

2019 SENATE JUDICIARY

SB 2281

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2281
1/22/2019
#31178 (30:22)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

Minutes:

3 Attachments

Chair Larson opens the hearing on SB 2281.

Dick Dever, District 32 Senator, testifies in favor of the bill

Senator Dever: 2 or 3 years ago, Jenny Erickson who is here and is the mother of a child who was in childcare, noticed her child came home with some bruises. She was concerned about that and filed a complaint. The police department and states attorney said the teeth are not really in the law to deal with that. She determined that she will do something to get that changed and that's why we're here. This bill is clean-up language but the meat of the bill is in section 1 paragraph a where it talks about the reasonable force. One of the concerns we had in the drafting of the bill is that we not prevent parents from disciplining their children, but that it is recognized that discipline is done by parents and only by parents or with their permission to caregivers. The bill says their permission must be in writing. This is the intent.

Senator Myrdal: Line 21 it talks about the permission in writing. How would you legally do that in writing? Discipline is relative.

Senator Dever: You can't bruise your child either and that's in the bill also, not being changed. If you cannot do that yourself, you cannot assign that to somebody else to do either. One other circumstance here is that the daycare provider was not licensed. I've been told that as many as half of the child care providers in the state of North Dakota are not licensed and that's a problem, yet not addressed by this bill. It should be addressed elsewhere.

Chair Larson: This bill doesn't specify a licensed provider.

Senator Dever: No, but whether they're licensed or not I think the provisions of the bill should apply.

(5:05) Jenny Erickson, concerned parent, testifies in favor (see attachment #1)

(11:35) Chair Larson: Did anyone direct you directly to Social Services to make a child abuse report? There standard is not as high as the legal standard.

Erickson: I was told that Social Services could not get involved until after the police did their investigation, and that was about 4 months after the incident. I received a letter about 7 months after it had happened stating that they found no abuse by the caregiver.

Chair Larson: Did you take pictures of the marks?

Erickson: I do have pictures and the detective took pictures as well.

(13:12) Katrina Hanenberg, concerned parent, testifies in favor (see attachment #2)

(15:32) Chair Larson: How is she now?

Hanenberg: She's a healthy, happy 3-year-old thank goodness- after 3 brain surgeries.

Senator Bakke: This is personal for me too because I was a foster parent and my youngest child was a shaken baby at 4 months. Both of you have mentioned that neither one of these daycare providers were licensed, but yet nothing in your bill is addressing that. Is that a piece that you also want addressed or is it only the limitations on force?

Hanenberg: I would love it to be addressed that unlicensed providers are better regulated; however, my husband and I met with our legislator this past summer and brought this issue to him. He talked to several of your colleagues and informed us that they found it too difficult to regulate unlicensed day cares at this time because there is so much lack of care. My husband and I felt that if we could even make unlicensed daycares have to self-declare if there was any abuse found, social services would then be able to shut them down immediately. In our daughter's case, our daycare provider was allowed to keep doing daycare. Social services could do nothing and informed us of that.

(18:17) Lisa Schauer, concerned parent, testifies in favor (see attachment #3)

(21:20) Chair Larson: You talked about your biggest regret. I want to assure you that as a trusting person never having experienced anything like this, there would have been no reason for you to act any differently than you did. It would have been normal to expect people to take good care of your child. It shouldn't have happened but the shame isn't on you.

Senator Myrdal: As mothers we often carry a lot of guilt no matter what. If you were seeking a daycare provider today with this bill passed, what would you write in a written agreement?

Schauer: I personally wouldn't allow it to be "I consent for you to use physical discipline on my child". To me it's more of an anti-consent; it would be something like "do not use physical force on my child under any circumstances". Also an injury reported or an injury that occurs in a childcare provider's home should be reported.

Jenny Erickson: Senator Bakke had asked about unlicensed providers. I'd like to add that nothing was done to my son's daycare, and she is still providing care today. When my story came out, I found out about other previous incidences that happened in her care. She hit a little girl over the head with a salt shaker and the prosecutor on my son's case was the same one on that case. When I asked her why nothing was done, she said it was the same thing.

It was a young child who could not testify. The goal of including written consent to a paid caregiver is that it covers anybody you are paying for a service to take care of your child.

Chair Larson closes the hearing on SB 2281.

(24:30) Chair Larson: I have a constituent who contacted me. I told her it was too late to draft a bill when I didn't know this one was out there. I may want to offer an amendment. She had a child who died in daycare. She thought it was neglect because her baby died of SIDS and hadn't been checked on for some time. She was wondering if there would be a way that we could put together some kind of a requirement that even unlicensed daycares log that they're providing daycare as an unlicensed person, so there's a record of those who are doing it. I don't know if this is possible, but I'd like to explore more before we proceed.

Senator Myrdal: I agree and think there is definitely provision needed to protect these children. I live in a rural area and it's a struggle- young people won't live there because they don't have daycare. The greatest resource we have in North Dakota is not oil or agriculture, but our children. We need to have the discussion of putting some kind of restrictions and enforcement on non-registered and non-licensed providers.

Chair Larson: Or at least have them listed to keep track of reports.

Senator Myrdal: Yes, some kind of accountability. And if it's relatives that's a whole different thing. This is a bigger issue than just this bill.

Senator Bakke: As a licensed foster parent and a mandatory reporter, many times Social Services will tell me that every time there is an incident of anything it needs to be reported because even though they can't find anything substantial with the first or second incident, the building of the paperwork eventually is their basis of what they can hold onto to charge people. I totally understand what these women are talking about. Right now Social Services doesn't have a lot of power in these cases, they just have to build up a reoccurrence that they can then get someone to act on. But how many kids need to be hurt before action can be taken? I'm of the opinion one.

Senator Myrdal: It's also important to protect parents here because there have been accusations of abuse in these cases. We need to make sure there are safeguards for wrongly accused parents.

Senator Osland: This is very serious stuff. Somebody mentioned this is a step in the right direction. We need to look at this bill and make sure that it contains what it should contain from the standpoint of the people testifying and the carrier of the bill. This deserves our utmost attention and might take a few days.

Chair Larson: We have work we want to do on this bill. We will come back in this afternoon after the floor session.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2281
1/23/2019
#31312 (7:11)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

Minutes:

No Attachments

Chair Larson calls the committee to order to discuss SB 2281.

Senator Bakke: I talked with somebody who works with licensed daycares. I was asking how we track people are providing daycare in a community, licensed or not. Licensed is easy because Social Services keeps track of that, but there is no tracking with unlicensed. She told me sometimes there can be family members who provide childcare and that it's almost impossible to know who all is out there doing childcare. We would have to come up with some sort of system to try to gather this information. She didn't know if that would even be possible.

Senator Myrdal: I had question about the written permission part. I understand it because I would want that as well, but what is the legal significance of that, will that stand up in court and what kind of written permission is deemed appropriate?

Senator Bakke: I have a problem with the title: limitations on permissible use of force on a child. That's child abuse. There is no permissible use of force on a child. I don't want it limited I want it eliminated. When you start putting reasonable, there should be no force. I do not want this ever happening to a child, but I'm not sure this does.

Senator Myrdal: I concur. I also do think we need to be careful not to step into the rights of parents. There's a fine balance of the liberty and rights of parents to discipline their children here, but some of the language is bizarre in this whole section frankly.

Chair Larson: We will take our time and get this worked out so that when we meet on Monday afternoon, we will be ready to take action.

Vice Chairman Dwyer: If we were going to do what Senator Bakke would like to see, you would have to put a period after "guardian" on line 19 and just not allow force by somebody

other than- and you don't have to question what kind of writing it is and so forth. We're just saying it has to be a parent or a guardian.

Senator Bakke: Even a parent can't use force on a child. Technically as a parent if you hit your child, that is child abuse.

Chair Larson: if you leave a bruise.

Senator Bakke: Yes.

Chair Larson ends the discussion on SB 2281.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2281
1/28/2019
#31583 (22:50)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

Minutes:

No Attachments

Chair Larson calls the committee to order to discuss SB 2281.

Chair Larson: I had wanted to hold off on voting because I had a constituent that wanted to see what we could do with at least registering other daycare providers that were not licensed. I talked with Legislative Council about it and together we could not figure out a way to try to make that happen. These are informal setting usually: a neighbor, a friend, a relative, etc. I like the idea of it, but I don't see how we can do it.

Senator Myrdal: Another concern was the provision on line 21 that says there must be direction in writing. We thought that was quite ambiguous and vague. It is the responsibility of the parent to do that. Our children are valuable and it's important to protect them in these situations, but it's the burden of the parent or guardian when dropping them off at any daycare to clearly write that on a piece of paper. The title "use of force on a child" is alarming, but it's criminal law language and in the Century Code. There's nothing we can do about that.

Senator Bakke: Basically what we were told was that this will do everything we wanted to do and there was really nothing that needs to be added. It would be virtuously impossible to get a registry for unlicensed providers.

Chair Larson: Does current law prohibit corporal punishment in a registered daycare?

Senator Bakke: I train foster and adoptive parent. In the state statutes for abuse of a child, a spanking is considered an abuse of a child. Foster parents and licensed daycares are not allowed.

Chair Larson: Is this bill opening it up to provide that if they have written permission?

Senator Myrdal: It is prohibited unless you permit with writing because there is a parental right to discipline your child as long as it doesn't leave a physical mark. Writing a note saying you may, that's the right of a parent. However, it that "may" does not include any bruising or anything under code that is already prohibited.

Senator Osland: One of the overriding problems in this whole area are funds and available resources. Think if we had a coupon for the children that you would have to be a licensed daycare to get, an amount that made it worthwhile. Coupons would ensure licensure, their name would be out there and we'd have control of everything. If they didn't care to receive a coupon, then they would be out in the dark. The coupon would have to have value to it; we need to spend money on the real places. Our babysitting right now costs the state about \$10,000 a kid- it's called public education. What if we talked about \$1,000 per child for daycare? That way we can get everyone registered and they can be profitable. If we had courage we would present a bill like this to protect our children, our greatest asset.

Chair Larson: They would have to attend a licensed day care provider to get this?

Senator Osland: You'd have to be licensed to get your coupon. That would encourage people and we would know who was out there. The money would be going to the right people.

(9:35) Senator Bakke: There are incentives to be a licensed daycare such as free food coupons, certain supplies and training. The food program is probably the biggest one. The problem is a lot of these people don't like going through the annual fire inspection required for licensed providers. Many people feel that's infringing. They require a certain ratio of kids to adults and some of the unlicensed daycares like to have more children because that's more income. I see what you're saying, but you'd have to make that coupon pretty engaging to get them to do it. They've done everything they can I think to make being licensed an advantage.

Senator Myrdal: I think we are doing enough in our state to try to make our public schools basically daycare from 3 years and up. Party line we may disagree, but I think this bill is necessary to protect from violence and abuse of children. Philosophically myself I wish we could get back to the day when one of the parents would choose to raise them.

Chair Larson: Senator Osland, your idea, although it has some merit to research, is substantially different than the bill we have before us. It is not something we can add to this bill.

Senator Osland: If we see a solution that doesn't coincide with a bill, we need to discard it?

Chair Larson: We cannot change the intent of a bill.

Senator Osland: We have workforce issues in this state, a tremendous shortage. The more accommodating we can be with this issue, is better; however, I agree with Senator Myrdal- I would like to see the parents at home with their children. In lieu of that, we need to create another bill and that would be the next session I suppose.

Chair Larson: Correct. Unless another bill comes through that has to do with funding of daycare providers.

Senator Myrdal: Motions for a Do Pass.
Senator Bakke: Seconds.

(13:55) Vice Chairman Dwyer: in what circumstances would a parent ever give a daycare provider written permission to beat up their kid?

