

2019 SENATE HUMAN SERVICES COMMITTEE

SB 2218

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2218
1/22/2019
Job # 31177

- Subcommittee
 Conference Committee

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| Committee Clerk: Justin Velez / Carie Winings |
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Explanation or reason for introduction of bill/resolution:

Relating to records of individuals who provide information to public social service agencies.

Minutes:

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|----------------|
| No Attachments |
|----------------|

Madam Chair Lee: Opens the hearing on SB 2218.

Senator J. Lee, District 13: Introduced the bill and gave a brief description. You can see the definitions about Human Services and public social service agencies, but in Subsection 2, you will see that the identifying information for an individual who has provided information regarding concerns observed. If you are going to say something when you see something, why would you be identified. Maybe there is a better way to put this if there are concerns about it. (Gave an example of a circumstance that occurred.)

(3:02) Senator Hogan: When you drafted this bill did you look at all the cross-references about exempt and non-exempt in all of the various codes? Because it is really defined by program. Would this be overriding to all of those?

Senator J. Lee: I guess I was assuming that Legislative Council would have taken care of that. We can certainly ask that question. I am not trying to stir the pot up. There are others here that may have something to say about this.

Senator Hogan: That was a hot issue in child care licensing issues and the exempt/non-exempt issues. I think this applies in child protection right now. It varies from program to program significantly, and I think we need to look at it.

Senator J. Lee: I can't think of a situation that I would not want this to be the beginning of the process. If there is a problem, then they have the right to know who the accuser was, but if there is an investigation that is taking place and it turns out that the information was incorrect then it should be able to evaporate eventually. The whole goal is for those persons that are served, whether children or adults in whatever agency it might be, should not fear retribution.

(6:00) Jonathan Alm, Attorney, Department of Human Services: How I would interpret this to be is if child abuse and neglect, vulnerable adult, protective services has a specific law that makes it confidential, we would of course use that law. If there is a provision or other records that would not be confidential, we would look at this law to make them exempt.

Senator Anderson: Explain to us the difference between exempt record and confidential record.

Jonathan Alm: The difference is that confidential record is where we can only disclose based on what the statute allows, and the exempt record allows us to be able to consider it a closed record. We can either disclose it or consider it to be a confidential, non-disclosable record.

Senator Clemens: If a person deliberately makes false accusations through ill intent, is that covered in the law?

Jonathan Alm: For example, in our child abuse and neglect law, we have a specific statute that provides a criminal penalty if they provide false information. That way we can turn it over to the state's attorney to be investigated based on our policy. I am not sure if other laws have similar provisions or not.

Madam Chair Lee: Please repeat the definition for exempt.

Jonathan Alm: I can get that to you.

Madam Chair Lee: Closed the hearing on SB 2218.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2218
1/28/2019
Job # 31549

- Subcommittee
 Conference Committee

Committee Clerk Signature: Justin Velez / Carie Winings

Explanation or reason for introduction of bill/resolution:

Relating to records of individuals who provide information to public social service agencies.

Minutes:

No Attachments

Madam Chair Lee: Opened committee discussion on SB 2218, and reminded the committee on the purpose of the bill.

Senator Roers: Moved a Do Pass.

Senator Clemens: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Senator Roers will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2218**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. K. Roers Seconded By Sen. Clemens

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|---------------|-----|----|
| Chair Lee | X | | Senator Hogan | X | |
| Vice Chair Larsen | X | | | | |
| Senator Anderson | X | | | | |
| Senator Clemens | X | | | | |
| Senator Roers | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. K. Roers

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

REPORT OF STANDING COMMITTEE

SB 2218: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2218 was placed on the Eleventh order on the calendar.

2019 HOUSE HUMAN SERVICES

SB 2218

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2218
3/5/2019
33214

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klaman by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to records of individuals who provide information to public social service agencies.

Minutes:

Chairman Weisz: Opened hearing on SB 2218.

Aaron Burst, Association of Counties: In support. This bill comes when people report child abuse deprecation kind of things to the social service agency. The social service agency of course takes the name, the address, the telephone number of that reporter, but of course a number of folks are not comfortable with that being released under open records. That simply says that is an exempt record and will not be released. There are two types of closed records; confidential and the exempt. Confidential will never be disclosed.

Representative Todd Porter: There's a point where if inside of the process of these investigations and action is required, is it the intent the name of the accuser is public or only if it goes to the criminal side it becomes public?

Aaron Burst: Regardless if it's criminal or not and the accused denies action necessary, counseling, treatment.

