

2019 SENATE JUDICIARY

SB 2053

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2053
1/8/2019
#30510 (31:55)

- 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 27-20-52 of the North Dakota Century Code, relating to inspection of law enforcement and correctional facility records and files of a child by an assistant superintendent.

Minutes:

1 Attachment

Chair Larson opened the hearing on SB 2053 and hands the gavel to Vice Chairman Dwyer.

Senator Larson: I was asked to put this bill in at the request of law enforcement who does make these notifications. The assistant principal is the one who typical receives these reports.

(1:55) Jason Stugelmeyer, Deputy Chief Bismarck Police, testifying in favor of the bill.

Deputy Stugelmeyer: It's really important that we work with the schools for school safety and part of that is sharing information. We owe it to our kids and parents to keep the schools safe. Now days more than ever that is very important. Chapter 27-20-52 as stated is a good law; however, it may have been overlooked that the assistant superintendent of schools should have access to the information. Right now it allows the superintendent of the schools and the principals to have access to that information. It doesn't make sense for the assistant superintendents, who are essentially the supervisors of the principals of the schools, not to have that information. We had a situation where this was needed on a pretty serious case this past summer and we weren't able to allow the assistant superintendent in a meeting to decide what should happen to these kids and how we're going to move forward and collaborate with each other to make the schools safer. Assistant Superintendent Ben Johnson is here and he also supports this. He was the one specifically affected.

(4:20) Senator Larson: What kind of information do you report to the schools?

Deputy Stugelmeyer: We, as a matter of routine business, don't like to share everything. There is a lot of low profile information that we don't need to get into. However, it is very important that the higher level cases be shared, especially those including victims. We need to make sure that victims and suspects that are going to the same schools are maybe

separated. We don't have authority in doing that, but the schools do. There was some gang type activity developing with a group of kids from the district. There was a youth part of this group that was severely injured. The intent was homicide. He wasn't killed, but it's important to be able to share this information to prevent this group from festering within the school district. We can't do that if we're not working as a team together and able to share that information. As law enforcement, juvenile records are mostly confidential. 27-20-52 allows us to share that information strictly to keep our kids safer with the school district.

(6:21) Senator Myrdal: How often is this likely to happen and how are we assured that the school officials have the same confidentiality commitments that law enforcement does?

Deputy Stugelmeyer: If you have an Student Resource Officer (SRO) in the school like we do, they deal with routine issues on a daily basis SRO to principal and vice principal. On those cases it may be more frequent. When we get the assistant superintendent involved, it's more frequent. I would guess more monthly when we have the more serious cases. Of course I'm speaking for the district in which I work- it may vary.

Senator Bakke: You mention the assistant principal whom is not mentioned in the bill. Will there be a need for assistant principal in addition to assistant superintendent? I don't want to open Pandora's box, but it's quite restrictive as to who can be involved.

Deputy Stugelmeyer: I agree. In discussions we were also worried about Pandora's Box situation. I would personally support that the assistant superintendents have that information, but with what we have, that is what I'm supporting. Assistant principals are in charge of the schools' discipline typically in those settings, so I would support that also. We've had a habit in the Bismarck Police Department by giving the information to the principal. Then they are able to share that information with their assistant and counselors as needed.

Senator Bakke: This only refers to who the police share information with?

Deputy Stugelmeyer: Correct. This statute only relates to what we can release as far as our records to the school.

(11) Vice Chairman Dwyer: Should it say "Superintendent or Superintendent designee"? In small schools, you don't have assistant superintendents or assistant principals. You may have a superintendent who is also the principal for the high school then you may have an Elementary principal and they sometimes include the school counselor and the counselor has a more rigid confidentiality than anyone in the school. Should a designee be considered?

Deputy Stugelmeyer: We also discussed that. We are more familiar with the bigger districts that have a more formalized structure, but I would also support that.

Senator Luick: My wife is a high school teacher and has to deal with students who've been kicked out of other school districts. Those students come to our district with no history. It's not fair to other kids or teaching staff. They need to know what to be watching for. It can be a festering situation. I agree with adding language.

Deputy Stugelmeyer: I agree that information sharing across districts is very important. This statute as written allows police records to be shared to other districts so long as the student attempts to apply to that school. For example, if we have a student who intends to go to Minot and the Minot School district verifies that the student will go to Minot, we can share that information. Right now we're just restricted to sharing it to the principals and superintendent. What they do with the information is not addressed I don't believe anywhere in state law. It certainly is not addressed in this statute.

(14:55) Chair Larson: This bill just addresses what the police can release. This doesn't address what the schools can do within their buildings.

Deputy Stugelmeyer: That is correct.

Senator Bakke: My son is both principal and superintendent. If he were gone for a period of time and something were to happen, the police wouldn't have anyone to relay information to. In that situation what would you do?