Chair Larson: This is talking about proper discipline; it is not referring to beating up anybody. The proponents came in and thought that by passing this legislation, they're going to ensure that it's in state law, that it is prohibited unless you have written permission to spank my child you cannot. They feel it provides more of a protection. The proponents and testifiers felt it would be protection against a daycare provider thinking they are allowed to spank a child.

Senator Myrdal: In the testimony, those kids were abused and hurt which is already illegal, but there wasn't enough clarity for prosecutors in Century Code to go after it legally; this gives some clarity. If you do write something, then it's on the parent. But again it's illegal under law even then to bruise or use force that is hurtful.

Chair Larson: you may not leave a mark.

Senator Bakke: What bothered me the most is "reasonable force". There is no force I find reasonable with a child. Legislative Council told me reasonable force is defined in the law somewhere else and it's not what I was thinking it was. Reasonable force could be anything from talking or forcing your opinion on a child. It doesn't necessarily involve a hit or a slap. That's why that language was used; it's not what I was thinking it was.

Chair Larson: There are children with mental disorders who begin to physically self-harm or hurt somebody else. There are restraints that you use to swaddle a child and hold them for their own protection and for others. Those are a certain kind of force that would be allowed in these situations.

Senator Bakke: There are therapeutic holds you can put a child in that keeps them from hurting themselves by banging into walls or hurting others without really hurting them. Then it keeps them under control. When you're a licensed daycare, you're required to go through the training to learn to do that so that you don't harm a child.

Vice Chairman Dwyer: I understand the intent of the bill, but what parent would actually sign something in writing and say "you can use reasonable force on my kid"? If they sign that and there's a bruise or mark, then are we creating a situation where there's no liability because they've signed it?

Senator Bakke: I don't disagree with you. It's appalling what was done to these children, but I don't know if this fixes it or makes it worse. In talking with legislative council, there was really no way to change it. I don't know where I am in this either.

Senator Myrdal: In light of these discussions, I will retract my motion so we can look into this a little further. It's an emotional bill, but we should look at this technically. I would like to revisit legislative council.

Chair Larson: If this is actually giving permission for something we don't want to give permission for?

Senator Myrdal: Yes.

Senator Myrdal: Withdraws Motion
Senator Bakke: Withdraws Second.

Senator Bakke: We should bring legislative council down here, so we can all hear what she says to clarify it in all of our minds.

Senator Myrdal: Representation from the prosecutor's office would be helpful as well. We're dealing with such minute changes. I want a clarification of what the law does now and what this accomplishes and if it meets the intent. If it does not meet the intent, this law is unnecessary.

Chair Larson: Let's try to schedule that for tomorrow after floor session.

Chair Larson ends discussion on SB 2281.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2281
1/29/2019
#31703 (35:31)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

Minutes:

No Attachments

Chair Larson calls the committee to order to discuss SB 2281.

Jennifer Clark, legislative council, neutral party

Clark: The reality is this law is only going to come up when something bad has happened. The law is an affirmative defense. So somebody has been charged with a crime and they're saying "but I had authorization to do it" under the use of this law. In putting this together, it was difficult to figure out when you're prosecuting somebody for harming a young child, the he said she said or the lack of credibility of the witness can be a real challenge. In this instance in visiting with our local state's attorney, one thing she said was one of the struggles in prosecuting this was the daycare providers who were not licensed said "we had permission to use necessary force". That's what this is focusing on, is if that had been in writing, that would have been of assistance to them in prosecuting it. Even if that had happened it may not have changed the outcome of the case because then it would have been a matter of which adult in the household actually used that force on the child. Another reality is that child really was significantly harmed. This affirmative defense doesn't allow you to significantly harm a child; it allows you to use necessary force. For shorthand I'm going to say "spanking". As this law exists today, it says the following people can spank. We're narrowing the scope of who we say can use as an affirmative defense "I had permission to spank". We're saying that it can be a parent, somebody who is acting at the direction of a parent and if that person acting as a parent is a paid caregiver, it must be in writing. Today it doesn't have to be in writing.

Senator Myrdal: but it's illegal?

Clark: No. If you're a licensed or self-declaration caregiver, the Department of Human Services says as part of their licensure requirements that those individuals are prohibited from spanking. That's not a crime if they spank, but they're going to lose their licensure. If they're going to keep their licensure, they can't use that type of force. Generally, you're dealing with somebody who is a non-licensed caregiver.

Chair Larson: If we pass this and they have in writing that they may spank Johnny, then that in itself is a problem for them with their licensure because they're not allowed to spank Johnny according to their licensure.

Clark: Correct. That is my understanding with the law and the administrative rules.

Senator Bakke: That is only if they're a licensed daycare.

Chair Larson: Correct. How can we get a registry of people who are not licensed? I haven't found anybody that can figure out any way to do that.

Clark: That would be a challenge. There are so many people who would provide those services on a one-time basis. It would be a struggle to enforce.

Vice Chairman Dwyer: This bill would narrow the affirmative defense so that it would have to be in writing.

Clark: For a paid caregiver, yes. Today it doesn't have to be in writing for them to raise that affirmative defense.

Chair Larson: This would apply more to unlicensed daycare providers that they can't use that claim.

Clark: Yes, and babysitters. It's a paid relationship.

Brita Demello Rice, Office of Attorney General, neutral party

Senator Myrdal: Does this bill meet the intent of the sponsor?

Rice: I don't know the intent, but currently a daycare provider could still bring this defense. Certainly all personal crime is usually a he said she said instance, but it helps if there is corroborating evidence for one side. It would help the providers if it was in writing.

Chair Larson: According to licensure, their licensure prohibits spanking.

Rice: Correct.

Chair Larson: Having this still would not give them permission.

Rice: No. This has to do with an affirmative defense in a criminal matter.

Senator Myrdal: If we do not pass this language, does that mean it's a free for all if something like this happened again?

Rice: First of all, we have prosecutorial discretion. Every prosecutor is different so it's hard to say that whether or not you pass will have a certain effect on all prosecutions. What this language does is protects unlicensed daycares who get permission to spank a child. In most child abuse cases that are actually charged out as child abuse, there has to be bodily injury, the minimal injury. Bodily injury is any impairment of physical condition including physical pain. It's a lot different than just a swat on the butt. One case I handled in the past was an

18-month old who came home twice with a huge hand mark on her face. So now we have a non-verbal victim and no adult witness besides the daycare provider. She claimed that the little toddler was walking around, fell, and hit herself in the head with a rattle. That did not look like the handprint on this baby's head. That went to trial twice; the first time it was a hung jury and the second time it was acquittal. No matter what you, we will still charge people with a crime if there's evidence sufficient to show bodily injury. This helps their defense because it puts it in writing that at least mom and dad said it's okay to spank, but it doesn't help if it's clearly more than reasonable force. The language as proposed is very confusing.

Senator Myrdal: What I'm hearing is that this would not help the complaints that we heard. You cannot under law do unreasonable harm to a child already. I'm starting to think this language doesn't accomplish anything to help the intent of the sponsor of the bill.

Senator Bakke: Is this the best way to stop what we want to stop or is it already in law? I don't want to protect the unlicensed daycare; I want to protect the kid. Is this the best way to keep the kids safe?

Clark: I can't speak to whether this is the best way to do it. My recollection is the sponsor wanted to somehow address these situations where it is so difficult to prosecute and it doesn't matter what you do, there's still going to be a he said she said.

Vice Chairman Dwyer: If you took out the last sentence of subsection a so that daycare providers could not use reasonable force, we wouldn't be giving them a defense of it being in writing. We'd say it's prohibited. Would that make it better?

Clark: Page 1 line 19 "or a person acting at the direction of a parent or guardian", that's the change you would need to make. That would prohibit more people from being able to raise this as an affirmative defense.

Vice Chairman Dwyer: From a prosecution standpoint would that help?

Rice: If it's addressing Senator Bakke's concern about protecting the kids, then yes. If it's addressing Senator Dever's concern that the daycare provider that got permission from a parent is now facing a criminal charge and has no defense even though a parent told them, it doesn't protect them. I think that's where Senator Dever was coming from.

Chair Larson: That wasn't the impression he gave us. I think his intent was to prohibit some providers spanking somebody's child without written permission to do so. That was his intent in our committee.

Rice: I misspoke.

Vice Chairman Dwyer: Knowing what Senator Dever's intent was, protecting the kids, if we took that out then a daycare provider wouldn't have that defense because the law says you can't do it.

Rice: Yes, I think that does protect the kids. It's not a fail-all because you're still going to have people abuse kids unfortunately but then we charge them with a crime.

Senator Myrdal: I agree with protecting the kids, but we're also responsible with protecting all citizens including that daycare provider. If you take that section out, is that protecting both parties?

Rice: If we did that, then daycares from now on would know that the law doesn't allow you to have any corporal punishment if you're a daycare provider. If a parent were to come to

them and give them permission, the daycare provider would have to refuse because the law says they cannot.

Clark: I agree. It's not just a daycare provider, it's a paid childcare provider who is not licensed.

Senator Myrdal: Are we running into infringing on parental or family right to discipline their child? Are we stepping on liberty in that regard? Not abusing, but simply disciplining.

Chair Larson: If there is no damage or marks or abuse showing, then there's nothing to prosecute. We're not putting them in any danger right now by doing this in my opinion.

(20:35) Senator Myrdal: We're talking about striking line 19 “, or a person” until line 22 b.

Chair Larson: Right.

Vice Chairman Dwyer: We would be protecting the right of the parent or guardian by keeping those words in there.

Senator Bakke: If you go to the second page line 4, it says “or a person acting at the direction of the guardian or responsible person”. Do we have to go through this bill further?

Clark: These are different classes. One thing to point out is we are talking about subdivision a lines 16-21. We're talking about using that use of force as punishment. That doesn't include somebody reaching for a hot pot and slapping their hand away. That arguably would still be allowed under existing law on page 1 lines 10-14.

Chair Larson: If we were to amend this like we're talking about, would this substantially change the current law?

Clark: it would change the way the law is today. It means parents can't delegate that to somebody else. We've already got instances that can't be delegated. If you look at line 10, that's our school situation, you cannot delegate to your school teachers. Is it inconsistent? No, we do that. Is it a change? Yes.

Senator Myrdal: How does it affect families who delegate that to the oldest sibling?

Clark: If you strike that language we're taking away all reference to paying. You can't delegate that anymore.

Senator Myrdal: That becomes an issue of contention for families I'm sure.

Rice: There are other forms of discipline. We're talking about the reasonable force like a spank as our example has been. There are time outs, taking electronics away, writing sentences, sitting in a corner, etc. We're taking away any of that. We're taking corporal punishment on a child.

Senator Luick: If this were passed today as is, what are the damning effects?

Rice: Sometimes we can't predict our unintended consequences of legislation. From an attorney's point, it is confusing as proposed and that's not a good thing. From what I gather, it just gives the daycare provider more of an affirmative defense if they have a written defense. If they don't have it in writing, it makes a weaker case for their defense.

Senator Myrdal: I'm not sure if it's needed. We're giving both parties more of a he said she said case. Does that change the outcome of what we're dealing with here? I'm not sure.

Senator Bakke: I'm not sure how in law you fix a he said she said situation. What I do like about removing those 3 lines, is now no body is allowed to use corporal punishment except for the parents or guardian of the minor and they can't delegate that. I like that. I don't think as a parent you should delegate it because you never know what someone else's definition of punishment is.

Chair Larson: If the law is quiet on that, I don't think it says you can't delegate that. If I tell my babysitter it's okay to spank him on the butt, this doesn't tell me I can't. It just doesn't say that you have to get it in writing if you do. Am I misreading this? You're not going to prosecute anything unless there's some evidence.

Clark: Under your proposed amendment, I don't think it would be accurate to say we're silent on this. What we've said is that reasonable use of force for punishment, you can only raise an affirmative offense if you're a parent. Otherwise I think we've said as punishment, you can't do it unless you're a parent or guardian. It's clear that the person who can do that is a parent or guardian.

