



Phone: 701.237.6983
218 NP Avenue | PO Box 1389
Fargo, ND 58107-1389
mfriese@vogellaw.com

January 20, 2023

The Honorable Diane Larson
Chair, ND Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in support of SB 2216

Dear Chairman Larson and members of the Senate Judiciary Committee,

I write individually in support of SB2216. I am an attorney in private practice in Fargo. I am a lifelong North Dakota resident. I have lived in Legislative District 45 for twenty years. Prior to law school, I served as a Bismarck Police officer. I served in the North Dakota Army National Guard for twenty-four years.

I am perhaps in a unique position to offer input on this bill because I regularly represent both police officers and criminal defendants. This bill would provide long overdue temporary privacy protections for both. I respectfully ask the Committee to make minor amendments, and thereafter recommend “do pass” for SB2216.

As a lawyer, I have represented dozens of police officers following critical incidents. I have represented hundreds of individuals charged with violations of criminal statutes and ordinances. In both categories of representation, my clients have been targeted by unscrupulous businesses attempting to take advantage of the circumstances, and by outspoken critics who seek to harass, annoy, embarrass, or intimidate individuals and officers. I have asked individual officers to write in support of this proposal and to outline examples.

Sadly, the ability for individuals and businesses to engage in these tactics is because they can harvest identity and contact information from public records prepared at public expense. While this bill may not eliminate this type of conduct, it will undoubtedly reduce it. And it will provide assurances to our citizens and our police officers that unwanted solicitation and harassment is not the result of mining data contained in public records. Accordingly, rather

than limiting protection from only correctional facility records, I am urging the Committee to amend the bill to extend protection in all public records, amending the proposed bill as follows:

2. The address and telephone number of a criminal defendant ~~which is in the possession of a correctional facility or correctional facility staff~~ is a confidential record while the defendant's case is pending trial or appeal.

and to thereafter recommend “do pass.”

As outlined in the bill, the proposed confidentiality protections would not prohibit governmental entities or employees from sharing the protected information. Identity of police involved in critical incidents and contact information for citizens accused of crimes would instead receive protection from public intrusion and exploitation.

This type of protection is not new. Federal law already requires similar protections for information contained in records held by state motor vehicle departments. *See* Driver’s Privacy Protection Act (“DPPA”) of 1994, 18 U.S.C. § 2721 et seq. Under this federal law, state motor vehicle departments cannot release personal information to include name, address, telephone number, driver identification number, social security number, or even photograph. North Dakota law already protects as confidential the home address and telephone number for law enforcement officers (as well as judges, prosecutors, and others). N.D.C.C. § 44-04-18.3(1) and (5). This bill is much less restrictive than federal law or existing statute, precluding only the release of a defendant’s address and telephone number, and preventing the release of the identity of a police officer involved in a critical incident until the incident investigation is complete.

Based on an approved ballot measure known as Marsy’s Law, a crime victim has the constitutional right to restrict access to their identity and personal identifying information. Many police officers can readily be classified as victims in critical incidents. Notwithstanding, multiple police agencies have refused to extend these constitutional rights to police officers. This bill would remedy that disparity.

I have been contacted by dozens if not hundreds of individuals charged with crimes who have received direct mail solicitations from unscrupulous and misleading companies. Most prevalent are solicitations with official looking letters attempting to sell ignition interlock devices to those accused of impaired driving. The solicitations are misleading, claiming to authorize driving privileges for enrollment. But North Dakota courts and the NDDOT do not use interlock devices; they use the 24/7 Sobriety Program, administered by the Attorney General under statutory authority. Presumptively innocent citizens have spent thousands of dollars having been duped by shady companies who get the contact information for citizens from court, police, and correctional agency records.

Sadly, even my own profession is becoming characterized by unwanted direct solicitation. While the conduct of directly soliciting clients by mail is lawful, it is distasteful. But if lawyers choose to engage in this behavior, our citizens should be assured that the contact information

for solicitors to reach them has not been generated by mining records held by our public entities.

I have witnessed firsthand bullying, intimidation, threats, and criticisms of police and accused citizens by community members who are most often wrong about the events leading up to the critical incident or arrest. This behavior feeds on itself, and others often join in the banter with mob-like behaviors. It is an indictment on our current social climate.

Every police officer who serves our state and its communities deserves the limited protection of withholding disclosure of his or her identity in the immediate aftermath of a critical incident. When the investigation is complete, and when police leaders can engage in meaningful and extended dialogue regarding the event and its investigation, those involved should be identified. But not before.

Likewise, presumptively innocent citizens accused of offenses should not be subjected to unwanted, unseemly, and misleading solicitation. Stalking, threats, harassment, and even assaults are directed at police and accused citizens. Those who engage in this type of behavior should not be permitted to obtain the information to do it from government records.

I respectfully urge the Committee to amend the proposal to provide protections from harvesting this limited personal data from all governmental records, and thereafter recommend “do pass.”

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

MAF:hs

cc: Sen. Ronald Sorvaag, *via email only*
Rep. Carrie McLeod, *via email only*
Rep. Scott Wagner, *via email only*