division, Bismarck Police Department: Neutral. This law was passed by the Supreme Court in 2005. Basically the juvenile court was not happy, that's why it was brought up. The juvenile court's basically had been letting it go. The Supreme Court met and reviewed its policies that why wasn't this law being acted on. When a child turns 18, all records are to be destroyed. But we need to hold on to the records for different reasons. That's why we are all scrambling at this time. Sometimes even though a child turns 18, we need the records until they turn 21, etc.

Rep. Koppelman: You work with juveniles.

Mike Arnold: Yes.

Rep. Koppelman: You understand the reasons for the records destruction.

Mike Arnold: Confidential records has worked very well and hasn't posed any problems that I know of.

Rep. Koppelman: Do you know how this came about.

Mike Arnold: The only thing I could find out, was that years ago there was a young man who wanted to get into the Naval Academy and something came up that was a sexual offense. It wouldn't have mattered anyway, because those offenses are exempt already.

Rep. Zaiser: After listening to the discussion here, is it your feeling that the entire bill should be repealed or do you support this.

Mike Arnold: I think it should be addressed more clearly. Right now, even talking with the juvenile court people, they are not understanding how we should do it, how we should act upon it, and what all it entails. It is very broad.

Rep. Zaiser: It appears that this is taking a broad brush approach.

Mike Arnold: We need to look at the level of crime. You have some offenses, where if the juvenile committed a felony, he might not be eligible for a concealed weapons permit for a period of time. If we destroy all files and records, we wouldn't have access to that information to look at in making that determination.

Rep. Wolf: If put the amendment into the bill, this bill will ask all of the agencies not exempt to destroy the juvenile records. This would allow the exempted agencies to destroy records on their own system.

Mike Arnold: Correct.

Rep. Klemin: I was looking at the statute, the last time we amended this statute was last session, 2007, and I'm not sure what the amendment was, but before that it was last amended in 1991 and this statute has been around since 1969 in some form. I don't know what it originally looked like, but maybe it's the change that took place in 2007 that is the issue. I don't know that.

Mike Arnold: I looked at the 2005 law book, and it reads almost exactly the same as the current law that was amended in 2007.

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

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1159

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/21/09

Recorder Job Number: 7398

Committee Clerk Signature



Minutes:

Chairman DeKrey: What are the committee's wishes in regard to HB 1159?

Rep. Klemin: We had a subcommittee consisting of myself, Rep. Dahl, Rep. Kingsbury, Rep. Wolf, and Rep. Zaiser. We looked at this bill. The Dept. of Corrections, Dept of Human Services, and the AG's office had come in and asked that they be added to the list of agencies that aren't required to delete information relating to juveniles. We were wondering where this came from. I did some research on it and this particular section of the law was one of about 30 sections in the revamp of the Juvenile Court Act that was dealt with in the 2007 session. What had happened in that session, in the comments of the section by section analysis prepared on that and the only comment they had on this particular one was that it would clarify language. Actually it did a little more than that. There was a similar law like this before and the exemption only applied to law enforcement agencies and the Dept. of Transportation. They deleted that language and made the requirement apply to every agency except the Dept. of Transportation. What's happening now is that we've had 18 months of experience with this new law and some of the other agencies are now coming in and saying we should be taken out too, like the Dept. of Human Services, county social service agencies, and the AG and the DOCR. They were exempt before. The subcommittee recommendation is that our Committee

adopts the amendment that was given to us in writing by Leann Bertsch, from DOCR, which includes both the DOCR and the AG's office.

Rep. Delmore: Both of these amendments are Leann Bertsch's.

Rep. Klemin: I move the Bertsch amendments.

Rep. Wolf: Second.

Chairman DeKrey: Further discussion on the amendments.

Rep. Griffin: Did the AG's office and DOCR have the exemption before.