Senator Myrdal: I would say that meets the intent and probably goes further. If we pass this amendment, we are limiting corporal punishment to a parent or guardian. I'm personally fine with this.

Chair Larson: I spoke with Senator Dever on this and told him we were wondering if written permission will give someone permission that they don't currently have. He said he thought it would be fine if we took that portion of the bill out, that it still has his intent.

Vice Chairman Dwyer: Moves to adopt the amendment to strike “, or a person acting at the direction of a parent or guardian. If the person acting at the direction of a parent or guardian is a paid caregiver, the direction must be in writing.” on page 1.

Senator Bakke: Seconds.

Senator Luick: The direction in writing is completely gone from the bill entirely? I though thought that was the whole intent.

Chair Larson: The intent was to not let anyone do it and if they do they need written permission.

Senator Luick: The written permission is going away entirely?

Chair Larson: Yes, we're not authorizing other people to use corporal punishment to discipline a child. They would have to use other means.

Senator Myrdal: Reading it with the proposed amendment, I think it's still confusing. I think we need to do something with that.

Clark: If you take that language away, we probably would have written it a little differently. You could task me in preparing some amendments to rewrite this section to get at what you are trying to do.

Vice Chairman Dwyer: Withdraws Motion.

Senator Bakke: Withdraws Second.

Chair Larson ends discussion on SB 2281.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2281
1/30/2019
#31840 (1:33:00)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

Minutes:

3 Attachments

Chair Larson calls the committee to order to discuss SB 2281.

Chair Larson: We have our amendment that Vice Chairman Dwyer brought in (**see attachment #1**). The discussion we heard yesterday was that providing a written permission was an affirmative defense to somebody who uses spanking against a child that they shouldn't.

Senator Luick: This amendment, isn't this already in law? We aren't changing anything I don't think.

Senator Myrdal: It is in law for licensed providers that you can't do anything beyond reasonable force. I agree I don't think we are doing anything with this; it's kind of feel-good legislation if we pass this. I don't think it changes anything.

Senator Luick: As I understood, the intent was to get something in writing that gave another person the ability to do the spanking let's say. Now we're taking that out completely and going back to reasonable force of a minor by a parent or guardian. Law already allows for that type of behavior.

Chair Larson: I would agree with you. I think that what it says is you can give someone permission to spank your child, but I think from the testimony and the Senator, their intent was not to allow anybody to do it without written permission, that it was more preventative rather than enabling. The result really was, like we were told, an affirmative defense.

Senator Myrdal: We're changing the bill to say only parents and guardians can do it period. We changed the intent to try to fix something different. We're potentially submitting a bill that changes the law totally different from what the intention was. That's concerning to me.

Vice Chairman Dwyer: It provided an affirmative defense if there was a written position, but it also hurt it if there wasn't written permission. It narrowed both sides. I think it should only be parents and guardians that can take this kind of action on their kids.

Senator Myrdal: If we pass this then nobody else can. It's a very grey area. I think we're here to protect children but also the rights of the parents. Even if we take that part out, what we leave in line 16 is still confusing.

Chair Larson: This is used by persons with parental, custodial or similar responsibilities. This does address a daycare situation.

Senator Myrdal: What I heard from the former prosecutor, who was neutral, she said she couldn't understand it. She said we already do it, but it's at the discretion of individual prosecutors whether they prosecute or not. The cases we heard, they decided not to. I don't think we should do something because of a complaint when it doesn't actually effectively do anything in the law.

Senator Luick: If we were to adopt this amendment, subsection 1 would have to go away as well because it contradicts what subsection 1 lays out. It contradicts section 1 line 10 through 14.

Senator Myrdal: Is this needed? I'm not afraid of standing up on the floor and explaining this if it doesn't do what these individuals what it to do. We're doing the Century Code a disservice.

Vice Chairman Dwyer: Section 1 talks about the purpose of safeguarding or promoting the minor's welfare, so it's not in conflict. The amendment talks about punishment. They're two different things.

Senator Myrdal: It contradicts on line 13.

Chair Larson: Number 1 is specifically talking about promoting a minor's welfare and the amendment is talking about addressing misconduct.

Senator Myrdal: You can misconstrue that language for some people as it being for the promotion and safeguarding of a minor's welfare. That would be ambiguous in the law then.

Chair Larson: I agree with the interpretation that one is to promote safety like putting someone in a swaddle hold to protect their personal safety, but you can't for the discipline unless you're a parent or guardian.

Senator Myrdal: My concern is still extended relationships in the family. I understand it makes it easier to prosecute for unlicensed daycares, but I think we're opening up another problem.

Chair Larson: We still have disagreement on the effect of the amendment. There's concern that this amendment then will make it illegal even at the direction at the parent or guardian for anyone else to use any physical discipline on a child.

(16:47) Brita Demello Rice, Attorney General Office, neutral party

Rice: As I read the proposed amendment, it would make that only a parent or guardian can use reasonable force for purposes for discipline or misconduct. Promoting or safeguarding their welfare would still be okay.

Chair Larson: These two sections are not in conflict with each other are they?

Rice: No because one section is for safeguarding or promoting the minor's welfare whereas the other is for discipline.

Senator Myrdal: If I leave my child with my sister in law or teenage daughter, they cannot use any force or discipline?

Rice: Correct.

Senator Myrdal: With this amendment, is it helping anyone?

Rice: With the proposed amendment, it does provide the extra protection that nobody is ever allowed to use that reasonable force for the purposes of discipline whereas before it was a defense because anybody who was lawfully taking care of your child could. If your purpose is to provide more protection for a kid, now only the parent or guardian can. In all reality a lot of our child abuse cases do involve the parent.

Senator Myrdal: Could a grandma or my 17-year-old daughter or my sister-in-law get in trouble out if this if they discipline a child?

Rice: They can't get in trouble under this but they would have no defense under this section. If they cause bodily injury to a child, then they could get in trouble if there was evidence to believe there was child abuse. This statute is a defense.

Chair Larson: If we adopt the amendment, it prohibits anybody other than a parent or guardian from physical punishment for a child. If we don't adopt the amendment, then we are leaving in an affirmative defense to somebody to be able to physically discipline your child if you give them written permission to do so. If we do nothing and kill the bill and leave the language as it is currently, then that continues to leave things open the way they are. The people that for whatever reason felt they had no remedy under the current law maybe is because of the prosecutor.

Rice: Our current law allows a parent or guardian or anyone watching the child, to use reasonable force whether it's for discipline or to promote their welfare. If they were charged with child abuse for using reasonable force, they would say "hey, I was just using reasonable force which this statute allows me to do".

Chair Larson: It does allow you to do that without any changes?

Rice: Right.

Rice: Again to be charged with child abuse, you have to have bodily injury. It's a lot more than a spank. We've had a case in North Dakota where a 2-year-old was spanked for over two hours. We've had a case where a dad is disciplining his 14-year-old with a belt and body slamming her. That's not reasonable force; of course it's brought up at the jury trial. The 12 jurors I dealt with in that case just saw through the smoke.

Senator Bakke: In the beginning on line 10 it says "except as provided in section 15.1-19-02. What is that section? **(see attachment #2)**

(25:28) Senator Osland: The law and the prosecutor in their opinion were not performing. In their opinion, their child was mistreated and some was severe. Are we writing something that will help or hinder it?

Rice: It's difficult to answer. The prosecutor, someone who has that many years of experience, already knows how juries are. Juries are different all over the state. Each prosecutor around the state knows their area best and may have more experience in that certain area of law to see the gaps in an investigation. Oftentimes he or she may know that yes, this kid was hurt but how do I prove that and prove that to 12 people? Sometimes we can't fix everything and help every victim even if we want to because we have certain standards and ethics rules.

Senator Luick: If we are looking at trying to fix this bill, we need to step back and ask what we want then craft the language to get to that point.

Chair Larson: I don't think there's agreement on the committee exactly on what we want.

Senator Myrdal: Is the code as it currently stands sufficient to deal with these issues that we're looking at. You said prosecutors have discretion on this. Does 2281 with or without amendments improve a prosecutor's opportunity to defend the innocent or not?

Rice: It's going to be a case by case situation how this plays out. If I have photos that this is way more than reasonable force and an ER doctor that confirms it, then I'm not going to care about the piece of paper that says they have permission because they caused bodily injuries to this kid and it doesn't mean anything to me. I'd argue that in front of the jury. It's just an affirmative defense.

Chair Larson: What is reasonable force? It can't be exactly defined.

Rice: There's some case law on that. The case where the dad spanked his 2-year-old for a long time, there's case law on that. That's where the Supreme Court rules unreasonable. The policy decision is whether you want parents to be giving daycare providers permission to spank or do you want to say daycare providers never have permission to spank? It doesn't matter, there are other forms of discipline besides physical force.

Senator Myrdal: You cannot ever spank but also includes that we exclude family members.

Rice: If you left the law as is, anybody in charge of the child can use reasonable force.

Senator Myrdal: So we already have protection in the law for reasonable force. I don't feel like this changes anything.

Senator Bakke: We're doing a lot of wordsmithing, but we need it plain and simple: this is what you can and can't do.

Vice Chairman Dwyer: For the record, I do not believe this would be a “feel good” thing to satisfy the mothers that came in. What the current law does is says that the parent or person responsible can use reasonable force for two purposes: safeguarding or promoting a child’s welfare and it includes prevention and punishment of the minor’s misconduct, and the maintenance of proper discipline. If we pass the bill as proposed, all we’re doing is saying the caregiver can do it if it’s in writing. In may not matter in prosecution, but you cannot do it if you don’t have the writing. That’s what this bill proposes. The amendment says you can’t do it period, so it goes further.

Senator Bakke: What I’m understanding you saying, is that what we have already in law is fine and we don’t need any of this?

Vice Chairman Dwyer: No.

Senator Bakke: You’re saying adding the amendment, we would then seal it in a little tighter? But other parts of the law would allow family members that would give them an opportunity to provide care to the child, correct?

Vice Chairman Dwyer: The other parts of the law don’t allow abuse, so it’s not speaking to discipline part.

Senator Myrdal: If we pass this amendment, it still excludes siblings, aunts, sister-in-laws and others if we put that in code. We’re not talking about abuse because that’s already covered. I think this is all covered in law. The original bill complicates it more and gives that affirmative defense but the overriding part of the law already says you can’t do what these witnesses came and told us. The people who came and told about these stories, that was already illegal and for some reason or another that is unknown to us, the prosecutor couldn’t go ahead with it. that could have been correct or a failure on their part, but the provision in the law is there to go after it if they so see fit in front of a jury. I don’t think we’re adding anything; I just think we’re taking away some provisions from certain families. You may take parental and family rights away from what we believe as reasonable force, which is not abuse that’s already protected.

Vice Chairman Dwyer: So if you wanted to make it consistent and address the concerns of Senator Myrdal, you could use the exact language in the child abuse statute and say “only a parent, adult family or household member or a guardian may use reasonable force”.

Rice: The only person it wouldn’t include would be grandma unless she lives with you.

Vice Chairman Dwyer: It actually says “or other custodian of any child”

Senator Bakke: Do we want to allow somebody or anybody to decide what’s appropriate punishment or discipline for our children?

Senator Myrdal: I don’t think discussion on this bill is about whether we allow parents to spank or not. What is the legal definition of “custodian”- does that include someone paid?

Vice Chairman Dwyer: Section 2 goes onto talk about the paid people.

Vice Chairman Dwyer: Moves to adopt an amendment that removes lines 16 through 21 and adds “Only a parent, adult family or household member, guardian or other

custodian of any child may use reasonable force for the prevention of or punishment for the misconduct of the minor or the maintenance of proper discipline.”
Senator Bakke: Seconds.

(46:34) Senator Luick: Subsection 1 will stay the same as it is, and the amendment would take the place of section a?
Chair Larson: Correct.

