

2019 SENATE JUDICIARY

SB 2074

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2074
1/7/2019
#30444 (9:13)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 27-20-54 of the North Dakota Century Code, relating to the destruction of juvenile court records.

Minutes:

1 Attachment

Chair Larson opened the hearing on SB 2074.

Travis Finck, Deputy Director N.D. Comm. On Legal Counsel for Indigents, testified in favor (See Attachment 1)

Finck: This is a House keeping bill that we had pre-filed with this year's legislative assembly allowing us to retain some records. There was some question in the Youth and Juvenile Court Act as to whether not any of the records that we had was subject to the mandatory disposal in 27-20-54. Just to clarify, the Commission is responsible for providing counsel in the Uniform Juvenile Court Act for parties that are determined to be indigent. We retain those records for purposes of establishing budget, setting contracting levels, determining staffing levels in our office-things of that nature. We also have a separate record retention policy other than that maintained by the Supreme Court. There are some specifically exempted agencies such as DOCR and Attorney General's office. We felt it would be appropriate for us to be listed in there as well as we do maintain those on a separate record retention schedule. We did get an ethics opinion when the Commission was started that did indicate if we are going to be destroying files, which we do. We need to keep a copy of the records that are destroyed, an index of those records. We do that to maintain our ethical obligations as well. This is just to make sure we're in compliance with statutory and our ethical responsibilities.

(2:49) Senator Luick: Do you keep any digital files of these as well?

Finck: We do keep some digital records. We are transitioning a little bit from the paper records to digital records, but they are maintained on the same record retention schedule. For example, in a Juvenile case, I believe it's 3 years after conditions met taken is when the record is destroyed, the actual file. However, then we do keep a copy of what was destroyed. Not an actual copy of the file itself, but a record indicating that that file was destroyed. We

keep that for a period of 10 years. That would include things like the amount of hours spent on it, disposition and things of that nature

(3:39) Senator Bakke: Do these pertain to the Open Records Law? Can someone gain access to these Juvenile records through that process?

Finck: These records are confidential by statute. Also we have an ethical responsibility that those will be confidential. Additionally, in our operating statute, Century Code 54-61, those are also confidential records that cannot be disclosed. It's just records that we have maintained internally.

(4:17) Senator Myrdal: You stated you need to keep it for budget reasons. Do they still contain names? Does it need to have those identifications included?

Finck: We have a case reporting system where all of our attorneys when they are assigned to a case, they put in the name of the client and when they close it they put in the hours and everything else. That information is retained. Such things such as maybe guarding ad litem report or police reports if it's a delinquency action- those are not maintained. So it is just the name and what has happened. Again that is a secure site and not public record.

(5:30) Senator Osland: What is this bill accomplishing?

Finck: This accomplishes allowing our agencies to do what we're currently doing. It's simply a housekeeping matter. We believe that there is a sort of a contradiction between our ethical responsibilities when we destroy a client file. So if I'm representing a juvenile who's accused of a delinquent act, I'm going to get police reports, witness statements and things of that nature. That's the attorney's file. When that case is closed, we destroy that file in accordance to the record retention policy, but we also need to keep a record of what is destroyed for a period of 10 years according to an ethics opinion we received. So the statute at hand requires that all records be destroyed in accordance with the Supreme Court's destruction schedule. Ours is different.

Senator Osland: You are now keeping a record of the ones you destroyed? We've been destroying these records right along correct?

Finck: Correct.

Senator Osland: Now we will take a record of what we will destroy?

Finck: Correct, to comply with the rules of ethics.

Chair Larson: You keep a record that you've destroyed John Doe's file, but you don't keep a record of everything that was in the file.

Finck: Correct.

Senator Luick: Moved a Do Pass.

Senator Myrdal: Seconded.

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Senator Osland will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2074: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2074

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2074
3/5/2019
33246

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the destruction of juvenile court records.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2074.

Travis Finck, Deputy Director of the ND Commission on Legal Counsel for Indigents: (Attachment #1) Read testimony. This adds us to the list of agencies that are exempt under the Uniform Juvenile Court Act of having to destroy the records once a juvenile court case is completed.

Rep. Paur: Who has to destroy the files? The list is so comprehensive is there anybody left?

Travis Finck: We have an obligation to keep that file on behalf of the client so we will continue to meet that obligation and we are asking for the statutory statute to do so?

Chairman K. Koppelman: Explain why do you need to retain it?

Travis Finck: Ethically that record belongs to the client. The client may come back and want a copy of something that he may not have gotten.