Rep. Klemin: At the end of line 14, it says each agency, except the director of DOT... that was new language that was added in 2007. So it made it apply to every agency in the State except the DOT. Before it wasn't that way. The language said that each law enforcement agency and law enforcement official, except the director the DOT, upon receipt of the court order shall destroy all files and so forth. It only required law enforcement agencies to destroy all files. By changing that to each agency, it required every agency, other than the DOT, to destroy all files. It considerably expanded the number of agencies that were subject to the destruction orders. The testimony we heard from the DOCR, the AG, as well as the DHS was that there are some good reasons for not requiring them to destroy these records.

Chairman DeKrey: Voice Vote. Motion carried. We now have the bill before us as amended.

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

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

VK
1/22/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1159

Page 1, line 13, after "~~director~~" insert "attorney general and the"

Page 1, line 14, after the first underscored comma insert "the department of corrections and rehabilitation,"

Page 1, line 15, after "~~director~~" insert "attorney general and the"

Page 1, line 16, after the first underscored comma insert "the department of corrections and rehabilitation,"

Page 1, line 19, after "The" insert "attorney general, the"

Page 1, line 20, after "services" insert ", the department of corrections and rehabilitation,"

Page 1, line 21, remove "department's or agencies" and after "retention" insert "policy of that official, department, or agency"

Page 1, line 22, remove "policies"

Page 1, line 23, after "~~director~~" insert "attorney general and the"

Page 2, line 1, after the first underscored comma insert "the department of corrections and rehabilitation,"

Renumber accordingly

Date: 1/21/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1159

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1159: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1159 was placed on the Sixth order on the calendar.

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2009 SENATE JUDICIARY

HB 1159

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1159

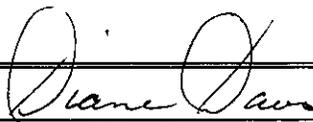
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/18/09

Recorder Job Number: 9654

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the destruction of juvenile court records.

Tara Lea Muhlhauser – Director of the Children and Family Services Division – see written testimony. In support of this bill.

Senator Nething – The partners you're talking about are Social Services, Dept. of Corrections.

Muhlhauser – Also the Attorney General's office.

Senator Nething – States, what you're really doing is just bringing this into the area of Dept. of Transportation's exemption.

Muhlhauser – Replies, correct. That it's what the department is looking for because they thought it was the most expedient fix to this. This is an old statutory provision, for years it was not an issue but because of policy changes in the Supreme Court the best practice standards they now have in place has created a file with record destruction orders. This puts them in a very difficult position.

Senator Fiebiger – Asks how other states are handling this.

Muhlhauser – Said she has not looked into that.

Ken Sorenson – Assistant Attorney General – See written testimony.

Senator Nething – Said basically you're looking at crimes against children and juvenile requirements.

Sorenson – Says that records can be retained for 50 years, it does not exempt out crimes against children.

Senator Nething – Asks if this goes beyond those felony crimes against children and juvenile statutes. Does the exemption go beyond that?

Sorenson – No, he does not think it does.

Senator Fiebiger – Asks what the reason is that we destroy juvenile records, are these records that are exempt going to harm the juvenile later.

Sorenson – Responds, he appreciates the need for confidentiality. He said there have been a lot of changes in the juvenile statutes over the years and if you look at those changes you will see a significant erosion of what is confidential in juvenile court records. They try to avoid re-disclosure but with the sex offender & felony crimes against registration some of that information becomes open record information because that individual is required to register.

Senator Schneider – Asked if this should be determined by the Supreme Court.

Sorenson – Said that would be nice if it was done that way.

Lisa Bjergaard – Director Division of Juvenile services – see written testimony. In support of the bill.

Senator Olafson – Asks why we don't seal records instead.

Bjergaard – She is not sure how others seal records. But this act specifies destroy.

If these kids were coming out of your home you would keep their records, they need them to get into college.

Chief Keith Witt – Chief of Police for the Bismarck Police Department. – He is in support of this bill but would like to see an amendment including local law enforcement. They have a need for access for law enforcement investigative purposes.

Senator Fiebiger – Asks the Chief if he would elaborate how this would work for them.