Deputy Stugelmeyer: We don't usually have those problems in my district, but I understand that there could be those issues in a smaller district. As it states, we can only give that information to those stated people and we would try to contact them through phone. What they did with the information at that point is up to them. I don't know how that's resolved other than adding some different language.

(18:10) Ben Johnson, Assistant Superintendent for Secondary Schools, testifying in favor of bill (see attachment #1)

Dr. Johnson: We had a breakdown where this was challenged. I spoke with Superintendent Baesler that the wording of "superintendent" includes me as I am a superintendent for Bismarck, an assistant, but that wasn't deemed qualifying in this situation by the Attorney Generals at the time. That is why we're asking for this specific clarification because there were circumstances that involved all 3 of our high schools and many students. It's not just about those students, but it was about trying to ensure that we had safety for other students that were walking those halls. We wanted to make sure we had coordinated efforts. This situation was unique enough too that we had an intern superintendent just starting who wasn't used to dealing with those issues where I had but still could not be involved in that meeting. Therefor some of that background that I would have brought in terms of understanding and coordinating efforts was lacking. There are some issues regarding FERPA where we abide by ethics, so of course we won't be sharing information with anyone who doesn't have a pertinent, educational interest in that student's information. I don't know if "designee" or other verbiage will help, but in order to avoid this situation, this simple addition of "assistant superintendent" is what we're asking for today.

(21:49) Senator Myrdal: This bill deals with only who the police department can give information to in school? Can you as an Assistant Superintendent then go within your internal structure and bring others in as far as school code goes?

Dr. Johnson: Yes, that would be my interpretation. This is simply about who can the police department or Sheriffs County share information with within the school. Then we abide by

confidentiality and would only be sharing that with other entities as we come together and create what we call a “safety plan” around that individual.

Senator Myrdal: Could you clarify for this committee- when we have an open enrolled student, he or she does not come with any information as of why that student is in their 3rd or 4th school in 5 years. Do you have any short clarification for this committee as to why that happens?

Dr. Johnson: We need to get better as a whole at sending our folders. There are timelines of about 10 days where you’re supposed to be sending cumulative files that have information. That is important with the registration process to make sure that’s being sent on so there is that history. There are processes in place, but people need to do a better job at it so there are less gaps. When we do see those trends, it’s about picking up the phone and trying to help facilitate that communication. It’s separate, but it obviously relates with the situation like this.

(24:40) Senator Bakke: Because of open record laws, can police information be put in a child’s cumulative file?

Dr. Johnson: There is a federal supremacy that trumps that. Students have a rights under the FERPA laws which is federal. Even if we have a local, state matter that is put in a school cumulative file, I would deem that that is not an open records request because it is a student’s federal right guaranteeing privacy of that information.

Senator Larson: Moved a Do Pass
Senator Myrdal: Seconded.

Senator Bakke: We should consider an amendment to add “designee” for especially the smaller schools.

Chair Larson: I am reluctant to add more.

Senator Luick: I agree with Senator Bakke. In our smaller districts, we have a half-time superintendent from Fargo who comes down a couple days a week and we have one principal. There is no assistant principal and sometimes that principal is gone. Sometimes the funds don’t allow extra staff such as hiring a vice principal. I agree we should add “designee”.

Senator Myrdal: In these small schools, they don’t have an official designee so I am concerned that the police will just pick and choose whom to tell.

Vice Chairman Dwyer: I served as an interim superintendent for 2 years. If I left, I would officially designate to act in my place.

Chair Larson: I will withdraw my motion and look into an amendment.
Senator Myrdal: I will withdraw my second.

Vice Chairman Dwyer, acting for Senator Larson, closed the hearing on SB 2053.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2053
1/9/2019
#30568 (06:30)

- 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 27-20-52 of the North Dakota Century Code, relating to inspection of law enforcement and correctional facility records and files of a child by an assistant superintendent.

Minutes:

No Attachments

Chair Larson calls the committee to order.

Chair Larson: There was an amendment that had been suggested

(01:55) Senator Bakke: There are times a when a superintendent, assistant superintendent or principal may be one person, particularly in smaller schools. We should add “or designee”.

Chair Larson: I spoke with Tom Gerhardt with Citizen’s United who is the lobbyist for all things relating to schools and also with Kirsten Baesler from the Department of Public Instruction. Ms. Baesler thinks it will be a good addition following the inserted language on page 2 line 3 after “assistant superintendent” add “or designee”. The people I spoke with were completely in favor of that.

Senator Bakke: Do we want to put it after “principal”?

Senator Myrdal: I agree. We’d take out the “or” before “principal” and insert “, or designee” after “principal”. This would authorize the principal or the superintendent to have a designee.