Senator Myrdal: I still have a hiccup of the definition of “custodian”. We need to know that before we vote.

Chair Larson: Under the Uniform Transfers to Minors Act, “Custodian” means a person so designated under section 47-24.1-09 or a successor or substitute custodian designated under section 47-24.1-18.

Senator Myrdal: If it is a paid position, we’re not accomplishing nothing with this amendment by adding custodian.

Senator Luick: Is there another word we can use instead of custodian?

Vice Chairman Dwyer: We can get rid of custodian and just say “adult family member” because that should include a grandmother.

Senator Myrdal: All those words are fine, but I don’t know if we can move legislation if it puts this much language into it without having legislative council write it.

Vice Chairman Dwyer: It’s the exact words in the child abuse section. We’re not creating different words or stating anything differently.

Chair Larson: If that is the intent of what we want to say, then I’m okay with waiting until legislative council can redraft this amendment.

Senator Myrdal: I just asked for the procedure of having council do it; that does not mean that I will vote for it.

Chair Larson: That’s okay, we just need to come to some sort of agreement as a majority.

Vice Chairman Dwyer: If we take words verbatim from another statute, legislative council will be okay with it.

Vice Chairman Dwyer: Withdraws amendment motion
Senator Bakke: Withdraws second.

Vice Chairman Dwyer: Moves to adopt an amendment that removes lines 16 through 21 and adds “Only a parent, adult family or household member or guardian of any child may use reasonable force for the prevention of or punishment for the misconduct of the minor or the maintenance of proper discipline.”

Senator Bakke: Seconds.

Senator Luick: What's the definition of guardian?

Senator Bakke: That is a legal term for somebody that has filed paperwork to become the legal guardian. They can overstep the parents in those cases.

(58:55) Vice Chairman Dwyer: If you recall, Judge Cynthia Feland and we had a rewrite of our guardianship laws. You can be a court appointed guardian if somebody designates that in your will or if your parental rights are taken away in juvenile court because you're a bad parent. They were cleaning up all of the procedures, but the same principles of guardianship are in the law.

Chair Larson: We are allowing a parent, adult family member or household member or guardian to use physical discipline on a child. Those are the only people permitted under this amendment.

Senator Bakke: Would a household member be a step parent?

Chair Larson: It could be.

Senator Bakke: and just someone who is staying in your house?

Rice: family or household member is defined in the Criminal Code. I don't think it can be a random person because then we would have to charge aggravated assault instead of child abuse because there has to be that connection between the kid and the person who abused them.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Amendment is adopted.

Senator Bakke: Moves a Do Pass as Amended.

Vice Chairman Dwyer: Seconds.

Chair Larson: We have the definition of "family or household member" in chapter 14-07.1 regarding Domestic Violence. **(see attachment #3)**

Senator Myrdal: That definition scares me and I will be a no on the bill as amended.

Chair Larson: If the bill fails then the bill goes back to current language. If the bill carries, then we are limiting those who can use discipline to the people we just discussed.

Senator Luick: This seems like it opens it up more so than what we have in the original bill.

Chair Larson: I don't know if it opens it up more by putting that language in because it certainly doesn't include a daycare provider.

Rice: The current language under subsection 1 says "or other person responsible for the care or supervision of a minor". That could be any of those people. Currently we can argue that anyone falls under there if the parent or guardian tasked that person with supervision.

Senator Myrdal: I think legislative council needs to look at this. I can't vote on something that has definitions that I don't know.

Senator Luick: We need to know who we want to include and who we want to exclude.

Chair Larson: I would have been okay with just a parent or guardian.

Senator Bakke: Our testimony of concerned mothers had providers who caused their children serious injury; it was child abuse. It's already in state law. Is this original bill going to make those people more accountable for their actions or is this just trying to write a bill for something we already have?

Rice: The language as written is confusing. This is an affirmative defense, so they're already charged with a crime. This is giving an extra protection to say "the parent or guardian told me I could" but none of this allows anyone to give bodily injury to a child.

Senator Bakke: These cases were charged but they got off.

Rice: Every prosecutor and facts of a case are different. This is an affirmative defense for reasonable force.

Senator Bakke: This is just there to give a defense for the abuser.

Rice: They already have the defense in current law. It does narrow the defense to the parent, guardian or a paid giver. By taking out the language at the end of subsection 1, it does limit who can spank a child for discipline. It also adds if you're a paid caregiver, you need written permission to do it. It does narrow it down as compared to our existing law.

Senator Myrdal: We have a motion on the table. Why are we talking about changing language?

Chair Larson: We're discussing our options.

Vice Chairman Dwyer: Senator Myrdal is right that we have to take out the "household" deal. It's too broad.

Senator Bakke: Withdraws motion.

Vice Chairman Dwyer: Withdraws second.

Vice Chairman Dwyer: No one should be apologetic about the amount of time we're spending on this. We're just doing something that makes sense and is legally statutorily proper.

Vice Chairman Dwyer: Motions to Reconsider the Amendment

Senator Bakke: Seconds.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion passes. The original bill is restored.

Jennifer Clark, Legislative Council, neutral party

(1:21:30) Chair Larson: The testifiers came to us with a real problem of their children being abused in daycare. Is there anything without this legislation that should have prevented that? Would this legislation make that situation better?

Clark: A lot of this is going to come down to public policy. The bill that's in front of you today is approaching this from the perspective of who can administer corporal punishment. The way it's drafted tries to narrow the scope of who can administer corporal punishment. If this passed, there would be fewer people who could use this as an affirmative defense.

Senator Bakke: Is that with the amendment or original?

Clark: as the bill came to you. There may be a different discussion of if it narrows it the way you want it to. Based on the amendment prepared, that seems to be what you're focusing on.

Chair Larson: We have in our minds what we think of as a spanking. It's a difficult thing to set law regarding that when there are different family standards.

Senator Luick: Who would have the proper authority to do that corporal punishment? Perhaps we could change it to "parent or guardian or adult family members".

Senator Myrdal: That does not address if I leave my 16-year-old in charge of my kid.

Chair Larson: Our discussion is moving this amendment without the household members included.

Senator Luick: How about "only a parent, guardian or identified family members"?

Clark: Identified by whom? This is in the arena of criminal law, so it's pretty contentious. Anything you can do to be as clear as possible is especially important. Try to be as specific as possible.

Vice Chairman Dwyer: I think we should pass the bill in its original form.

Senator Myrdal: I keep coming back to public policy. Does the language in this bill accomplish anything? I think it doesn't. I think the language is ambiguous and I agree with Vice Chairman Dwyer, we should vote on the bill as is. I don't see myself supporting any amendments or likely not the bill either.

Senator Luick: If we were to look at the original bill, will the portion in writing be a prosecutorial problem? Will we have some issues with this giving them more protection or more ability to do more harm to that child?

Rice: I don't think so. To charge a crime we need bodily injury or more for that child. It's definitely going to be something more than reasonable force for it to be a crime.

Senator Luick: Moves a Do Pass.

Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 0 absent. Motion passes.

Vice Chairman Dwyer will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2281**

Senate Judiciary 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 Vice Chairman Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Removes lines 16 through 21 and adds "Only a parent, adult family or household member or guardian of any child may use reasonable force for the prevention of or punishment for the misconduct of the minor or the maintenance of proper discipline."

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2281**

Senate Judiciary _____ 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
 Reconsider Amendment

Other Actions: _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Removes lines 16 through 21 and adds "Only a parent, adult family or household member or guardian of any child may use reasonable force for the prevention of or punishment for the misconduct of the minor or the maintenance of proper discipline."

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2281**

Senate Judiciary 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 Senator Luick Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland		X			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Vice Chairman Dwyer

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

REPORT OF STANDING COMMITTEE

SB 2281: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2281

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2281
3/19/2019
33942

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to limitations on permissible use of force on a child.

Minutes:

1-3

Chairman Koppelman: Opened the hearing on SB 2281.

Senator Dever: Introduced the bill. It came about when a child came home from a day care facility with bruises and they contacted the police, but there is no law on the books that covers this to prosecute that case. The young mother decided she was going to pursue it to make sure it doesn't happen to someone else. (1:58) The reasonable force used Page 1, Subsection 1(a) is the meat of the bill. So you don't spank my kid unless you have written permission. On the Senate on the floor it did not get a unanimous vote because some members argued that some states attorneys said it is not necessary. The Burleigh County States Attorney said it is. The DOHS has concerned about this bill because they don't allow any childcare provider to spank a child under any circumstances. In this circumstance the child care provider was not licensed by the state. That happens to be true in approximately half of the cases. The bill doesn't address that issue.

Rep. Satrom: This doesn't apply to grandparents?

Senator Dever: I am a grandparent and I don't believe anyone should spank their grandchildren.

Rep. Paur: What would be the legal remedy if this was violated by a child care provider?

Senator Dever: I am not sure what the penalty would be.

Rep. McWilliams: Do we have other places in code that addresses spanking or corporal punishment in our century code?

Senator Dever: I think if you look at Page 1, line 10 15.1-19.02 would refer to circumstances in schools.

Rep. Rick Becker: In the bill how does this pertain to grandparents?

Senator Dever: This would be for a paid caregiver? Maybe there is a hole in the bill you might want to explore.

Chairman K. Koppelman: You said it doesn't address people who are not licensed, but I think it would. You said it doesn't address people who are not paid caregivers?

Senator Dever: It would apply to every caregiver.

Chairman K. Koppelman: You said the DHS doesn't allow anyone to spank a child. How do they do that when it isn't in law?

Senator Dever: That is through their administrative rules process, which can't conflict with law legally. Parents have the say what is appropriate for their child.

Chairman K. Koppelman: Discussed a family from Fargo who were actually told by a social worker that the kids were playing with neighborhood kids and visiting about what do your mom and dad do when you a naughty; well we get sent to our room and one said sometimes we get a spanking and there was a social worker at the door the next day. After confronting the parents; after confronting the parents they said it was against the law to spank your children. The parent was quick thinking enough to say would you show me in law where it was and the social worker said she would and came back tomorrow and said well there is no such law. The Director of Dept. of Human Services at that time pressed the issue and tried to get the parents to sign a document saying they would no longer spank their children. Parents referred to Doctor Dobson's book on discipline. They did not sign the document and the case went all the way to the Supreme Court and they said child abuse is illegal, but parents have the right to spank their children if they chose as long as it doesn't step over that line into abuse etc. The legislature the next session put that into law.

Rep. Jones: I see a lot of child abuse cases and we are seeing the consequences of parents not discipline their children. You need discipline for child guidelines. I think it is nothing short of child abuse to not spank a child when they need it.

Senator Dever: The people following me are compassionate about what they are here for.

Chairman K. Koppelman: Can you provide us the other version? There is not an assault version under current law?

Senator Dever: That would be the 01 version. I will provide that for you.

Jenny Erickson, Parent: (Attachment #1) Went over testimony. (17:60 -26:20.)

Samantha Svihl: (Attachment #2) Went through testimony. (26:55- 28:30)

Troy Hanenberg, Parent: (Attachment #3) Went over testimony. (28:58-32:32)

Opposition: None

Neutral:

Amanda Carlson, Early Childhood Services Administrator, Dept. of Human Services: (33:00) We have both licensed and unlicensed childcare. Unlicensed childcare can only have up to five children. If they have over that we contact the provider; offer information regarding how to become a licensed provider; how can we support you and are you interested and we follow up. There is nothing currently in ND Century Code which early childhood is covered under 50-11.1 specifically regarding discipline; however, in the early childhood administrative rule which is 75.03-07 through 11.1 we do have specific child care discipline. Childcare may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain or physically mistreat a child. All our licensed childcare providers are required to take training on age appropriate discipline techniques. That might be another thing that we may require if a child care provider with a problem; we may require them to take additional training.

