

2013 SENATE JUDICIARY

SB 2320

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2320
2/4/2013
Job #18212

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the release of juvenile records and other information to schools

Senator David Hogue - Chairman

Senator Nicole Poolman - District 7 - Introduces the bill - see written testimony (1)

Senator Sitte - Says she is concerned with it being too broad.

Senator Poolman - Points out on page two where it talks about reasonably necessary and in the best interest of the juvenile and the protection of others. She does not see this as a blanket statement every time a juvenile has a record.

Senator Armstrong - Asks if this bill is an attempt to let the Department of Juvenile Services know what they can and can't give schools.

Senator Poolman - Replies it is but the problem is it says they may offer this information. She feels they were airing on the side of caution and didn't want to give out anything if they didn't have to. She said they want to give them strong encouragement with the word shall instead of may.

Senator Lyson - Asks how secure the records are when they go to a school.

Senator Poolman - Responds that it is her understanding it would go to the administrators. She elaborates on confidential records.

Senator Hogue - Asks if she is talking about lesser offenses that do affect the safety of students and teachers.

Senator Poolman - Said the schools have dealt with rape.

Senator Sitte - States that they want an awful lot of confidential records.

Senator Poolman - Replies that if they are going to address problems of troubled kids that counseling and psychological records are very important for the schools to have access to.

Steve Madler - Secondary Principal - See written testimony (2)

Senator Grabinger - Said it seems to him getting the records may be difficult.

Madler - Responds there is programing in place while the student is in treatment facilities and the case worker is very much aware of the types of things in the recommendations from professional counselors. He said what they are running into is how much information they are able to share. He also said it hampers them when they are trying to put together a successful plan for that student.

Senator Armstrong - Asks if they are trying to get private counseling records.

Madler - Responds yes, they want to be able to see how to keep the juvenile from re-offending and not put other students at risk.

Senator Sitte - She wonders if there is a point where someone's record is cleared.

Madler - Sad he envisions when that risk is no longer a risk to students.

Opposition

Lisa Bjergaard - Director of the Division of Juvenile Services - See written testimony (3)

She gives statistics to the committee for the last year. She says if they have a youth that commits a sex offense and is unable to complete treatment during the time period they are in custody their practice is to refer those youth for an evaluation for civil commitment.

Senator Armstrong - Asks about what is reported to schools.

Bjergaard - Replies that a lot of drug and alcohol records are protected under Federal Law. She says there should be a dialog over any issues including drugs and alcohol. She explains what kinds of kids are in State Juvenile Corrections.

Senator Armstrong - Asks if there is a remedy for the schools to get information.

Bjergaard - Replies registration information is available through law enforcement at their discretion. The treatment information is available to a limited degree depending on what is relevant. She says she would welcome dialog with the schools if they think that is too conservative. She goes on to say they can work on case by case or a policy change.

Senator Lyson - Asks if her organization has been contacted by the schools or to set a policy.

Bjergaard - Said she would work with the schools to better inform them. She says she is very invested in making sure kids are safe in schools.

Senator Grabinger - Asks if she goes beyond in alerting the school system when a youth is re-entering the school.

Bjergaard - Replies if it is the high risk untreated kids, those kids are not released into schools. The lesser risk kids do have a reunification process. She goes on to explain this process.

Senator Hogue - Asks if there is any document by name that could be asked for that would identify for school officials that the person under your custody is a sexual offender.

Bjergaard - Said she is unaware if they have a summary but they could create something. She said they would like to have digital records but still keep paper files.

Senator Lyson -Says they are more than just sexual offenders here.

Bjergaard - States she struggles with the release of all files for many reasons. She says most of their youth are not sexual offenders. They may be delinquent but not sex offenders.

Neutral - none

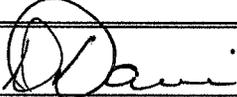
Close the hearing on 2320

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2320
2/12/2013
Job #18826

Conference Committee

Committee Clerk Signature 

Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Sitte proposes an amendment - Sitte amendment
Senator Armstrong seconded

Discussion

Committee discusses the amendment. This will give the schools a little more teeth. The committee thinks it is a better bill with the amendment.

