

January 24, 2023

Testimony to the **Senate Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of S.B. 2216**

Chairmen and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports S.B. 2216** and recommends a **DO PASS** from the Senate Judiciary Committee.

As the members of this Committee are well aware privacy protection is increasingly important in the digital age. Unsurprisingly, as more of our personal information and governmental functions have moved into the digital realm opportunists have identified new ways to seek out and monetize personal information. Our justice system has not been immune to the prying eyes of target marketers and others in search of personal identifying information for their use and benefit. One prominent example is ignition interlock marketers who access DUI defendant addresses and phone numbers to market expensive devices and services to vulnerable individuals on false promises of shorter suspensions, limited restrictions, and other criminal and administrative penalty reductions that may be available in other States but are not recognized under our law.

To be clear, the NDACDL, and myself on a personal level, are committed to open courts and public justice. However, criminal defendants are innocent until proven guilty. The mere occurrence of being charged with an alleged violation of an ordinance or law does not deprive individuals of their reasonable expectation of privacy and should not subject our presumptively innocent citizens to direct contact with target marketers and other opportunists who lack a need to know. All individuals, criminal defendants included, have the right to protect their personal information from unreasonable and unwanted intrusion. Many make active efforts to limit public access to their residential address, phone number, and other personal information. Clearly, one must surrender identifying information to the State for a variety of reasons, including the traditional “booking information” following arrest. And in that context, and many others, the State has a legitimate interest in the information and requires it for a variety of core governmental functions. However, there is no legitimate interest in the public posting and dissemination of such information to individuals who have no need to know or legitimate interest.

S.B. 2216 provides a reasonable approach to making the information available only to those individuals within the justice system with a need to know while preventing unreasonable spillage of that information to others. That said, I respectfully urge the Committee to amend the bill to eliminate confusion and extend this protection to all public records, not just those in the possession of correctional facilities. Accordingly, the NDCDLA would recommend a DO PASS with the following amendment:

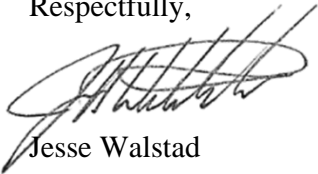
The address and telephone number of a criminal defendant ~~which is in the possession of a correctional facility or correctional facility staff~~ is a confidential record while the defendant's case is pending trial or appeal.

Additionally, myself and many in the defense bar proudly offer legal counsel to our brave men and women in law enforcement through programs such as the Fraternal Order of Police and the Professional Law Enforcement Association. Many of us, myself included, often represent officers in the wake of critical incidents including use of force investigations, deadly car accidents, homicide investigations, and officer involved shootings. Despite the extreme bravery with which our law enforcement professionals carry out their

duty, these events are traumatic and often very personal. It is also not uncommon for continued investigation following an initial charge. The integrity of investigations, and the safety of our law enforcement officers, may be unreasonably jeopardized by the public dissemination of law enforcement officer's personal information. S.B. 2216 provides a reasonable approach to protecting that information in the critical months before trial when investigations are completed and our law enforcement officers process these traumatic events.

For the aforementioned reasons, the NDACDL urges a **DO PASS** on S.B. 2216 with the above amendment.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse Walstad", written in a cursive style.

Jesse Walstad