Chairman K. Koppelman: You already answered the licensing questions. Do you have a lot of providers who do voluntarily license though who care for fewer than five?

Amanda Carlson: That would be our self-declared providers. We had about 150 across the state. As Senator Dever mentioned, the DHS has a concern; the reason we went with the language that we did. Spanking can be very subjective. That is why in administrative rule we put a child care provider cannot spank so we have a means if it does happen we can revoke your license because you cannot engage in any of those types of disciplinary techniques.

Chairman K. Koppelman: This bill would change that and allow for it if there is written permission.

Amanda Carlson: Yes, we would have to change our administrative rule, which is not century code so it does not require legislative action. What is the definition of spanking? Because they are unlicensed currently childhood services have no authority over them. They would be subject to the filing of a suspicion of child abuse or neglect and go through that CPS assessment.

Chairman K. Koppelman: Current law says except as provided in Section 15.1-19.02; a parent, guardian or other person responsible for the care and supervision of a minor or other person responsible for the care of supervision for a special purpose or a person acting at the direction of the foregoing persons may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor welfare including prevention and punishment of the minors misconduct and maintenance of proper discipline. Sounds like your administrative rule conflicts with statute.

Amanda Carlson: I believe it may. Currently it would be at the child care providers own discursion versus the intention of this bill. This bill says they would have to get written permission from a parent or guardian.

Chairman K. Koppelman: The law says this is permitted and yet your rule says you can't do that.

Amanda Carlson: I would agree.

Rep. McWilliams: In the century code it says a child mental injury or bodily injury? How do you look at mental injury and how is that defined?

Amanda Carlson: I would have to research that question and report back to committee.

Rep. Bob Paulson: I did a google search of childcare complaints in ND. Is the police avenue the same? Were you aware of the situation we heard of from Ms. Erickson this morning?

Amanda Carlson: I was not, but I was not the early childhood services administrator when that happened.

Rep. Bob Paulson: So you wouldn't know if this person is still providing child care?

Amanda Carlson: If I was given a name I could certainly look it up.

Chairman K. Koppelman: Was this an unlicensed child care?

Amanda Carlson: I believe that is what was said.

Jenny Erickson: Yes, she was an unlicensed provider. I know there are different levels of licensed providers. Sometimes as a single mom you don't always have the resources for help with daycare assistance. Unlicensed providers are the cheaper route. When I went through this with my son social services would not investigate until the police investigation was done. This happened in March. The police investigation was not finished until the beginning of May and I did not receive a letter from Social Services until August of 2017. They did not reach out to me or my son to let me know this investigation was going on. I don't know what their investigation includes, but I just received a simple letter and that was the end of it.

Chairman K. Koppelman: What did their letter say? They did care for more than five children so it was illegally unlicensed.

Jenny Erickson: There was no abuse found. She did tell me she had different hours for child pickup times so the children were like off-set throughout the day.

Chairman K. Koppelman: Did you report the fact that they might be illegally providing child services.

Jenny Erickson: I did when I met with Social Services. I provided every bit of information on them.

Rep. McWilliams: In your son's case was there ever any mention of mental abuse?

Jenny Erickson: They did not talk about any kind of mental abuse. When I met with the detective I was told that would fall under child abuse. I did reach out to a few attorneys because I felt not enough was done in my son's case. Almost every attorney told me my son

would have to attend therapy and have a diagnosis of either PTSD or some other kind of trauma for those charges to be filed.

Rep. McWilliams: Has a diagnosis ever made or was that ever pursued?

Jenny Erickson: He is still attending play therapy. There hasn't been a specific diagnosis done.

Rep. Bob Paulson: I am concerned about the potential breakdown between agencies. We have an unlicensed day care provider, but the detective's response to Ms. Erickson had to do with the day care rules so they were obviously viewing this as a day care situation and Social Services got involved, but is there anything that closes the loop that says this unlicensed daycare provider violated your administration rules; whether or not they are in conflict with current statute, are we closing all those loops? That day care provider should not have been providing services anymore within days.

Amanda Carlson: We do have within our century code; if we do find an illegal unlicensed childcare taking place we do have the ability to prosecute that provider. The Attorney General would make the decision whether they were actually going to prosecute. We do have the ability to site them, but technically we do not have the authority.

Rep. Bob Paulson: You could certainly revoke the license. In this case is they would be unlicensed so then the only option is a legal proceeding?

Amanda Carlson: Correct. There is not a license for us to revoke, so a legal action would be the only thing we could take.

Chairman K. Koppelman: What is the penalty for being illegally unlicensed?

Rep. Satrom: Do you think people are using the unlicensed avenue so there is a perception they don't have to follow the rules because they are not licensed?

Amanda Carlson: Unlicensed daycare is cheaper because the state is not requiring training over a years' time or within the licensed timeframe and there are fees to become licensed. If you have a high demand and don't have to go through all those check points that the state has determined to be necessary to try to ensure the highest quality of childcare available, that maybe an avenue to choose.

Rep. Magrum: It sounds like the testimony was the child abuse is about half and half licensed or unlicensed daycare providers so I think we are getting in the weeds here. That is not the issue. People don't approve of their child getting spanked so they want to be able to give them permission. That is the emphasis of the bill.

Amanda Carlson: I believe given the way the current century code is written a childcare provider could choose what level of physical intervention they would use on a child without getting written permission from a parent.

Rep. Magrum: It don't think we are trying to change licensed or unlicensed?

Amanda Carlson: I agree. All the early childhood services only have authority over a licensed provider. What an unlicensed provider does I don't have any authority to sanction them in any way shape or form.

Chairman K. Koppelman: Rep. Magrum you are correct in stating what the bill would do. It would govern any paid caregiver. The questions are coming up because of the case we heard about and to try to get a handle on what the current system is and whether this is the best solution, if there is a solution needed etc. I think the bill affects a whole lot more than child care.

Storm Olson, Legal Counsel for DHS: Lead Attorney for the Children and Family Services Division: I would like to clarify the language that is currently before you on the bill. There seems to be some confusion on the administrative code for DHS is in conflict and it is not. If you look at section 1. 1, line 13 it says may use reasonable force. This is permissible language and allows disciplinary actions to be utilized; however, it does not prohibit and agency from having a stricter standard.

Chairman K. Koppelman: The permissive is not a question of may or may not. The statute is saying that is allowed under ND law. You are saying that your prohibiting it for those that you license.

Storm Olson: Correct. ND law says yes you may use this. But it is not prohibiting and agency from saying. We are setting a higher and more restrictive standard. I would have to check to see if we have anything related to a child care provider at the federal level.

Chairman K. Koppelman: If the bill passes; it says if a parent chooses a paid provider for child care being licensed or not; and says I trust you to use some discipline in some cases in a very limited amount, and I am giving you written permission to do that. even though that would conflict with your administrative rule currently, is it your view that the language in your statute would clearly permit it and you would have to change that rule.

Storm Olson: Based on the language provided in the bill I would concur that would allow day care providers with written permission from the parent, to provide that type of discipline. Obviously the department would need to update our administrative rules to come in line with that. There would need to be a discussion on what is considered reasonable.

Chairman K. Koppelman: Is the state or parent in charge of disciplining their child.

Rep. Jones: Do you have any idea of the confusion your agency's decision has caused to parents and citizens of ND.

Storm Olson: I have been working for DHS for three years.

Rep. Jones: I want your policy as an agency to specifically reflect legislative intent. As I was raising my children; they came home and informed me that I could not spank them because it was against the law and they were getting that because of the interpretation of the agencies liberal use of the use of the word may. I want to get rid of that and make it well

understood that we believe in disciplining our children so that they will be good upstanding citizens, not run amuck. Not causing the problems we are seeing in this committee.

Storm Olson: As an attorney for DHS I know our intent is to make sure our laws and regulations are in line with the intent of the legislators. If you do change the laws the department will change our administrative rules to be in line with whatever the intent is.

Rep. Jones: If I say may that means may. If your policy says may not; if your policy says may not; that is in conflict. Do you understand that? If not, then we are going to have to go back to using a different word because I think it was very specific that it was the intention of this legislative body to say that they may. So for an agency to say that is permissive we can split hairs here and change it to may not is offensive to me and I want to clarify it somehow so we do not allow that to happen in the future. I want to work with you somehow and make sure you are in line with the legislative intent as an agency.

Storm Olson: You have exactly done just that. You have very specifically now stated the determination of may does not include may not.

Chairman K. Koppelman: This discussion has nothing to do with the degree that committee members may like or dislike the idea of discipline or what this bill seeks to do from policy standpoint. It does go to the point of the importance of administrative rules following the intent of law. If we had caught this when the administrative rule was made I am sure the administrative rules committee would have avoided the rule. If you look at a statute, we are saying the parents have the authority to do this or guardians or those entrusted with the child childcare.

Storm Olson: I understand there may be a federal requirement that I don't have before me that might have led to this.

Chairman K. Koppelman: This is what the federal government does is limited. What the federal government does to govern a whole lot more than what our constitution and our founding fathers intended our federal government does is they dangle dollars and they say we have to do it for that reason. When these things come up please spell that out for us.

Storm Olson: We do look at all our administrative rules once the session is over to go through the changes. This section of the code is not something we would normally look at.

Chairman K. Koppelman: Would you let us know when those rules were written whether it was subsequent to the enactment date of this statute and what other administrative rules that you referred to in passing earlier might be in conflict. I think that would help Rep. Jones with some of his questions as well.

Storm Olson: Would that include any Century Code that is in conflict?

Rep. Rick Becker: What is the penalty?

Storm Olson: I don't have that information off the top of my head. The DHS does not have the authority to charge someone with a crime. Many of the actions that occur that that level

happened within the county that they are licensed. It would be the states attorneys within that county that would make that determination as to what crime would be charged specifically and what the penalty would be that would be tied to.

Rep. Rick Becker: We have a bill that creates a new crime in the criminal code. It would be good to know what the penalty is?

Storm Olson: I can't answer that questions. The DHS is not responsible for establishing or maintaining the charges or penalties for criminal activities tied to those.

Rep. Rick Becker: It is an odd position to vote on when you don't know the effects are. On page 1, line 16-21; we are talking about direction; it says unless used by a parent or guardian or a person acting at the direction of a parent or guardian. If the person acting at the direction of the parent or guardian is a paid caregiver, the direction must be in writing. So the grandparent direction also has to involve specific direction from the parent or caregiver to apply corporate punishment. Then it doesn't need to be in writing because that is only paid caregivers so I guess it needs to be given verbally? I am finding some difficulty with the wording here.

Storm Olson: I was not a participant in the language or development of the proposed changes. There is no carve out that would provide an exception for grandparents the way I am reading this. Anyone could say I can spank this child and that is how I am reading this right now.

Rep. Jones: When you read section 1 it says that a parent, guardian or person responsible for the care and supervision of a minor or other person responsible for the care and supervision of a minor for a special purpose or acting at the direction of any of the four going persons may use reasonable force upon a minor for the purpose of safeguarding and promoting that minor's welfare. In my opinion that deals with grandparents, or anyone that is taking care of my child because of that paragraph they have the right to use disciplinary action to make the kid what is good for the child and to protect them. That takes care of that. the words we are adding to this bill in the underlined language specifically makes it so if you are a paid care giver you have to get written permission in order to use physical force of any kind on a child. Is that how you understand it?

Storm Olson: Yes, that is how I understand it based on the current language before the committee.

Chairman K. Koppelman: See the overstruck language on 14 & 15. Back to the case at hand; when a concern is reported to the department if it is a licensed child care provider; you would go in and do an investigation. Once the is completed and there is reason to believe there might be misconduct; if there is going to be criminal charges. What happens after that?

Storm Olson: It does get multiple agencies participating. Early Childhood Services does an investigation of harm. If it is an alleged abuse; then Child Protective Services division comes in and does an independent investigation. Law enforcement can potentially be involved doing an investigation at the same time. There can be three different groups investigating.