Vote

Verbal vote - all yes

Motion passes

Senator Armstrong moves a do pass as amended
Senator Sitte seconded

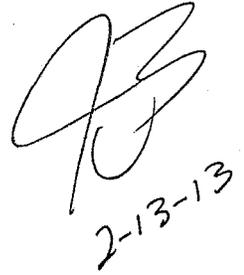
Vote - 7 yes, 0 no

Senator Sitte will carry

13.0817.01001
Title.02000

Adopted by the Judiciary Committee

February 13, 2013



Handwritten signature and date: 2-13-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2320

Page 1, line 1, remove "and section"

Page 1, line 2, remove "27-21-12"

Page 1, remove lines 19 through 24

Page 2, remove lines 1 through 29

Page 3, remove lines 1 through 28

Renumber accordingly

Date: 2/12/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate JUDICIARY Committee

Check here for Conference Committee 13.0817.01001

Legislative Council Amendment Number Bitte amendments

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Sitte Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal - all yes

Floor Assignment _____

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

Date: 2/12/13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2320**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0817.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S Sitte

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

REPORT OF STANDING COMMITTEE

SB 2320: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2320 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and section"

Page 1, line 2, remove "27-21-12"

Page 1, remove lines 19 through 24

Page 2, remove lines 1 through 29

Page 3, remove lines 1 through 28

Renumber accordingly

2013 HOUSE EDUCATION

SB 2320

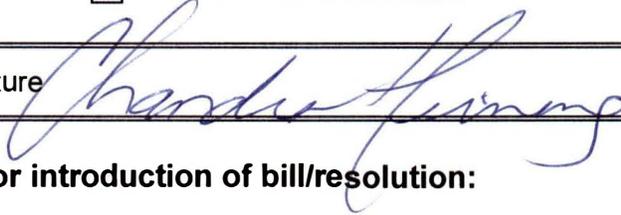
2013 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

SB 2320
March 18, 2013
Job 20072

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 15 of section 12.1-32-15 of the North Dakota Century Code, relating to the release of juvenile records and other information to schools.

Minutes:

No attachments

Chairman Nathe: Summarized topic of bill.

0:14 **Rep. Rohr:** Senator Poolman was to get back to me with some of the language regarding the privacy and/or need to know of this information. She has not gotten back to me. I'm going to move a Do Not Pass.

Rep. Rohr **moved a Do Not Pass** on SB 2320. Rep. Heller seconded the motion.

0:46 **Rep. Rohr:** If you recall, Senator Poolman had indicated that the previous law had addressed the issue of the privacy law and the need to know. That is actually eliminated from this bill. There is a lot of literature which talks about a child who makes a mistake as a juvenile being labeled for the rest of his or her life, and the information gets spread from school to school. I do not think we want to set them up for life.

1:25 **Rep. Rust:** My concern as an administrator would be what about the victim or the potential victims. I understand that you do not want to brand a student coming into your school. At the same time, as an administrator I would be livid if someone in our school was a substantial risk to children in that school and I knew nothing about that. Presented scenarios.

2:48 **Rep. Meier:** When you were an administrator and you had a student was convicted of a felony or an offense against a child, did you have a record on that child? If you did, how long did you keep that record?

3:17 **Rep. Rust:** I am trying to recall if we ever had that happen. Realize that all students are protected under Family Education Rights and Privacy Act. So the student coming in with a record and a conviction is protected under that act. The school or teachers or counselors who have received that information cannot give that information to other people.

Chances are that information will get out in at least one of a variety of ways. Enumerated possible ways information is spread. More than likely, if it is something of a medical condition, it would be protected under the HIPAA laws. I believe that student has protection. The people who could possibly be harmed by that student are not protected. My initial reaction is that I owe those people a lot.

4:53 **Rep. Meier:** So when that information was shared with you as the administrator, were you able to share that with your fellow teachers and staff?

5:14 **Rep. Rust:** It is on an as-needed basis or an as-need-to-know basis. Depending on the information, you would probably give that information to a select few individuals who would need to know particular information about someone. You may want to inform certain people who will be working with those students, those who may be in situations where they need to have a watchful eye.