Witt – From law enforcement perspective, if we have a juvenile has been a fire starter and may have been sighted in juvenile court. They get notification to destroy the record. Three years down the road we're having a problem with arsons in Bismarck, they do a search of their computer records on who might be doing these crimes. That person would not show up on their radar screens, so they could direct there investigative efforts as to whether that person may be responsible for what is happening now.

Senator Nething – It is a current problem with you, this bill helps resolve that if we include you.

Witt – States correct it is a current problem.

Senator Lyson – Asks if you keep your officers reports, by looking at those records could you narrow down your search to certain people that you had as a juvenile.

Witt – Replies, yes, that it quite common.

Close 1159

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1159

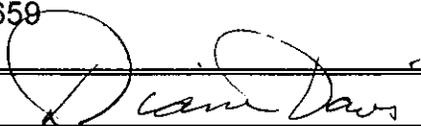
Senate Judiciary Committee

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Hearing Date: 2/18/09

Recorder Job Number: 9659

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the amendment they are considering.

Senator Nething - Struggles with amending a bill when the House had testimony and didn't except it.

Senator Lyson – Thinks this is important enough to pass this and get it in a conference committee.

Senator Fiebiger – He struggles with the reasons that Chief Witt gave. He can understand Human Service Services asking for this. The Chief is using it to go back to law enforcement uses to go against the individual which seems counter to the reason to get rid of the record. He is not sure he can support the amendment based on that.

Senator Nething – Said that it seems the Chiefs interest is parallel with that of the Attorney General and the Dept. of Corrections. He does agree with the interests of Social Services.

Senator Lyson – This does not open it up to the public. This opens up a link that may help with a crime that has been committed before.

Senator Fiebiger – Asks then why are we destroying the records. It is said you get a new shot as an adult.

Senator Nething asks the committee to take some time and talk to others.

Senator Schneider – Says he would also like more time to discuss with others.

Senator Nething adjourns the meeting

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1159

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11126

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

The committee discusses keeping open the juvenile records to certain departments. There is discussion whether this is in the best interest to the juvenile. For law enforcement it would be better to help them with future investigations. The committee asks for more time to go over the testimony and the bill. They tabled the bill till the next committee meeting.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1159

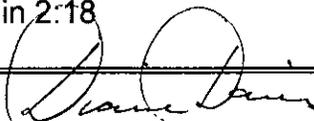
Senate Judiciary Committee

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Hearing Date: 3/18/09

Recorder Job Number: 11186 in 2:18

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

Committee discusses what this bill opens up for law enforcement. Committee members are concerned that having it open to law enforcement would keep the juvenile record following them forever. Senator Lyson said it would help in investigations. Senator Fiebiger says having it open to County Agencies is more geared to helping the individual rather than law enforcement trying to solve a crime that is based on available records that should have been destroyed. Senator Lyson said most of the records for Human Services end up in a bank in Colorado and as a sheriff he could go into that and get information. Senator Nething asks why the Attorney General would have authority and not law enforcement. Senator Nelson mentions that Dept. of Corrections is included. Senator Lyson said he would like to see law enforcement included but if not he knows that the records can still gotten if they need them in other ways.

Senator Nelson moves a do pass

Senator Fiebiger seconds

Vote – 4 yes-1 no-1 absent

Senator Schneider will carry

Date: 3/11
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 1159
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Nelson Seconded By Sen Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.			Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson		X	Sen. Mac Schneider	X	

Total (Yes) 4 (N) 1

Absent 1

Floor Assignment Sen Schneider

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

REPORT OF STANDING COMMITTEE

HB 1159, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1159 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1159

Testimony
House Bill 1159 – Department of Human Services
House Judiciary Committee
Representative DeKrey, Chairman
January 14, 2009

Chairman DeKrey, members of the House Judiciary Committee, I am Tara Lea Muhlhauser, Director of the Children and Family Services Division of the Department of Human Services. I am here today to provide you with an overview of House Bill 1159. The Department supports passage of this bill.