Chairman K. Koppelman: Is information shared?

Storm Olson: We do share information. Each one has a different authority and focus. Your division would be licensure.

Chairman K. Koppelman: What is Child Protective Services focus?

Storm Olson: Child Protective Services focuses investigation of alleged abuse and neglect of children. They have an assessment investigative process they follow. They also reach out to law enforcement, if they have not been involved. They can make a service required finding does not mandate treatment or any type of consequence other than being placed on the index. The child use index is where individuals that have had a services required finding your name goes on the index for ten years. It could affect licensing and it does have an effect.

Chairman K. Koppelman: Who has access to the index?

Storm Olson: No it is not public. You have to go through Child Protection Services so it is an exempt record.

Chairman K. Koppelman: So if the Child Protective Services was called upon for a request it would come from public?

Storm Olson: It can come from anyone.

Chairman K. Koppelman: So if someone called them and said this child care center which was caring for my child administered some discipline which I consider abuse; they should be looked at that would trigger an investigation; it would go forward and if Child Protective Services came to a finding of services required they would contact these people and say this is our finding. We think you should have training or counseling and they are on the naughty list. The only people get the name of the index would be someone who requests that information, as I heard you say. Are employers aware of this?

Storm Olson: If a service required finding is made all parents of that daycare are sent a letter advising them of that determination.

Chairman K. Koppelman: Discussed concern with a child care in my area and the problems that came out about that.

Storm Olson: That is true we do have problems with that.

Rep. McWilliams: If this became law; there would be an investigation but since it is not tied to any crime and they were found guilty of this section the department would simply direct training?

Storm Olson: I cannot speak to what the Department has to do. If they are being charged with a crime and the law passes just the way, it is written and they have violated this law; obviously the department has to change its administrative rules. We have what we call direct

bearing offenses that actually prohibits an individual from providing daycare if they have been convicted and plead guilty or no contest. So not knowing how the defense itself is going to be defined from a legal standpoint I can't speak to what the Department may or may not do at this time. We don't have an understanding of the level of the crime yet.

Rep. McWilliams: If the legislature does not assign a penalty to the bill then the department doesn't know how to proceed and if the legislature doesn't do that this bill would have no impact whatsoever?

Storm Olson: I don't think that is necessarily accurate. If there is no criminal penalty attached the department then would have to look at it and say what was the intent of the legislator behind the bill and then we would have to look at other sections of the code; we would have to work with to see if we could somehow craft what our response would be.

Rep. McWilliams: What possible responses exist to possibly respond?

Rep. Jones: Do you have a list of the services; licensed, or unlicensed care givers in the state of ND?

Amanda Carlson: The DHS doesn't have any way of maintaining a list of illegally unlicensed childcare services. I do maintain a list of those self-prepared providers.

Rep. Jones: If the people looking for a day care would DHS have a list of licensed and unlicensed daycare? If you become of an unlicensed daycare, then you could fix it.

Amanda Carlson: We do not maintain a list of unlicensed day care providers.

Rep. Jones: People looking for a daycare, if they would have a resource they can go to; how hard would it be for your agency to have a list of the licensed, the self-declared and the unlicensed that you are aware of? If there are any complaints on the unlicensed ones there would be a way for someone who is looking for a daycare to use to know whether there have been any demerits associated with the unlicensed daycare that they may be considering using for their child.

Amanda Carlson: Currently we do maintain a list of the self-declared and licensed providers through Childcare Aware of ND. We don't have a handled on the unlicensed providers there are.

Chairman K. Koppelman: What is the penalty or consequences of not being licensed?

Amanda Carlson: I do know that I have had two come to my attention; we attempted two times to make contact and they were referred to the Attorney General's office. We will get that information.

Rep. Jones: Do you know how much turn over you get on the unlicensed daycare providers?

Amanda Carlson: I do not have any of that information. I would only have a community concern if it came about.

Rep. Jones: I would be interested in working with you to see if there is some way inside your agency if you were made aware of unlicensed if there could be a list generated and specifically if there are complaints that could be made public through your website so if someone was looking could use that in their decision making.

Chairman K. Koppelman: What is the penalty if a childcare if operating illegally?

Jenny Erickson: Yes, I would address the penalty. In my son's case it was considered child abuse is defined in the ND Century Code; however, this portion is the defense. Even if they would have been charged with child abuse this is what an attorney would have used to get them out of those charges. Especially under child abuse if it isn't a paid provider it would be classified as a b felony.

Chairman K. Koppelman: What is the penalty?

Jenny Erickson: In my case I was not happen with the Children's Advocate Center, Social Services program. When this happened to my son reports got out of previous instances of children that were in the same provider's care. She is still providing childcare to this day.

Chairman K. Koppelman: Did you report this to Child Protection Services.

Jenny Erickson: I did file a police report. I did speak with Social Services and I don't know how the investigation went. They just closed it.

Representative Simons: The agency that is overlooking these daycare providers? What does it take to lose a daycare providers licenses?

Rep. Jones: We have some overstrike on the bill. Why was that overstruck?

Senator Dever: My understanding was it is included the following language.

Rep. Jones: I think I will want to take that overstrike out. It looks like it is specifically dealing with the grandparent's situations and those types of things.

Senator Dever: If you chose I would suggest Jennifer Clark is the person who drafted the bill so work with her. The reason version one is not on is because version .02 is the version that was introduced.

Chairman K. Koppelman: If it was never introduced you could just share it with me, at least.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2281
3/27/2019
34277

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to limitations on permissible use of force on a child.

Minutes:

1

Chairman Koppelman: Opened the meeting on SB 2281. Went over proposed amendment. (Attachment #1) This bill deals with corporal punishment and focuses particularly on child care centers. The committee wanted to be sure they did not have a problem with the intent of the bill. That was to make sure that someone who is a paid child care provider; they would have to have written permission from the parent to administer corporal punishment.

Motion Made to amend 19.0494.02002, Attachment 1 by Rep. Satrom; Seconded by Rep. Bob Paulson

Discussion:

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Satrom; Seconded by Vice Chairman Karls

Discussion:

Rep. Magrum: What happens if a minor is babysitting a child for pay and they spank's the child. Are they subject to this new law we would be passing?

Chairman K. Koppelman: Line 21 says, I suppose you could interrupt it that way. The intent is the idea of a daycare center. We could further amend to exclude that.

Rep. Jones: I can see his point. Where it refers to caregiver we could insert professional caregiver; and not the grandparents or children in the family.

Rep. Satrom and Rep. Karls withdrew their motion.

Rep. Paur: I think Rep. Magrum came up with an excellent point. If it is a babysitter or minor it goes into a whole different area. That is juvenile and they can't be charged with a crime. I think that would be handled differently.

Chairman K. Koppelman: I am not sure unlicensed or licensed would clarify enough. A 14-year-old babysitter is not a daycare; unless you said a licensed or unlicensed business. Maybe to exclude a minor caregiver in the home of a minor. I don't know if we need to amend or the juvenile statute would take over.

Rep. Roers Jones: I don't know if we need to try an amend this and I don't know if it helps to say in the home of a minor because generally minors aren't babysitting in their own homes; they are babysitting in the child's home. I think we should leave it in the discretion of the courts.

Do Pass as Amended Motion Made by Rep. Satrom; Seconded by Vice Chairman Karls

Chairman K. Koppelman: The intent here was the concern with the language that was overstruck in lines 14 & 15 because we think this is good language in law and then to clarify that a daycare and business which are childcare facilities. A paid caregiver in that kind of situation would have to have written permission.

Rep. Jones: I was shocked in the hearing that legislature had made it clear that in certain occasions you could spank your child, but agencies had taken the liberty of interrupting may to be may not. I am shocked that way our society has let those things slid. Now the prevailing idea now is you can't spank kids. An animal without discipline is worthless and a drain on society. The children who don't have discipline are absolutely a drain on society. We are seeing the impacts of that in this committee as we go through. They have to learn discipline one way or another or they will learn it from the justice system and it is more painful to do that. No discipline is one of the worse forms of child abuse that our society is seeing. I hope we can get a message to society that property discipline sometimes meaning a spanking is a good thing for children so they can grow up healthy, strong and with the proper attitude.

Chairman K. Koppelman: I was troubled by an agency of government in ND that the intent is permissive; that some parents may do this. Some parents may choose not to and that is their right as a parent. But for an agency of government to come in and say our administrative rules day may not; even though the statute says may is very troubling. I was comforted by that individual said during testimony that now that this is on the legislative record we will have to go back and change our administrative rules.

Rep. Buffalo: I feel obliged to share my perspective as an indigenous woman; that discipline of physical abuse is extremely frowned upon. In the history of our country our native American children were sent to boarding schools where they received extreme physical abuse referred to as discipline. I would respectfully disagree with Rep. Jones comments.

Chairman K. Koppelman: The bill I think now does what the prime sponsor intended; which is to insure if a child is placed in a paid child care center of some sort, before the individual working there can administer corporal punishment they need to have written permission from the parent to do so.

Rep. Vetter: With Rep. Jones comments that all animals without discipline are worthless; I wanted to clarify that beings I own a few Chihuahuas, they are not the most disciplined dogs, that they are not worthless and they are loved.

Rep. Jones: I absolutely believe in proper discipline showing forth afterward an increase in love. Discipline on itself is not effective. The increase of love that you show is done. As you watch nature and dogs and pups; a mother dog when a pup misbehaves they will lay onto him and bit him on the neck in a loving way and that dog learns discipline and she will then go ahead lick and love him. I am not creating it and this is nature at its best. I understand the criticism and I should not have said worthless; I should have said less valuable. I have two daughters and four sons and when I would leave my children in the care of a babysitter, I was more worried about the babysitter being abused than I was worried about the children being abused. I left specific instructions that they were to use whatever method was needed to keep my kids on their best behavior.

Chairman K. Koppelman: I don't think anyone on the committee favors child abuse. That is not anyone's point.

Roll Call Vote: 9 Yes 4 No 1 Absent Carrier: Rep. Roers Jones

Closed.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, line 14, remove the overstrike over "~~including prevention~~"

Page 1, line 15, remove the overstrike over "~~and punishment of the minor's misconduct, and the maintenance of proper discipline~~"

Page 1, line 16, remove "The reasonable force used for the purpose of safeguarding or promoting the"

Page 1, remove lines 17 and 18

Page 1, line 19, remove "a parent or guardian, or a person acting at the direction of a parent or guardian."

Page 1, line 20, replace "acting at the direction of a parent or guardian" with "using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline"

Page 1, line 20, remove the second "the"

Page 1, line 21, replace "direction must be in writing" with "that person must be acting under written direction of the parent or guardian of the minor"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 SB 2281**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 19.0494.02002; Attachment #1

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. Satrom Seconded By Rep. Paulson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried.

REPORT OF STANDING COMMITTEE

SB 2281: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2281 was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over "~~including prevention~~"

Page 1, line 15, remove the overstrike over "~~and punishment of the minor's misconduct, and the maintenance of proper discipline~~"

Page 1, line 16, remove "The reasonable force used for the purpose of safeguarding or promoting the"

Page 1, remove lines 17 and 18

Page 1, line 19, remove "a parent or guardian, or a person acting at the direction of a parent or guardian."

Page 1, line 20, replace "acting at the direction of a parent or guardian" with "using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline"

Page 1, line 20, remove the second "the"

Page 1, line 21, replace "direction must be in writing" with "that person must be acting under written direction of the parent or guardian of the minor"

Renumber accordingly

2019 TESTIMONY

SB 2281

1
SB 2281
1/22

Mr. Chairman/Madame Chair and members of the Judiciary committee:

My name is Jenny Erickson and I am here to talk about the importance of passing Bill 2281, which pertains to the permissible use of force on a child.