Chairman K. Koppelman: Would this include retention in order for expungement?

Travis Finck: There would not be an involvement relative to expungement. Our file is kept strictly with the record retention. We have different mandates. Since that file belongs to the client we have specific mandates. As an attorney that file technically belongs to the client.

Chairman K. Koppelman: A client of your agency has a brush with the law and their sentence is probation. If the carrot dangled at the end of probation is if you keep your nose clean your records will be expunged. You will not be guilty of a crime any more. Now you are saying that file would not be destroyed in your office, but you are also saying it belongs to the client. There would be no reason in the whole the client would want that record retained. How does that work?

Travis Finck: We have a retention schedule because we are required to do so. The state requires a retention schedule and then we have to meld it with the rules of professional conduct for an attorney and how that all melds was the ethics opinion that we got. We have to have this set in stone so we advise them when we first engage with them that we are subject to a record retention policy and your file will be kept for a period of x-amount. When we have our closing letter that goes to them we also inform them that their file will be destroyed on such and such date unless they object. If they object we have to keep that file.

Chairman K. Koppelman: Where does the ethic's opinion come from?

Travis Finck: It is something the commission sought out at the infancy of the commission and the ethics committee of the Supreme Court recommendation. Our files are not discoverable. While they are sealed; the attorney has the duty to maintain the confidentiality of that.

Chairman K. Koppelman: What is the purpose for hanging onto the file that long?

Travis Finck: If they would want a copy of it down the road and we have had cases where there is a misdemeanor by disposition where someone was sentenced to one year and it was deemed a misdemeanor by disposition but they do the records check when they apply at the motel or fast food place; they say have you ever been convicted of a felony; they mark no and you say wait a minute this is a felony. No it is a misdemeanor by disposition so they actually have to get a copy of that. often times it is easier to get ahold of your attorney because we can talk to them about that process; than it is to get that from the court.

Representative Simons: Do attorney's share that amongst themselves?

Travis Finck: Confidential is how it is viewed in the century code provisions. The Attorney Client provision is owned by the client.

Representative Simons: You cannot go public with these records.

Travis Finck: No.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. Paur; Seconded by Rep. Roers Jones

Roll Call Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Bob Paulson

Closed.

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2074

House 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 PAUR Seconded By Roers Jones

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) 14 No 0

Absent 0

Floor Assignment Rep. Paulson

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

REPORT OF STANDING COMMITTEE

SB 2074: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2074

Senate Bill 2074
Senate Judiciary Committee

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1/7/19

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
January 7, 2019

Good Morning, Madam Chair Larson, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission, through its public defenders and contract counsel, provides representation in juvenile court proceedings emanating from the Uniform Juvenile Court Act, NDCC Chapter 27-20. NDCC § 27-20-54 requires juvenile court records to be retained and disposed of pursuant to supreme court retention policies; however, it lists several agencies which are exempted from following the supreme court schedule. These agencies are required to follow their own retention policies. This bill seeks to include the Commission and its public defender offices to the list of exempt agencies.

The majority of the client's file is, ethically, the client's file. In general, if the client objects to destruction of a file, the attorney cannot ethically destroy it. The Commission's retention schedule recognizes this, and permits an attorney to maintain a file for additional time, if appropriate.

The bill also would permit the agency to retain index references. Under an ethics' opinion dealing with the issue of destruction of client files, it is recommended that the attorney maintain an index of files returned to the client or disposed of. Index references are also used to check for conflicts for assignment of attorneys to the cases. Also, the records regarding appointment, disposition, amount of time spent on a case, etc. is information the Commission uses in establishing contracting levels, compensation, and the necessity of staffing in our public defender offices.

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1/7/19

Therefore, the Commission respectfully asks this committee to provide a do pass recommendation to the Senate.

Respectfully Submitted:



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3-5-19
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Senate Bill 2074
House Judiciary Committee

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
March 5, 2019

Good Morning, Chairman Koppelman, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission, through its public defenders and contract counsel, provides representation in juvenile court proceedings emanating from the Uniform Juvenile Court Act, NDCC Chapter 27-20. NDCC § 27-20-54 requires juvenile court records to be retained and disposed of pursuant to supreme court retention policies; however, it lists several agencies which are exempted from following the supreme court schedule. These agencies are required to follow their own retention policies. This bill seeks to include the Commission and its public defender offices to the list of exempt agencies.

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Therefore, the Commission respectfully asks this committee to provide a do pass recommendation to the House.

Respectfully Submitted:



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