North Dakota Century Code chapter 27-20-54 provides for the destruction of Juvenile Court records. While this section has been long standing, recent practice and protocol changes within the ND Supreme Court have resulted in judicial orders to destroy records received by the ND Department of Human Services and County Social Service offices.

Through this bill, we are seeking an exemption to this records destruction policy for the ND Department of Human Services and County Social Service offices similar to the exemption, already in law, for the Department of Transportation. While we agree in principle to the historical and philosophical basis behind this records destruction law, the law at present puts us in a difficult legal position. When we receive orders to destroy "all files, records, and references" (NDCC 27-20-54 (2)), including dispositions contained in files based on juvenile records, we are ordered to destroy records that federal and state law and requirements mandate us to retain and have available for programmatic audits and various other quality assurance purposes. In addition, in the case of Human Service Center records, we are asked to destroy records for individuals who we may still be

serving as clients. Having this information available is essential to serving the clients in the best and most efficient manner.

For instance, we may be asked to destroy the court order that was used to place a child in foster care, and the accompanying details of juvenile court involvement found in their file that relate to their status as a deprived child. At the same time, we may be engaged in providing services to this same individual as a young adult transitioning into an independent life outside the child welfare system. The Department receives federal dollars and state dollars to pay for child welfare related expenses (the stay in foster care), federal and state requirements mandate that we maintain copies of the court order placing the child in foster care. Thus, receipt of record destruction orders places the Department, and county agencies, in a very difficult situation.

The Department, and county agencies, do have records retention and destruction policies at varying lengths of time for various programmatic services. There is institutional assurance that records will be destroyed, at a date and time that will comply with the requisite state and federal requirements. In this bill, we have indicated that we may not keep a record beyond the length of these policies.

Thank you for consideration of my testimony, and I ask for your support on House Bill 1159. I am available to answer any questions you have.

HOUSE JUDICIARY COMMITTEE
Representative Duane DeKrey, Chairman
January 14, 2009

North Dakota Department of Corrections and Rehabilitation
Leann Bertsch, Director

Presenting Testimony concerning HOUSE BILL 1159

The North Dakota Department of Corrections and Rehabilitation, through its Division of Juvenile Services, supports HB 1159 with consideration of an amendment to HB 1159.

N.D.C.C. Section 27-20-54(2) requires each agency that has received notice from the juvenile court to destroy "all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court." The Department of Transportation is specifically exempted from the records destruction requirements.

The North Dakota Department of Corrections and Rehabilitation, through its Division of Juvenile Services, is bound by additional records retention statutes that lay out timelines that may be inconsistent with Section 27-20-54, including the records of youth adjudicated as sex offenders or felony offenders against children and who are required to register under N.D.C.C. Section 12.1-32-15 for fifteen years, twenty five years, or even lifetime, and records retention requirements for sex offenders that must be retained for 50 years.

In addition, the North Dakota Department of Corrections and Rehabilitation, through its Division of Juvenile Services, retains records including education records, treatment records, medical and mental health records for children committed to its

custody. These records are frequently requested by agencies and entities, including school districts, the military, colleges, medical and treatment providers, and the Department of Human Services and County Social Services. And finally, the records may be pertinent to a pre-sentence investigation, as juvenile court records presently are under N.D.C.C. Section 27-20-51.

For these reasons, the Department of Corrections and Rehabilitation, and its Division of Juvenile Services requests a "Do Pass" recommendation with the offered amendment.

PROPOSED AMENDMENT TO HOUSE BILL 1159

Page 1, Line 13, after "director" insert "attorney general,"

Page 1, Line 14, after "human services," insert "department of corrections and rehabilitation,"

Page 1, Line 15, after "director" insert "attorney general,"

Page 1, Line 16, after "human services," insert "department of corrections and rehabilitation,"

Page 1, Line 19, after "The" insert "attorney general,"

Page 1, Line 20, after "human services" insert ", department of corrections and rehabilitation"

Page 1, Line 21, replace "the department's or agencies" with "their"

Page 1, Line 23, after "director" insert "attorney general,"