On March 16th, 2017, the “use of force” was used on my oldest son, Quentin, who was three-years-old at the time. We had just moved to a new neighborhood and I was in search of childcare. I found a childcare provider who, conveniently, lived right down the street from us. When meeting with them, they pushed the importance of my children viewing them as “grandparents” and they asked that my boys call them grandma and grandpa.

My boys attended this daycare for four days, and on that final day when I picked my children up, I walked in to find my oldest son sitting on his knees in front of the T.V. with his shirt soaked in drool and tears all the way down to his waist. The second his eyes met mine, he stood up and ran over to me with his arms wide open ready to give me a hug. I could tell when I looked at him that he had spent quite a bit of time crying. The female caregiver quickly rushed over to jump in between him and I before he could get to me. That’s when she told me that my son had a rough day and he had received a “soft little pat on the butt from her husband.” When I asked what the reason was behind this and how hard the “soft pat” was, she showed me with her hands that this pat was soft enough to hardly make a noise and let me know that it was because of what she considered “poor behavior.” When the caregiver stepped between my son and I, he dropped to the ground and began crying hysterically. I tried consoling him, but nothing was working, so I picked him up and carried him to the car.

Upon arriving home, my son quickly ran to his bedroom. After I realized he was not coming out for supper, I peeked in his bedroom and found him sitting on his knees, staring into

his closet, trying to get his pajamas on. When I walked in further to ask him what he was doing, I noticed something wasn't right. This is when I realized I was living every parent's worst nightmare: my son started crying and began to tell me that because he got in trouble, the caregivers told him he was to go straight home, get in his pajamas and go to bed without dinner. As the story unfolded, I found a large red handprint on my son's upper back, two welt marks that were forming on his bottom and other bruises that were forming on his bottom and on his lower back. It was obvious that these marks were not from a hand but looked as though he was struck by an object. I found out all of this happened because he was running to the door when another mother showed up to pick up their child, thinking it was me coming to pick him up. As he was running to greet who he thought was me, he was picked up by the male caregiver, held over his arm and was hit numerous times on his bottom. He was then dropped to the ground and started crying as any child would. He was then struck again on his upper back, because he was now in trouble for crying. After that, he was dragged by his hair and forced under a little table in the play room for timeout.

I called the police and met up with a detective to file a report against the caregivers. That same night, I received a call from the detective stating that "they didn't deny anything, but the decision to arrest them or press charges would be up to the State's Attorney." The following day, I received another call from the same detective stating that no charges would be filed due the ND Century Code, Section 12.1-05-05, where it states that they (daycare providers) "may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary". This means that it is up to the caregiver's discretion on how and when to use this reasonable force

regardless of how minor the misconduct may be. My son's case was closed, but I kept pushing for the police to further investigate. This is when I was able to meet with the prosecutor that was assigned my son's case, where she stated that "reasonable use of force is permissible whether it is necessary or not" according to the ND Century Code, "as long as it does not inflict serious bodily injury or death." My child would ultimately have had to end up with an injury, such as temporary or permanent loss of function of a body part or be dead for child abuse charges to be filed against these "caregivers."

My son, who is now five, has faced many emotional and mental hurdles in the last two years. To this day, he wakes up crying in the middle of the night because he is scared someone will hurt him. To this day, he will ask me if I will ever send him back to what he now calls the "mean grandma and grandpa's house." To this day he will hide behind me for protection when meeting new people. To this day, he talks about every single detail as if it happened yesterday. My son was beaten and traumatized all because he was excited to greet his mother at the door. Because of this trauma, his life was forever changed at three-years-old. Because of this trauma, he regularly attends play therapy to deal with his struggles. Because of this trauma, he has a long road of healing ahead of him. Because of this trauma, he is too scared to speak out when he knows something isn't right.

Prior to this incident, my son was a very smart, happy, active and giggly little boy. He could light up any room he entered and was extremely out-going. As a mother it is so painful to watch my little boy, who was once such a strong and independent individual, turn into a fearful and shy kid who struggles to even confide in me at times because of this incident. It is my job as a mother to protect and fight for my children, and that day I put my faith in our justice system. My son did not receive justice in his situation but ended up with long-term emotional damage. I

#1
SB 2281
1/22

was told that my son was too young to have the vocabulary to describe in detail what happened. I was told that what happened to my son was chalked up as a “spanking” because he couldn’t say if an object had been used on him. Then again, what three-year-old child would know to look behind them in the middle of being beaten, just for the sake of testifying. I was told that it would be my son’s word against a grown man’s word, and that my son’s word held no merit against his abusers. I was told that child abuse was defined by “intent” and because the caregiver didn’t intend to leave marks, it made what happened to my son legal. I ask you to imagine your child going through what my son did and imagine feeling helpless because there is nothing you can do to protect them. The way this law is stated today, it protects the abuser instead of the child. Bill SB 2281 would be a start in giving children a voice to speak up against harm, so they could be protected, rather than a law that protects their abuser.

So, I urge you to consider voting yes on this bill, not only because this would be some form of justice for Q, but it would allow justice to be served in all other child abuse cases like his and prevent any paid caregiver from getting away with what happened to my son. SB 2281 would only allow the use of force for the prevention of misconduct or punishment only by parents, guardians and someone who is working at the direction of the parents. Which means it would require any paid caregivers to have written consent from a parent to inflict the use of force on a child as a form of punishment or discipline. This would prevent caregivers from falling through the cracks of our system by blaming physical abuse on the child’s poor behavior rather than the caregiver’s poor self-control, as it happens far too often. I thank you for your time and allowing me to speak before you today and hope that you truly consider the impact that this bill can have on the safety and protection of our children.

Madam Chairman and committee members my name is Katrina Hanenberg. I live in Burleigh County with my husband and two children. I am here in support of senate bill 2281 because my daughter was abused by her [REDACTED] care provider in 2016.

May 31, 2016 my daughter was airlifted to the Minneapolis Masonic Children's Hospital...her diagnosis...subdural hematomas or brain bleeds, a skull fracture and retinal hemorrhaging.

Looking for answers from our daycare provider all we received was lies, changing stories and deception. It was the most horrifying experience of our lives and even more so when our daughter was removed from our care and we were wrongly accused by social services.

While I'm not here because I had experience with our daycare provider using "reasonable force" on our child. I am here because I've seen too many daycare providers, including ours, get away with harming children over and over. Especially unlicensed providers.

No paid childcare provider should ever be able to lay their hand on a child. Reasonable force for punishment by a non guardian without a parents knowledge is unacceptable. More times than not that reasonable force goes too far.

I have listened to countless presentations by social services that a parent spanking a child is not ok, yet it seems when a paid childcare provider does this everyone looks the other way.

[REDACTED] need to do better for our vulnerable children who are unable to speak for themselves.

Please recommend a do pass of senate bill 2281. This is just a small step that can be taken to combat a larger issue in regulating unlicensed paid childcare providers. I believe it will give parents more peace of mind that action can be taken when their child is injured by someone they thought they could trust.

Thank you for your time and allowing me to speak today.

#2 SB 2281 1/22
page 2

#3
SB 2281
1/22

Mr. Chairman/Madame Chair and members of the Judiciary Committee:

June 1st, 2018, I picked my 3-year old son, Max up from daycare and soon noticed both of his ears were bruised and swollen. He had scratches going down his neck and a large bruise across his forehead. I asked him what happened, and he told me "Marlene broke my ears off." My heart sank into my stomach as I realized one of my biggest fears as a parent had become reality. The person I trusted to care for my only child had caused him harm.

After Max was injured, we learned the extent of injuries to another child who was injured in her care, a 5-month old baby who had severe head injuries that required multiple brain surgeries. This occurred while Max was in her care and Marlene told us at the time that another child had pushed her out of the swing. She made it sound like it was a bump on the head. We believed her because we had no reason not to. To this day, one of my biggest regrets is that I didn't ask more questions or second guess if I was putting Max in a dangerous situation.

I discussed discipline with Marlene on multiple occasions as I was trying to keep things consistent at home and at daycare. She told me when he would misbehave, she would put him in time-out or that he would have to sit in the corner, things a parent expects and understands that a childcare provider must do. I never would have guessed that being dragged by his ears would be the way she would discipline a 3-year-old boy for having an accident.

This was not a random childcare provider chosen out of convenience or a person I just met. She was a family friend who had cared for my nieces 4 years before Max was put in her care. She came highly recommended. Her background was clear. I knew other parents and referred others to her. Max was in her care for almost 2 years and I considered her a friend and thought of her as another grandmother to him. I trusted her and believed in her.

Marlene was convicted of Felony child abuse January 9, ~~2018~~²⁰¹⁹. I am all too aware of the difficulties in holding childcare providers responsible for injuries that occur at daycare. There is no way to prevent every instance of abuse that occurs under the care of people we are paying to watch our children. Had I told Marlene that she was not to use physical discipline against my son, even if it were in writing, I don't know that it would've changed anything. But I feel that Bill SB 2281 gives parents and childcare providers a starting point. This also gives childcare providers an opportunity to assure parents that they will not use physical discipline, unless a parent has consented, and provide accountability if they do.

3
SB 2281
1/22

Parents should be able to have reasonable expectations that our children are safe while they are working.

LK
Lisa Schauer

19.0494.02001
Title.

Prepared by the Legislative Council staff for
Senator Dwyer
January 29, 2019

#1
SB 2281
1/30

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, remove lines 16 through 21

Page 1, line 22, replace "b." with "Only a parent or guardian may use reasonable force for the prevention of or punishment for the misconduct of the minor or the maintenance of proper discipline."

a."

Page 2, line 1, replace "c." with "b."

Renumber accordingly

#2
SB 2281
1/30

**CHAPTER 15.1-19
STUDENTS AND SAFETY**

15.1-19-01. Legal surname - Use.

Personnel in a public school district, a nonpublic school, a preschool program, and a child care facility shall use a student's legal surname for registration, for the maintenance of all records regarding the student, and in all communications requiring the use of a surname.

15.1-19-02. Corporal punishment - Prohibition - Consistent policies.

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.
2. This section does not prohibit a school district employee from using the degree of force necessary:
 - a. To quell a physical disturbance that threatens physical injury to an individual or damage to property;
 - b. To quell a verbal disturbance;
 - c. For self-defense;
 - d. For the preservation of order; or
 - e. To obtain possession of a weapon or other dangerous object within the control of a student.
3. For purposes of this section, corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a student is not corporal punishment. A school board may not expand through policy the definition of corporal punishment beyond that provided by this subsection.
4.
 - a. The board of each school district shall develop policies setting forth standards for student behavior, procedures to be followed if the standards are not met, and guidelines detailing how all incidents are to be investigated.
 - b. The board shall ensure that the policies, procedures, and guidelines applicable to all elementary schools in the district are identical, that the policies, procedures, and guidelines applicable to all middle schools in the district are identical, and that the policies, procedures, and guidelines applicable to all high schools in the district are identical.

15.1-19-03. Period of silence.

Repealed by S.L. 2001, ch. 187, § 2.

15.1-19-03.1. Recitation of prayer - Period of silence - Pledge of allegiance.

1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the schoolday to the same extent a student may voluntarily speak or participate in secular speech.
2. A student of a public or nonpublic school may not be prohibited from voluntarily participating in any student-initiated prayer at an activity held on the premises of a public or nonpublic school.
3. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
4. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each schoolday.
5. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each schoolday. A student may

**CHAPTER 14-07.1
DOMESTIC VIOLENCE**

3
SB 2281
1/30

14-07.1-01. Definitions.

1. "Department" means the state department of health.
2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence sexual assault organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.
-  4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Predominant aggressor" means an individual who is the most significant, not necessarily the first, aggressor.
8. "Willfully" means willfully as defined in section 12.1-02-02.