5:56 **Chairman Nathe:** Is this information with which you would notify parents?

6:02 **Rep. Rust:** Absolutely not. I'd be violating the FERPA laws.

6:11 **Rep. Heller:** On line 14, what is meant by *the law enforcement agency*? Elaborated.

6:31 **Chairman Nathe:** It would be law enforcement agency in North Dakota; that's all the bill would cover.

6:38 **Rep. Heilman:** If a superintendent or a principal knows now and an incident still occurs, does that open the district or anyone else up to additional suits, or are they protected under other areas?

7:08 **Rep. Rust:** First of all, all school districts have liability coverage. Elaborated. I think you could get sued. I think you also could be sued if something happened and you had not done your diligence or if someone thought you should have known or should have protected their children but did not. The person coming in is protected by FERPA laws. That changes when that person becomes eighteen years old because now it may be publicized by the media in your community. I don't think this is a bad law. I am worried about victims as much as I am worried about someone who has committed a crime and has been convicted.

8:31 **Rep. Schatz:** As a teacher, I would want to know. I understand your concern about people sharing the information unduly or people who are innocent but have been labeled. If you have someone who is a threat to the other kids, as an instructor I would want to know.

9:11 **Rep. Kelsh:** I know there were privacy issues with the law which have not been straightened out. After listening to Rep Rust, I was more comfortable with the bill until he made his last statement, which was regarding information in the media when the person is eighteen. How does that work?

9:41 **Chairman Nathe:** I think that would go on television from the law enforcement if someone is a registered sex offender. It wouldn't come from the school; it would come from law enforcement.

9:49 **Rep. Kelsh:** If the crime happened when you were sixteen....but when you turn eighteen, this cannot all become public, can it?

10:05 **Chairman Nathe:** Chances are, that information would be wiped clean when they turn eighteen.

10:10 **Rep. Rust:** I believe Chairman Nathe is correct. I do not see the school releasing that information. In most cases, when you are charged as a juvenile, the court has in its decision how that will be handled once you turn eighteen. I don't believe any of that would be in the school district's hands.

10:54 **Rep. Kelsh:** You were talking about two different things: If you do it when you're sixteen, or if you do it when your eighteen. I didn't know if you had tied them together, and I wanted to make it clear.

11:06 **Rep. Rust:** I should have been more specific. My intention was to remind you that at age eighteen, it is a different story.

11:31 **Rep. B. Koppelman:** We're really hung up on schools knowing this information. But we said we would not tell parents, and we'd tell only those who need to know at the discretion of the superintendent or principal. As I understand it, most sexual offenses are not likely to happen in a school environment. I'd argue that if you had to weigh out who should know, I'd say the parents should know more so than the school. I'm opposed to this bill on the premise that I don't think we have seen the demonstrated need for this.

12:41 **Rep. Rohr:** When I read the previous bill, I thought it was good the way it was existing in law. The prime sponsor of this bill, when asked if the information is confidential, said that she assumes it is.

13:00 **Rep. Mock:** My comment was in the discussion related to the adult and saying that this does nothing regarding how the law enforcement agencies report information of a sexual offender to the public. Refers to line 13. Right now, you may release that information to school districts. The bill is only to require that it be released to school districts. I am going to resist the motion. I think this is information which should be shared with the superintendent or principal, and I think it is relevant to ensure the safety in our schools.

Roll call vote on motion for a Do Not Pass. Motion fails.

Yes = 4

No = 9

Absent = 0

14:58 Rep. Heilman moved a **Do Pass** on SB 2320. Rep. D. Johnson seconded the motion.

House Education Committee

SB 2320

March 18, 2013

Page 4

Roll call vote on motion for a Do Pass. Motion carries.