Page 2, Line 1, after "human services," insert "department of corrections and rehabilitation,"

Renumber accordingly

HOUSE JUDICIARY COMMITTEE
Representative Duane DeKrey, Chairman
January 14, 2009

Ken Sorenson
Assistant Attorney General

Testimony concerning proposed amendment to
HOUSE BILL 1159

The proposed amendment includes the Attorney General's office for several of the same reasons submitted by the North Dakota Department of Corrections and Rehabilitation, namely the Attorney General must maintain records for registration purposes under N.D.C.C. Section 12.1-32-15 for juveniles adjudicated delinquent for sex offenses and for felony offenses against children. Juveniles may be required to register for fifteen years, twenty five years, or lifetime, depending on their level of risk or number of sex offenses committed. Registration under Section 12.1-32-15 also requires the collection of a DNA sample and submission to the Attorney General's State Crime Laboratory. The Attorney General's Office is also required to maintain all sex offender records, including juvenile sex offender records, for fifty years.

Juvenile records are also necessary to determine whether an individual has committed an offense that may prohibit the individual from possession of a firearm under N.D.C.C. Section 62.1-02-01 or prohibit issuance of a concealed weapons permit to the individual under N.D.C.C. chapter 62.1-04.

The Attorney General's State Crime Laboratory's records include records relating to juveniles. The State Crime Laboratory has its own retention requirements, including retention of records for forensic medical examination reimbursements, toxicology and drug reports, and also DNA records subject to retention and quality assurance

requirements under the National DNA Index System and the Combined DNA Index System.

Therefore, a do-pass for House Bill 1159, with the proposed amendment, is respectfully requested.

Testimony
House Bill 1159 – Department of Human Services
Senate Judiciary Committee
Senator Dave Nething, Chairman
February 18, 2009

Chairman Nething, members of the Senate Judiciary Committee, I am Tara Lea Muhlhauser, Director of the Children and Family Services Division of the Department of Human Services. I am here today to provide you with an overview of House Bill 1159. The Department supports passage of this bill.

North Dakota Century Code chapter 27-20-54 provides for the destruction of Juvenile Court records. While this section has been long standing, recent practice and protocol changes within the ND Supreme Court have resulted in judicial orders to destroy records received by the ND Department of Human Services and county social service offices.

Through this bill, we are seeking an exemption to this records destruction policy for the ND Department of Human Services and county social service offices similar to the exemption, already in law, for the Department of Transportation. While we agree in principle to the historical and philosophical basis behind this records destruction law, the law at present puts us in a difficult legal position. When we receive orders to destroy "all files, records, and references" (NDCC 27-20-54(2)), including dispositions contained in files based on juvenile records, we are ordered to destroy records that federal and state law and requirements mandate us to retain and have available for programmatic audits and various other quality assurance purposes. In addition, in the case of human service center records, we are asked to destroy records for individuals who we may still be

SENATE JUDICIARY COMMITTEE
Senator David Nething, Chairman
February 18, 2009

Ken Sorenson
Assistant Attorney General

Testimony concerning Engrossed
HOUSE BILL 1159

The North Dakota Attorney General supports Engrossed House Bill 1159, which amends N.D.C.C. Section 27-20-54 relating to the destruction of juvenile court records and proposes to exempt the North Dakota Attorney General, the Department of Human Services, and the Department of Corrections and Rehabilitation from the current records destruction requirements of the statute. The Department of Transportation is already exempted from the statute.

N.D.C.C. Section 27-20-54, which has two subsections, was amended by the 60th Legislative Assembly as part of a re-write of N.D.C.C. chapter 27-20, the chapter of the state code relating to the juvenile courts. The 2007 amendments amended both of the subsections.