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order, or at a later date if good cause is shown.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services

#1
SB 2281
3-19-19
P. 1

Chairman Koppelman and members of the House Judiciary committee:

My name is Jenny Erickson and I am here to talk about the importance of passing SB 2281, which pertains to the permissible use of force on a child.

On March 16th, 2017, the “use of force” was used on my oldest son, Quentin, who was three-years-old at the time. We had just moved to a new neighborhood and I was in search of childcare. I found a childcare provider who, conveniently, lived right down the street from us. When meeting with them, they pushed the importance of my children viewing them as “grandparents” and they asked that my boys call them grandma and grandpa.

My boys attended this daycare for four days, and on that final day when I picked my children up, I walked in to find my son sitting on his knees in front of the T.V. with his shirt soaked in drool and tears all the way down to his waist. The second his eyes met mine, he stood up and ran over to me with his arms wide open ready to give me a hug. I could tell when I looked at him that he had spent quite a bit of time crying. The female caregiver quickly rushed over to jump in between him and I before he could get to me. That’s when she told me that my son had a rough day and he had received a “soft little pat on the butt from her husband.” When I asked what the reason was behind this and how hard the “soft pat” was, she showed me with her hands that this pat was soft enough to hardly make a noise and let me know that it was because of what she considered “poor behavior” because he ran in the house. When the caregiver stepped between my son and I, he dropped to the ground and began crying hysterically. I tried consoling him with no luck, so I picked him up and carried him to the car.

Upon arriving home, my son quickly ran to his bedroom, which was out of character for him. When I went to go check on him, I found him sitting on his knees, staring into his closet,

#1
SB 2281
3-19-19
P. 2

trying to get his pajamas on. When I walked in further to ask him what he was doing, I noticed something wasn't right. This is when I realized I was living every parent's worst nightmare: my son started crying and began to tell me that because he got in trouble, the caregivers told him he was to go straight home, get in his pajamas and go to bed without dinner. As the story unfolded, I found a large red handprint on my son's upper back, two welt marks that were forming on his bottom and other bruises that were forming on his bottom and on his lower back. It was obvious that these marks were not from a hand but looked as though he was struck by an object. I found out that all of this happened because he was running to the door when another mother showed up to pick up her child, thinking it was me coming to pick him up. As he was running to greet who he thought was me, he was picked up by the male caregiver, held over his arm and was hit numerous times on his bottom. He was then dropped to the ground and started crying as any child would. He was then struck again on his upper back, because he was now in trouble for crying. After that, he was dragged by his hair and forced under a little table in the play room for timeout.

I called the police and met up with a detective to file a report against the caregivers. That same night, I received a call from the detective stating that "they didn't deny anything, but the decision to arrest them or press charges would be up to the State's Attorney." The following day, I received another call from the same detective stating that no charges would be filed due the ND Century Code, Section 12.1-05-05, where it states that they (daycare providers) "may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, **including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary"**". This means that it is up to the caregiver's discretion on how and when to use

#1
SB 2281
3-19-19
P. 3

this reasonable force regardless of how minor the misconduct may be. My son's case was closed, but I kept pushing for the police to further investigate. This is when I was able to meet with the prosecutor that was assigned my son's case, where she stated that "reasonable use of force is permissible whether it is necessary or not" according to the ND Century Code, "as long as it does not inflict serious bodily injury, dismemberment, gross degradation or death." According to the state's definition, my child would ultimately have had to end up with an injury, such as temporary or permanent loss of function of a body part or be dead for child abuse charges to be filed against these "caregivers."

My son, who is now five, has faced many emotional and mental hurdles in the last two years. To this day, he wakes up crying in the middle of the night because he is scared someone will hurt him. He will ask me if I will ever send him back to what he now calls the "mean grandma and grandpa's house." He will hide behind me for protection when meeting new people, and he talks about every single detail as if it happened yesterday. "Reasonable force, whether it is necessary or not" was used on my three-year-old child for running through the living room to greet me at the door. Because of this trauma, his life was forever changed at three-years-old. Because of this trauma, he regularly attends play therapy to deal with his struggles. Because of this trauma, he has a long road of healing ahead of him, and because of this trauma, he is too scared to speak out when he knows something isn't right.

Prior to this incident, my son was a very smart, happy, active and giggly little boy. He could light up any room he entered and was extremely out-going. As a mother it is so painful to watch my little boy, who was once such a strong and independent individual, turn into a fearful and shy boy who struggles to even confide in me at times because of this incident. It is my job as a mother to protect and fight for my children, and that day I put my faith in our justice system.

#1
SB 2281
3-19-19
P. 4

My son did not receive justice in his situation but ended up with long-term emotional damage. I was told that my son was too young to have the vocabulary to describe in detail what happened. I was told that what happened to my son was chalked up as a “spanking” not only because the marks on his bottom were clearly from an object, but because he couldn’t say if an object had been used on him. Then again, what three-year-old child would know to look behind them in the middle of being beaten, just for the sake of testifying. I was told that it would be my son’s word against a grown man’s word, and that my son’s word held no merit against his abusers. I was told that child abuse was defined by “intent” and because the caregiver didn’t intend to leave marks, it made what happened to my son legal. I ask you to imagine your child going through what my son did and imagine feeling helpless because there is nothing you can do to protect them and nothing you can do to make sure your child’s abuser faces consequences. The way this law is stated today, it protects the abuser instead of the child. SB 2281 would be a start in giving children a voice to speak up against harm, so they could be protected, rather than a law that protects their abuser.

One argument that has been made pertaining to this bill, is that child abuse is already defined in the ND Century Code. It is in fact defined in section 14-09-22, as someone “who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury.” It also talks specifically about caregivers, stating that “a person who provides care, supervision, education, or guidance for a child unaccompanied by the child’s parent, in exchange for money, goods, or other services and who while providing such services commits an offense under this section is guilty of a class B felony.” It seems as if this is a clear definition of what our state defines as child abuse, but section 12.1-05-05 is in place for the offender’s defense against such charges. Which is why the

#1
SB 2281
3-19-19
P. 5

prosecutor on my son's case could not press any charges. It seems as if there is a contradiction in place within our laws. What happened to my son was clearly child abuse, not only according to me, but according to section 14-09-22. The loophole lies within section 12.1-05-05, as it allows a very narrow range of what is considered an unreasonable amount of force to be used. SB 2281 is so important as it would require written permission, such as a daycare contract, if parents do wish to give consent to use reasonable force for punishment or discipline. I believe the only time the use of force should be up to the caregiver's discretion, is if it is meant for safeguarding the minor's welfare, but never for punishment or discipline.

Not only am I a mother of three children and majoring in psychology, where I am learning about traumas like these and how they affect young children, but for the better part of ten years, I have been a Certified Nursing Assistant in nursing homes and retirement facilities, a Quality Service Provider in home health care, a Certified Medication Assistant in multiple settings and I am certified in working with the developmentally disabled and an unlicensed daycare provider. In all my experience, I have not only had extensive training on abuse and neglect, I have also never encountered a situation with a resident, patient, client or child in my care where I have felt the need to use the use of force. Out of every position I have held while caring for others, being an unlicensed daycare provider is the only one where there are no strict rules or guidelines, yet if what happened to my son would have happened to someone in any of the other settings I have worked in, there would have been severe consequences.

For the safety of our children, I strongly urge a do-pass recommendation on SB 2281, not only because this would be some form of justice for Q, but it would allow justice to be served in all other child abuse cases like his and prevent any paid caregiver from getting away with what happened to my son. This would prevent caregivers from falling through the cracks of our

#1
SB 2281
3-19-19
P.6

system by blaming physical abuse on the child's poor behavior rather than the caregiver's poor self-control, as it happens far too often. I thank you for your time and allowing me to speak before you today and hope that you truly consider the impact that this bill can have on the safety and protection of our children.

#2
SB 2281
3-19-19
P.1

Chairman Koppelman and Members of the House Judiciary Committee:

I strongly encourage a do pass recommendation on SB 2281.

During the discussion on the Senate Floor, it was stated that unlicensed daycare providers can say they had implied consent from the parent to discipline a child using reasonable force. I, as a parent, assumed no other individual had the legal right to physically discipline my child without my permission and/or supervision, including an unlicensed daycare. Although I support the right of parents to spank their children if that is the discipline method they see fit, I do not believe a care provider has the right to use physical discipline without parental approval or permission. I have seen examples on more than one occasion that depict the results of "reasonable force" by unlicensed care providers and most of them have gone beyond a simple spanking and into the realm of abuse, which should be a prosecutable offense. As a mother I have never had to endure the trauma and heartbreak when my child is harmed and I pray that if I ever do, my child gets justice the way so many children right now do not, and I feel that passing this bill is a big step in the right direction in protecting the safety and wellbeing of our youth. I strongly urge a do pass recommendation on SB 2281 in order to protect our children and prevent child abuse in our state.

Samantha Svihl

Mr Chair and committee members my name is Troy Hanenberg. I'm speaking today because my wife was unable to make it due to important meetings at her work that she couldn't get away from. I'm not used to doing speeches so please bare with me. I believe we need to make important changes, so I felt it was important enough for me to talk about this even though it's not easy for me. I realize how important this is to my daughter, my wife and and all the other families. That is why I felt strong enough to be here today to express my concerns for change. I will do my best to tell you why this is so important and why we believe so strongly about it.

#3
582281
3-19-19
P.1

I live in Burleigh County with my wife and two children. I am here in support of senate bill 2281 because my daughter was abused by her daycare provider in 2016.

May 31, 2016 my daughter was airlifted to the Minneapolis Masonic Children's Hospital...her diagnosis...subdural hematomas or brain bleeds, a skull fracture and retinal hemorrhaging.

Looking for answers from our daycare provider all we received was lies, changing stories and deception. It was the most horrifying experience of our lives and even more so when our daughter was removed from our care and my wife and I were wrongly accused by social services.

While I'm not here because I had experience with our daycare provider using "reasonable force" on our child. I am here because I've seen too many daycare providers, including ours, get away with harming children over and over. Especially unlicensed providers.

No paid childcare provider should ever be able to lay their hand on a child. Reasonable force for punishment by a non guardian without a parents knowledge is unacceptable. More times than not that reasonable force

goes too far.

#3
SB 2281
3-19-19
P. 2

I have listened to countless presentations by social services that a parent spanking a child is not ok, yet it seems when a paid childcare provider does this everyone looks the other way. We need to do better for our vulnerable children who are unable to speak for themselves.

Ideally we'd like to see every unlicensed paid daycare provider have to self declare so parents can be informed of reported abuse. Unfortunately, our daycare provider walked away with a slap on the wrist due to lack of evidence as she lied about our daughters injuries. Parents weren't given any info by police or social services and she abused another child less than a year later. Fortunately that child could talk and she's now in jail as we speak. However, the second time should have never happened.

Senate bill 2281 is just a small step that can be taken to combat a larger issue in regulating unlicensed paid childcare providers. I believe it will give parents more peace of mind that action can be taken when their child is injured by someone they thought they could trust.

Our daughter is thankfully a healthy 3 year old today after 3 brain surgeries and years of therapy. However, many kids don't defy the odds like she did, please help us to make unlicensed daycares and providers accountable and safer. Thank you for your time and allowing me to speak today.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, line 14, remove the overstrike over "~~including prevention~~"

Page 1, line 15, remove the overstrike over "~~and punishment of the minor's misconduct, and the maintenance of proper discipline~~"

Page 1, line 16, remove "The reasonable force used for the purpose of safeguarding or promoting the"

Page 1, remove lines 17 and 18

Page 1, line 19, remove "a parent or guardian, or a person acting at the direction of a parent or guardian."

Page 1, line 20, replace "acting at the direction of a parent or guardian" with "using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline"

Page 1, line 20, remove "the"

Page 1, line 21, replace "direction must be in writing" with "that person must be acting under written direction of the parent or guardian of the minor"

Renumber accordingly