Senator Luick: moves to adopt amendment to add “, or designee” after “principal”

Senator Bakke: Seconds

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

Senator Luick: Moves a Do Pass as Amended

Senator Myrdal: Seconded

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

Senator Luick will carry the bill.

January 9, 2019

sk
1001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2053

Page 1, line 3, after "superintendent" insert "or designee of a school"

Page 2, line 3, overstrike "or"

Page 2, line 3, after "principal" insert ", or designee"

Re-number accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2053**

Senate Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: 19.0278.01001 _____

- 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 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:

Insert "designee"

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2053**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0278.01001

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 Senator Myrdal

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 Senator Luick

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

REPORT OF STANDING COMMITTEE

SB 2053, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2053 was placed on the Sixth order on the calendar.

Page 1, line 3, after "superintendent" insert "or designee of a school"

Page 2, line 3, overstrike "or"

Page 2, line 3, after "principal" insert ", or designee"

Renumber accordingly

Page 1, line 8, remove the fourth comma

Page 1, line 8, replace "61-21.1-02" with "chapter 61-21.1"

Page 11, line 17, after the third comma insert "and"

Page 11, line 17, remove the fourth comma

Page 11, line 18, replace "61-21.1-02" with "chapter 61-21.1"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2053, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2053 was placed on the Sixth order on the calendar.

Page 1, line 3, after "superintendent" insert "or designee of a school"

Page 2, line 3, overstrike "or"

Page 2, line 3, after "principal" insert ". or designee"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2105: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2105 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2106: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2106 was rereferred to the **Appropriations Committee**.

REPORT OF STANDING COMMITTEE

SB 2112: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2112 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2119: Transportation Committee (Sen. Rust, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2119 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2139: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2139 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2144: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2144 was placed on the Eleventh order on the calendar.

FIRST READING OF SENATE BILLS

Sens. Myrdal, Bakke, Dwyer and Reps. Buffalo, Satrom, Vetter introduced:

SB 2203: A BILL for an Act to amend and reenact section 12.1-31-01.2 of the North Dakota Century Code, relating to sexual assault restraining orders.

Was read the first time and referred to the **Judiciary Committee**.

Sens. Dever, Heckaman and Reps. Heinert, Keiser, Meier, J. Nelson introduced:

SB 2204: A BILL for an Act to create and enact a new section to chapter 54-07 of the North

JOURNAL OF THE SENATE

Sixty-sixth Legislative Assembly

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Bismarck, January 11, 2019

The Senate convened at 12:30 p.m., with President Sanford presiding.

The prayer was offered by Rev. Merle Hoots, Baptist Healthcare Chaplain, Bismarck.

The roll was called and all members were present.

A quorum was declared by the President.

CORRECTION AND REVISION OF THE JOURNAL

MR. PRESIDENT: Your **Committee on Correction and Revision of the Journal (Sen. Anderson, Chairman)** has carefully examined the Journal of the Fourth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 171, line 9, remove “, as engrossed”

SEN. ANDERSON MOVED that the report be adopted, which motion prevailed.

MOTION

SEN. KLEIN MOVED that SB 2139 be rereferred to the **Political Subdivisions Committee**, which motion prevailed. Pursuant to Sen. Klein's motion, SB 2139 was rereferred.

CONSIDERATION OF AMENDMENTS

SB 2031: SEN. ANDERSON (Human Services Committee) MOVED that the amendments on SJ page 170 be adopted and then be **REFERRED** to the **Appropriations Committee** with **DO PASS**, which motion prevailed on a voice vote.

SB 2031 was rereferred to the **Appropriations Committee**.

CONSIDERATION OF AMENDMENTS

SB 2053: SEN. LUICK (Judiciary Committee) MOVED that the amendments on SJ page 171 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

MOTION

SEN. KLEIN MOVED that SB 2036 be moved to the bottom of the Sixth order, which motion prevailed.

CONSIDERATION OF AMENDMENTS

SB 2034: SEN. LUICK (Judiciary Committee) MOVED that the amendments on SJ page 170 be adopted and then be placed on the Eleventh order with **DO PASS**, which motion prevailed on a voice vote.

MOTION

SEN. KLEIN MOVED that SB 2036, which is on the Sixth order, be laid over one legislative day, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2059: A BILL for an Act to create and enact section 43-17-02.4 of the North Dakota Century Code, relating to licensure exemption for certain physicians.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 47 YEAS, 0 NAYS, 0 EXCUSED, 0 ABSENT AND NOT VOTING.

2019 HOUSE EDUCATION

SB 2053

2019 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

SB 2053
3/11/2019
33509

- Subcommittee
 Conference Committee

Committee Clerk: Bev Monroe

Explanation or reason for introduction of bill/resolution:

A bill relating to inspection of law enforcement and correctional facility records and files of a child by assistant superintendent or designee of school

Minutes:

Attachment 1, 2

Chairman Owens: Opened the hearing on SB 2053.