Prior to the 2007 amendments, N.D.C.C. Section 27-20-54(1) required that all juvenile court records be maintained pursuant to rules and procedures established by the North Dakota Supreme Court. The 2007 amendment to Section 27-20-54(1) established an exception to the destruction of juvenile court records for specific sex offenses specified in Section 25-03.3-04, a section in N.D.C.C. ch. 25-03.3 relating to the civil commitment of sexually dangerous individuals. As amended, Subsection 1 of Section 27-20-54 now states, "Except as otherwise provided under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and

policies established by the North Dakota supreme court.” (Emphasis provided) Section 25-03.3-04 is in the chapter of the code relating to civil commitment of sexually dangerous individuals and requires retention of records relating to violations of N.D.C.C. Sections 12.1-20-03 (gross sexual imposition), 12.1-20-04 (sexual imposition), 12.1-20-05 (corruption or solicitation of minors), 12.1-20-06 (sexual abuse of wards), or 12.-1-20-07 (sexual assault), for fifty years.

Prior to the 2007 amendments, N.D.C.C. Section 27-20-54(2) required in part that upon destruction of the juvenile court’s file or record, the juvenile court was required to notify each agency or official named in the record, and that “[E]ach law enforcement agency and law enforcement officer except the director of the department of transportation, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to the child’s apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.” (Emphasis provided) The 2007 amendment to Subsection 2 deleted the reference to law enforcement agencies and law enforcement officers. Section 27-20-54(2) now provides, in part, “Each agency, except the director of the department of transportation, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child....” (Emphasis provided).

The Attorney General is responsible for sex offender and felony crimes against children registration under N.D.C.C. Section 12.1-32-15. A juvenile may be required to register for fifteen years, twenty five years, or lifetime, depending on the juvenile’s offense or number of offenses and the level of risk assigned under N.D.C.C. Section 12.1-32-15. Section 25-03.3-04 is far from exhaustive in exempting registerable

offenses under Section 12.1-32-15 from the destruction requirements of N.D.C.C. Section 27-20-54(2).

Juveniles may be required to register for felony crimes against children, including violations of N.D.C.C. ch. 12.1-16 (homicide), 12.1-17-01(1)(assault on a victim under 12 years), 12.1-17-02 (aggravated assault), 12.1-17-04 (terrorizing), 12.1-17-07.1(6)(a) (stalking), 12.1-18-01 (kidnapping), 12.1-18-02 (felonious restraint), 12.1-18-05 (removing a child from the state in violation of a custody decree), chapter 12.1-29 (prostitution), and Section 14-09-22(1)(a) or (2) (abuse or neglect of a child). Because these offenses are not listed in Section 25-03.3-04, they may also be subject to the records destruction requirements of subsection 2 of Section 27-21-54.

In addition to the offenses listed in Section 25-03.3-04, juveniles are also required to register for the following sex offenses not listed in that statute: N.D.C.C. Section 12.1-20-03.1 (continuous sexual abuse of a child); N.D.C.C. Section 12.1-20-05.1 (luring minors by computer); Section 12.1-20-11 (incest); 12.1-20-12.1 (indecent exposure); 12.1-20-12.2 (Surreptitious Intrusion); and N.D.C.C. ch. 12.1-27.2 (Sexual performances by children). Because these offenses are not listed in Section 25-03.3-04, they may also be subject to the records destruction requirements of subsection 2 of Section 27-21-54.

The State Crime Laboratory, which is part of the Attorney General's Office, also maintains records relating to juveniles. Sex offender and felony crimes against children registration under Section 12.1-32-15 requires the collection of DNA samples from juveniles who are required to register. These DNA samples are maintained at the State Crime Laboratory. The State Crime Laboratory also collects and stores DNA samples

under N.D.C.C. ch. 31-13 from individuals convicted of felonies and most sex offenses. All DNA samples and reports are retained indefinitely. The State Crime Laboratory's retention practices are in accordance with established laboratory retention and quality assurance requirements, and comply with the Federal Bureau of Investigation's National DNA Index System and the Combined DNA Index System retention and quality assurance requirements. The State Crime Laboratory also has its own retention requirements for toxicology and drug reports and will be developing retention requirements for forensic medical examination reimbursements.