Rep. Porter: Are we creating the witch hunt? These are always difficult situations inside family law. How does that person get their good name back and fight for what is rightfully theirs, too.

Aaron Burst: Social services take the reports, ask for action. States attorney also plays their role. If you are accused, you will always have the right to know that. This prohibits "Joe Citizen" from getting that information.

Chairman Weisz: If it doesn't go to court, will the accused ever find out who reported?

Aaron: If it doesn't go to court and no action is required, you probably wouldn't know you've been reported as you haven't been provided that information.

Rep. Bill Tveit: The provider yesterday, was accused and went thru the process. To this day I do not know if he knows who accused him.

Aaron Burst: It helps the accused because the records are exempt and their name shouldn't be released until it's proven fact.

Opposition: None

Closed hearing on SB 2218.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2218
3/6/2019
33304

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klaman by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to records of individuals who provide information to public social service agencies.

Minutes:

Chairman Weisz: Reopen SB 2218.

Rep. Dobervich: Motion to Do Pass.

Rep. Rohr: Second.

Chairman Weisz: Discussion.

Rep. Porter: We should put in this that someone that is “witch hunting” isn’t protected by this. I understand the good faith belief, but if an order wasn’t found, and it was a no change kind of situation should that person remain anonymous, even if they had the good faith or they were witch hunting? There is a pool of people out there that are just looking for any way to mess with someone’s life. This has me puzzled.

Rep. Tveit: I am with **Rep. Porter**. I can see us back here two years from now coming up with rules and regulations how you know it was done in good faith. Finding the good faith is really wide open.

Chairman Weisz: Currently now it is confidential, I believe.

Rep. Schneider: I suggest that we focus on the child or the vulnerable rather than the adult that can fight back on some of these things. If someone is afraid to report because it is not anonymous, a danger may continue. There are real reasons why people want to be protected from retribution against a real abuser. I would focus on the reason to have this and that is to protect individuals.

Rep. Dobervich: From the standpoint of doing input, taking calls, and writing up the initial complaint, when people are asked, not everyone, but multiple times when I would ask people for their name and phone number so that social services could follow up with them. The number of people that hung up on me that they wanted the abuse or neglect reported

and it didn't have the same sound to it as I'm mad. When doing the intake, there is a feel to those type of calls versus the others. There are a lot of people that want to remain anonymous because of the best interest of the family.

Rep. Skroch: Can you follow up on the information received when no contact information has been given to you?

Rep. Dobervich: If people hung up on us, as an intaker, it would be up to social services to decide if they had enough information and a lot of times there was not enough information and who knows what was really going on. Being able to keep it confidential, I believe you are able to get more information to go on and people are more likely to disclose information.

Rep. Weisz: They still have to investigate. Any report requires at least that they look into it.

Rep. Kiefert: One day my wife and I got a phone call from social services saying that we were reported for abusing our grandkids. While we were able to find out who did it and set the stage, my daughter was going through a divorce and it was here ex mother-in-law that reported us just out of spite. Being able to find out who it was, we were able to address it with the social worker and tell her what the situation was. That ended it being able to address who the person was, so it kind of goes both ways.

Rep. Dobervich: Social services would have had the information who it was. They had it but you didn't know. They still have to investigate.

Rep. Kiefert: It is hard to defend yourself when you don't know where it is coming from. Being able to find out who started process, we were able to explain to them what's going on, so then it was dropped right away.

Rep. Porter: All of these records are closed, so I am not so sure exactly what we want to do with this bill. Without a bill sponsor here, we really don't know what to solve, fix or do, so I think that our intern should look into this before we move forward with it.

Rep. Dobervich: Will withdraw motion.

Rep. Rohr: Withdraw second.

Chairman Weisz: Closed meeting.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB2218

3/11/2019

33526 (52:13-1:08:58)

Subcommittee

Conference Committee

Committee Clerk: Nicole Klaman by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Voting on bill.

Minutes:

A

Chairman Weisz: Opened the hearing on SB2218. The intent is to make sure that the information would be anonymous until it ends up in court. So that they don't have to fear retribution if they report somebody. The discussion came up because this is in section 44, and

Seth O'Neill, Legislative Intern: (handed out attachment A)

Rep Skroch: It raises concern to me that information about an allegation is released before there is verification about the problem, and the person being accused isn't informed and unable to defend themselves.

Chairman Weisz: From the sponsor's standpoint, the person reporting it might not report it if they believe that their name is going to be out there right away. Then they would report it to the department, and the department would do an investigation. However, if something does show up in the investigation, then the name would come out. The sponsor's intent was to make sure that the reporter's name wasn't public until there was information that there was in fact a grievance.