Yes = 9

No = 4

Absent = 0

Carrier: Rep. Rust

Date: 3/18/13

Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2320

House _____ **EDUCATION** _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Amended Rerefer to Appropriations
 Do Not Pass Adopt Amendment

Motion Made By Rep. Rohr Seconded By Rep. Heller

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe		✓	Rep. Bob Hunskor		✓
Rep. Mike Schatz		✓	Rep. Jerry Kelsh		✓
Rep. Joe Heilman		✓	Rep. Corey Mock		✓
Rep. Brenda Heller	✓				
Rep. Dennis Johnson		✓			
Rep. Ben Koppelman	✓				
Rep. Lisa Meier	✓				
Rep. Karen Rohr	✓				
Rep. David Rust		✓			
Rep. John Wall		✓			

TOTAL (YES) 4 (NO) 9 (ABSENT) 0

FLOOR ASSIGNMENT _____

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

Motion Failed

Date: 3/18/13

Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2320

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Amended Rerefer to Appropriations

Do Not Pass Adopt Amendment

Motion Made By Rep. Heilman Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Mike Nathe	✓		Rep. Bob Hunsakor	✓	
Rep. Mike Schatz	✓		Rep. Jerry Kelsh	✓	
Rep. Joe Heilman	✓		Rep. Corey Mock	✓	
Rep. Brenda Heller		✓			
Rep. Dennis Johnson	✓				
Rep. Ben Koppelman		✓			
Rep. Lisa Meier		✓			
Rep. Karen Rohr		✓			
Rep. David Rust	✓				
Rep. John Wall	✓				

TOTAL (YES) 9 (NO) 4 (ABSENT) 0

FLOOR ASSIGNMENT Rep. Rust

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

REPORT OF STANDING COMMITTEE

SB 2320, as engrossed: Education Committee (Rep. Nathe, Chairman) recommends **DO PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2320 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2320

February 4, 2013

Testimony for SB 2320

Nicole Poolman, District 7

Good morning, Chairman Hogue and members of the Judiciary Committee, for the record my name is Nicole Poolman, and I represent District 7 in the North Dakota Senate.

I introduced SB2320 for two basic purposes:

1. To make sure school administrators receive notice when a student has been adjudicated for a sex crime, and
2. To encourage the Division of Juvenile Services to release records of juvenile offenders to administrators in order to protect other students and offer appropriate services to the offender

Currently, when a school administrator comes to work on Monday morning, he will receive a phone call from law enforcement to inform him that Johnny was caught with a pack of cigarettes and Jenny was caught drinking at a local party.

But if Joe was convicted of rape on Friday afternoon, the administrator will not get a phone call about that. The same would be true for a weapon violation. Even if he hears through the grapevine that this has occurred and calls the Division of Juvenile Services, they will not release that information.

This is a safety issue in our schools. Safety for our students, safety for our teachers, and safety for the employees.

This bill came out of a number of conversations with school counselors, teachers, and most recently, administrators. These conversations inevitably come up every time there is another act of violence in our schools. The media always reacts with a new push for gun control, and those of us who work with these kids realize that the problem is so much deeper than the presence of guns in our society. We have some very troubled kids walking the halls of our schools, but many times we don't even know where to begin when it comes to offering them the services they need. Even when administrators ask to see a juvenile's records, they are denied.

We are charged with keeping our children safe while they are at school, but we have policies in place that can make it difficult to do that. Administrators need information to protect our students. They need information to offer mental health services to those who need it most.

Is this bill going to solve all of our problems and ensure that violence will never occur in our schools? No. But it is an important step in the right direction. It gives administrators the information they need to protect our kids. I ask you to help make that information available by supporting this bill.

Testimonial Senate Bill 2320

My name is Steve Madler and I am a secondary principal. One of the roles in my position is to ensure the safety of our students. This is done by identifying potential risks and putting together plans to minimize the risk. It is for this reason I am here today as an advocate for the amended changes in Senate Bill 2320.

Having worked with juvenile sex offenders during the past 9 years, I fully recognize the sensitivity of this information. The law, in its current format, seems to leave case managers in a quandary about the information that can and cannot be shared versus information that should and should not be shared. As with any offender, the societal goal would be to reintroduce an offender into their environment with minimal risk of re-offending. This is not done by simply letting them go with a stern message to not re-offend. Rather a carefully thought out plan is put in place and monitored for success. When dealing with juvenile offenders, one cannot ignore the fact that similar plans must be in place to assure success in a school setting. A quality plan cannot be developed when disclosure is muddied.