Finally, the Attorney General's Office, through its Bureau of Criminal Investigation, is responsible for the administration of concealed weapons licenses under N.D.C.C. ch. 62.1-04-03. The firearms prohibitions under N.D.C.C. Section 62.1-02-01 also apply to juveniles adjudicated delinquent for felony and violent misdemeanor offenses. Juvenile records may be necessary to determine whether an individual has committed an offense that may prohibit the individual from possession of a firearm under Section 62.1-02-01 or is prohibited under federal law from owning, possessing, or having a firearm. If an individual is subject to such a prohibition, the Attorney General may not issue a concealed weapons license to the individual.

It is necessary for the Attorney General's Office to retain juvenile records to comply with, and perform, its obligations under state and federal law. Therefore, a do-pass for Engrossed House Bill 1159 is respectfully requested.

Attach. 3
11-59

**SENATE JUDICIARY COMMITTEE
SENATOR DAVID NETHING, CHAIRMAN
February 18, 2009**

**North Dakota Department of Corrections and Rehabilitation
Lisa Bjergaard, Director
Division of Juvenile Services**

**Presenting Testimony concerning
ENGROSSED HOUSE BILL 1159**

The North Dakota Department of Corrections and Rehabilitation and its Division of Juvenile Services supports Engrossed House Bill 1159.

N.D.C.C. Section 27-20-54 was amended by the 60th Legislative Assembly as part of a substantial revision to N.D.C.C. chapter 27-20, the chapter of the state code governing juvenile court operations.

Prior to the 2007 amendments, N.D.C.C. Section 27-20-54(1) required all juvenile court records be maintained pursuant to rules and procedures established by the North Dakota Supreme Court. Also, prior to the amendments, N.D.C.C. Section 27-20-54(2) required that upon destruction of the juvenile court's file or record, the juvenile court was required to notify each agency or official named in the record, and that "[E]ach law enforcement agency and law enforcement officer except the director of the department of transportation, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court." (Emphasis added)

The 2007 amendments amended both subsections of Section 27-20-54. Subsection 1 of Section 27-20-54 was amended to state, "Except as otherwise provided

under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.” N.D.C.C. ch. 25-03.3 relates to civil commitment of sexually dangerous individuals. Section 25-03.3-04 requires retention of records relating to violations of N.D.C.C. Sections 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, or 12.-1-20-07 for fifty years.

N.D.C.C. Section 27-20-54(2) now requires “Each agency, except the department of transportation, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child’s apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.”

The North Dakota Department of Corrections and Rehabilitation, through its Division of Juvenile Services, is subject to records retention requirements that may be inconsistent with the records destruction requirements of Section 27-20-54(2), including the records of youth adjudicated as sex offenders or felony offenders against children and who are required to register under N.D.C.C. Section 12.1-32-15 for fifteen years, twenty five years, or even lifetime. While N.D.C.C. Section 27-20-54(1) exempts records relating to violations of the offenses specified in Section 25-03.3-04 from the statute’s destruction requirements because those records must be maintained for fifty years, there are many more offenses that are subject to registration under Section 12.1-32-15 and that require the Department of Corrections and Rehabilitation to provide supporting documentation to the Attorney General for the risk assessment process under the statute.

Finally, the Division of Juvenile Services retains records including education records, treatment records, and medical and mental health records for children

committed to its custody. These records are frequently requested by agencies and entities, including school districts, the military, colleges, medical and treatment providers, the Department of Human Services, and County Social Services. The Division's records are also requested by the state and federal courts for pre-sentence investigations.

For these reasons, the Department of Corrections and Rehabilitation, and its Division of Juvenile Services, request a "Do Pass" recommendation for Engrossed House Bill 1159.

PROPOSED AMENDMENTS TO HB 1159

Page 1, line 15, after the first comma insert "state and local law enforcement agencies"

Page 1, line 18, after the first comma insert "state and local law enforcement agencies"

Page 1, line 22, after the second comma insert "state and local law enforcement agencies"

Page 2, line 4, after the first comma insert "state and local law enforcement agencies"