Rep Schneider: I think in this committee we have focused on the rights of the accused, but this bill causes us to focus on the children, and the abused. If we want to be able to protect the children in violent situations, then we need to have a way for people to report violence without being named.

Chairman Weisz: I do think that the language here under number 2 subsection B does help with protection for those that have been illegitimately accused. The department has the ability to determine if they need to protect that individual that has reported the situation or not.

Rep Skroch: In the hand out we received, there is a penalty for not reporting, is there any protection of privacy for the individual that is accused?

Chairman Weisz: What do you mean?

Rep Skroch: So that nothing is leaked until there is evidence that they are guilty of this?

Chairman Weisz: If you look at the section, those are the exemptions and it is all confidential except for those. It is a public record, but it is confidential until there is evidence. I don't think it would change a whole lot, it just changes a few things.

Rep Porter: Move a do pass.

Rep Schneider: Second.

Roll Call Vote: 8 Yes, 5 No, 1 Absent. Motion carries.

Floor Assignment: **Rep D. Anderson**

Meeting closed.

Date: 3/11/19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL SB2218

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. Schneider

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|--------------------|-----|----|
| Robin Weisz - Chairman | X | | Gretchen Dobervich | X | |
| Karen M. Rohr - Vice Chairman | | X | Mary Schneider | X | |
| Dick Anderson | X | | | | |
| Chuck Damschen | X | | | | |
| Bill Devlin | | | | | |
| Clayton Fegley | X | | | | |
| Dwight Kiefert | X | | | | |
| Todd Porter | X | | | | |
| Matthew Ruby | | X | | | |
| Bill Tveit | | X | | | |
| Greg Westlind | | X | | | |
| Kathy Skroch | | X | | | |
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Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. D. Anderson

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

Motion Carries.

REPORT OF STANDING COMMITTEE

SB 2218: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2218 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2218

SB 2218
3/11/2019
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criminal, except for criminal liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged case of abuse, neglect, or death resulting from child abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse, neglect, or death resulting from abuse or neglect must be presumed.

50-25.1-09.1. Employer retaliation prohibited.

1. An employer who retaliates against an employee solely because the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected, or died as a result of abuse or neglect, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor. It is a defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.
2. The employer of a person required or permitted to report pursuant to section 50-25.1-03 who retaliates against the person because of a report of abuse or neglect, or a report of a death resulting from child abuse or neglect, is liable to that person in a civil action for all damages, including exemplary damages, costs of the litigation, and reasonable attorney's fees.
3. There is a rebuttable presumption that any adverse action within ninety days of a report is retaliatory. For purposes of this subsection, an "adverse action" is action taken by an employer against the person making the report or the child with respect to whom a report was made, including:
 - a. Discharge, suspension, termination, or transfer from any facility, institution, school, agency, or other place of employment;
 - b. Discharge from or termination of employment;
 - c. Demotion or reduction in remuneration for services; or
 - d. Restriction or prohibition of access to any facility, institution, school, agency, or other place of employment or persons affiliated with it.

50-25.1-10. Abrogation of privileged communications.

Any privilege of communication between husband and wife or between any professional person and the person's patient or client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse, neglect, or death resulting from abuse or neglect resulting from a report made under this chapter.

50-25.1-11. Confidentiality of records - Authorized disclosures.

1. A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:
 - a. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
 - b. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
 - c. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
 - d. Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.
 - e. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.

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- f. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
 - g. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
 - h. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
 - i. A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.
2. The department shall notify the parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 of the name of the subject and provide a summary of the facts and the results of an assessment conducted under this chapter if the report made under this chapter involves the owner, operator, staff member, or household member of the early childhood program, the holder of a self-declaration or a household member of the holder of a self-declaration, or the in-home provider or a household member of the in-home provider, who is providing care to the child.

50-25.1-11.1. Confidentiality of children's advocacy center records.

Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.

50-25.1-12. Cooperation required.

All law enforcement officials, courts of competent jurisdiction, and appropriate state agencies shall cooperate in fulfillment of the purposes of this chapter.

50-25.1-13. Penalty for failure to report - Penalty and civil liability for false reports.

Any person required by this chapter to report or to supply information concerning a case of known or suspected child abuse, neglect, or death resulting from abuse or neglect who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor. A person who willfully makes a false report, or willfully provides false information that causes a report to be made, under this chapter is also liable in a civil action for all damages suffered by the person reported, including exemplary damages.