Sen. Diane Larson: The bill I am bringing forward today is just a simple fix that asks the law be changed to do exactly what is already in practice. When police have someone who is a dangerous person who is a juvenile that is attending school, law enforcement can notify certain people in that school that this is someone they may want to be watching. On page 2 of the bill on line 3, currently it just says that a superintendent or a principal, etc., but it is actually the assistant superintendent that handles that information and decides what needs to be done with the student.

Chairman Owens: Any questions from the committee? Anyone else in support of SB 2053?

Jason Stugelmeyer, Deputy Chief, Support Services Division, Bismarck Police Department: (Attachment 1)

Chairman Owens: Any questions from the committee? Any others in support? Any testimony in opposition? Neutral testimony? Closed the hearing on SB 2053.

Ben Johnson (Attachment 2): Testimony handed out but not present.

Representative Denton Zubke: I'll move a **Do Pass** on SB 2053.

Vice Chairman Schreiber-Beck: I'll **Second** that motion.

A **Roll Call Vote** was taken: **Yes 13, No 0, Absent 1**. A **Do Pass** carries. Rep. D. Zubke will carry SB 2053.

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

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2053**

House Education Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Rep. D. Zubke Seconded By Rep. C. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens	✓		Rep. Guggisberg	✓	
V. Chair. Schreiber-Beck	✓		Rep. Hager	✓	
Rep. Heinert	✓				
Rep. Hoverson	✓				
Rep. D. Johnson	✓				
Rep. M. Johnson	✓				
Rep. Johnston	✓				
Rep. Longmuir	✓				
Rep. Marschall	A				
Rep. Pyle	✓				
Rep. Strinden	✓				
Rep. Zubke	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. D. Zubke

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

REPORT OF STANDING COMMITTEE

SB 2053, as engrossed: Education Committee (Rep. Owens, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2053 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2053

#1
SB 2053
1/8/19

Congressional Members,

Regarding Senate Bill No. 2053

I am representing Bismarck Public Schools. Over the past 5 years of my experience here with Bismarck Public Schools, we have had an outstanding working relationship with the Bismarck Police Department. We are confident in the ability to continue to use discretion regarding the sharing of sensitive and pertinent information regarding students with alleged or whom have been found to be delinquent.

As the Assistant Superintendent for Secondary Schools, I am charged with the oversight of the middle schools and high schools as well as holding the School Resource Officers portfolio for Bismarck Public Schools. This simple addition of including "assistant superintendent" would allow large school districts the ability to ensure that we have proper communication within and across the district in order to facilitate collaboration regarding input for safety plans and a shared understanding for necessary steps to protect all of the students across the district.

Respectfully,



Dr. Ben Johnson

SB 2053
3-11-19
#1

Prepared for:
House Education Committee
3-11-19
By: Jason Stugelmeyer, Deputy Chief Bismarck Police Department

Re: Support of Senate Bill 2053

My name is Jason Stugelmeyer and I am serve on the Bismarck Police Department as a Deputy Chief of the Support Services Division. We are in favor of this bill because it promotes information sharing between school districts and police departments.

It is my opinion that when NDCC 27-20-52 was created it was an oversight to not add the language of "assistant superintendent". As currently written, the Superintendent and Principals of a school are allowed access to law enforcement records.

How we learned about this issue was during a brief on a conspiracy to commit murder case. The states attorney's office interpreted the statute as written, and did not allow the assistant superintendent into the meeting. This resulted in a decision maker not to have all the information as we all had. The information was used to come up with a strategy on how to break up the gang and keep it from being perpetuated. Strategies such as this aid in keeping co-conspirators separated in a school building or help keep a victim safe from a perpetrator. To do this, we all need the proper information to make the right decisions.

In this day and time, it is imperative that law enforcement officials and school officials share information and by passing this that goal will be accomplished. I respectfully recommend a do pass for senate bill 2053.

Jason Stugelmeyer
701-355-1862

Did not give testimony
Just handed out.

SB 2053
3-11-19
#2

Congressional Members,

Regarding Senate Bill No. 2053

I am representing Bismarck Public Schools. Over the past 5 years of my experience here with Bismarck Public Schools, we have had an outstanding working relationship with the Bismarck Police Department. We are confident in the ability to continue to use discretion regarding the sharing of sensitive and pertinent information regarding students with alleged or whom have been found to be delinquent.

As the Assistant Superintendent for Secondary Schools, I am charged with the oversight of the middle schools and high schools as well as holding the School Resource Officers portfolio for Bismarck Public Schools. This simple addition of including "assistant superintendent" would allow large school districts the ability to ensure that we have proper communication within and across the district in order to facilitate collaboration regarding input for safety plans and a shared understanding for necessary steps to protect all of the students across the district.

Respectfully,

Dr. Ben Johnson