SENATE JUDICIARY
1/25/2023

TESTIMONY OF MARY KAE KELSCH
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2232

Madam Chair, members of the Committee.

I am Mary Kae Kelsch, Director of the Division of General Counsel, and I appear on behalf of the Attorney General.

Chief Deputy Claire Ness contacted Senator Larson and the bill sponsors about amendments we are offering due to drafting changes Legislative Council accidently made to our original bill draft.

Section One: Chapter 44-04 is not only the home of open records and meetings, but also of some other laws related to public entities. We propose to remove outdated language regarding states' attorney and law enforcement duties to investigate specific crimes found in N.D.C.C. § 44-04-06 "Peace officer to report law violations."

Section Two: N.D.C.C. § 44-04-18.7 is the section of the open records and meetings law that addresses records held by law enforcement. Currently, the law protects crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime. What this bill will do is expand this protection to include descriptions of images. Law enforcement officers often will include descriptions of the evidence they find in their reports. We want to protect those descriptions.

Section Three: Governing bodies are able to go into an executive session to discuss exempt or confidential information. One valid reason to hold an executive session is for consultation with the governing body's legal counsel. This bill will clarify that the discussion between the members of the governing body, as long as it is related to the topic of the attorney consultation, is properly in the executive session.

Section Four: The open meetings law sets out the requirements for posting notice of public meetings held by a governing body. The requirements have changed over time as technology has changed. Currently, the law makes it optional to post a meeting notice on a website. This bill would require that public entity post meeting notices on its website if it has one.

Section Five: Any person may request an opinion from the Attorney General's office regarding whether the open records and meetings law was violated. If the request meets the statutory time requirements, an opinion is written and issued. The law does not allow any discretion by the Attorney General for issuing the opinions. We have situations where repeated requests for opinions rises to the level of disrupting the functions of the office. This is not done lightly which is why we have language setting clear parameters on when we could decline a request.