I full-heartedly believe the proposed changes take care of issues our schools have experienced in the past regarding disclosure of juvenile sex offenders. It supports an open dialogue between the school and the juveniles' case worker. It is this open communication which will lead to a successful reintegration with students. Therefore, I ask you to leave no doubt in your mind as to the benefit this has for all students and schools throughout our state while supporting Senate Bill 2320.

2320
③

SENATE JUDICIARY COMMITTEE
Senator David Hogue, Chair
February 4, 2013

North Dakota Department of Corrections and Rehabilitation
Division of Juvenile Services

Lisa Bjergaard, Director
Presented Testimony concerning SENATE BILL 2320

For the record, I am Lisa Bjergaard, Director of the Division of Juvenile Services and I present this testimony in opposition to Senate Bill 2320.

Section 27-21-12 of the North Dakota Century Code currently provides for the sharing of information contained within the Division of Juvenile Services (DJS) case file with a school district or a multidistrict special education program when the exchange is necessary for the protection of others or is in the best interests of the juvenile, including for treatment and education purposes. Section 2 of Senate Bill 2320 proposes to delete this language.

The proposed new subsection 3 to Section 27-21-12 in Section 2 of SB 2320 would mandate that all of the information contained in the case file be shared with school superintendents or principals for any youth who happens to be under the legal care, custody and control of the DJS, regardless of the youth's risk level and whether or not the school requests the information.

My opposition to SB2320 is based on two broad areas of concern. First, as the state agency director, I am obligated to point out that DJS files are large and complicated, and creating full copies of the files will pose a challenge to the state agency on several fronts, which I will be happy to detail for you.

My primary opposition, however, is the broad based, all inclusive nature of this bill. Because of the level and intensity of treatment services provided to youth

and families while youth are under the custody of the Division of Juvenile Services, case files contain extensive confidential and personal information, and include private and very sensitive information regarding persons collaterally connected to the case as well. This bill will require DJS to release records far beyond those generated by the agency itself. It will release child protection reports (including the names of victims, the names and addresses of reporters, and of those who were interviewed as collateral contacts), confidential law enforcement reports, child support records, information that identifies the names and addresses victims of crimes, financial records related to Medicaid, social security and foster care, among others. There is similar information contained in these files on parents, siblings, step-parents, and other close relatives of the identified youth, and more.

The proposed statutory amendment is also over-inclusive in another respect. The amendment will require disclosure of the entire file in every case in which the Juvenile Court has ordered the Division of Juvenile Services to take legal custody of a child. This means the Division must present its entire file on a juvenile who does not have an out-of-home placement, or may only have an adjudication as an unruly child, or for a minor delinquent offense such as shoplifting.

The North Dakota Division of Juvenile Services has been designated as an agency that must comply with HIPAA (Health Information Portability and Accountability Act) Privacy and Security rules. If this bill were enacted, DJS could comply with the requirement to release the file. However, DJS would be mandated to disclose to the juvenile and their family that all of the information contained in the case file will be released to the superintendent of the school. This will have a direct and chilling effect on the willingness of youth and families to participate fully and with confidence in the programs that they so desperately need, and will in turn render the state youth corrections agency less able to fulfill the statutory mandate to provide treatment and rehabilitation. Treatment is the

single most important tool used to lower the level of risk posed by these youth to themselves and to society.

The current statute allows the DJS to release information from the file, but privileged, highly sensitive, or irrelevant information can be excluded or redacted. Also, the current statute allows information to be released in cases where the school feels it is needed, rather than a mandatory wholesale copying of files in cases where no cause for concern has been identified.

In summary, I would assert that our present statutory system is working. This is an over-inclusive and highly invasive bill with unintended consequences for the vast majority of DJS youth and families where there is no need for such detailed information-sharing. There exists no justification that the school needs the entire record of every juvenile who is being returned to school.

2320
2/12

①

Amendment No:

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2320

Page 1, remove lines 19 through 24

Page 2, remove lines 1 through 29

Page 3, remove lines 1 through 28