

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1267

2001 HOUSE JUDICIARY

HB 1267

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1267

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-22-01

Tape Number	Side A	Side B	Meter #
Tape I	x		1308 to 2280
	x		2302 to 5239
		x	01 to 1931
Committee Clerk Signature <i>Jean Diers</i>			

Minutes: Chr DekRey opened the hearing on HB 1267, the clerk will read the title. Relating to court and law enforcement records of a juvenile.

Ron Carlisle: District 30, Bismarek NID (see attached testimony)

Rich Ott: NDCBL (North Dakota School Board Association) We have asked a number of people to come to the hearing and explain their concerns.

Colleen A Bremer: Principal, west Fargo Community High School. (see attached testimony)

Rep Eckre: would we be getting around the student privacy act with this bill.

Colleen Bremer: This is not related to the privacy act since this would not be educational records.

Rep Eckre: was this what the bill was intended?

Colleen Bremer: This would deal with information going out from the school not coming into the school with the student.

Rep Eckre: How many states do this sort of thing at this time?

Colleen Bremer: I believe several of them do.

Vice Chr Kretschmar: (takes over the meeting at this time) How many are involved at this time, can you give me a number?

Colleen Bremer: We are a small school and we are not a typical school. That question would be better addressed by someone else who is here to testify.

Rep Klemin: You stated in your testimony that there is a component missing.

Colleen Bremer: That was an over site on my part.

Rep Klemin: What would you propose the language be?

Colleen Bremer: I could get that and have a copy for you.

Rep Klemin: That would be most helpful to the committee if you could submit that in writing.

Rep Grande: Can you define the term school official and how far would the information go, who would have access to it?

Colleen Bremer: School official would be the superintendent, principal, guidance counselor, law enforcement person of the school and this would all be on a need to know basis.

Rep Grande: would there be someone who would not have access, would it be a special file, and what about the parent?

Colleen Bremer: I can't answer your question, but my notion is that a parent could access the file of their student.

Rep Grande: How far would the records be transferred. If the student goes on to the university what record are going with the student when they graduate?

Colleen Bremer: The law enforcement person maintains the file and when the student graduates it stays at the school. Those records do not go on to a secondary school.

Rep Mahoney: By way of explanation, all records are open to the parents and records are not expected to go any further then when a student graduates from high school. This bill would make records of a certain type of crime a part of the record. Language could be added to the bill to names the crimes, we would have to contact the Legislative Council.

Terry Styf: West Fargo Police Department this officer has dealt with juvenile records and gave testimony on how this information would help teachers and the community with safety issues.

Rich Majerus: Lt with the Cass County Sheriff Department: The department is asking to share information to protect students of a school we want to make sure that we have a safe place for students to gain their education. He spoke in support of HB 1267.

Jean Doll: Administrator of the Foster Care Program, Children and Family Services, Department of Human Services (see attached testimony).

Kelly Rush: Principal Beulah High School spoke in support of HB 1267. He names several items that would be beneficial to the safety of the school. They were the school that had extensive damage done to their school thru vandalism.

Rep Delmore: How will you use this information to help teachers and other personnel? Who will have access to the information?

Kelly Rush: It would be on a need to know basis.

Rep Delmore: I can understand the principal knowing, but sometimes it would be very important for the teachers to know, how will this be done?

Rep Onstad: You can get a court order to get the information now.

Kelly Rush: yes, a state court order but no other information is given.

Rep Onstad: What about the tribal court verses regular court. How does this fit in with this bill?

Kelly Rush: I don't know if the tribal court will accept any court order.

Rep Onstad: If they fail to release the information will this put them in the light that they will have to?

Kelly Rush: I would say yes, it would have to be considered.

Rep Mahoney: what about mandatory disclosure, does that limit us.

SIDE B OF TAPE I

Rep Mahoney: continues with the question, do you have any preference or would you request juvenile records.

Kelly Rush: The word may have to be changed to the must.

Joe Westby: North Dakota Education Association) in support of HB 1267. We are concerned about the protection of the juvenile, also the teachers need to know. Page 1 lines 13 thru 19, the wording other schools students wish to enroll, we may some proposed amendments also section 2 and 3 as well.

Chr Vice Kretschmar: Are there any questions, thank you for appearing before the committee.

Greg Wallace Assistant State Court Administrator for Trial Courts (see attached testimony)

Rep Onstad: What do you see as the reporting period, when should it end?

Greg Wallace It isn't in this draft, we would also allow schools to report the information without having to ask for it.

Jack McDonald: North Dakota Newspaper Association (see attached testimony) also appearing for the State Association of Non Public Schools. The non public schools have some concerns about being allowed to participate. They would like an amendment so that non public schools could be allowed to be included.

Page 5
House Judiciary Committee
Bill/Resolution Number HB 1267
Hearing Date 01-22-01

Jerry Kemt: North Dakota Peace Officers Association, testified in support of HB 1267.

Vice Chr Kretschmar: Are there any questions, if not thank you for appearing in front of the committee.

Boy Nielson: North Dakota School Board Association, spoke in support of HB 1267.

Jim Flemig: Assistant Attorney General, offered technical points on the bill, to clarify the language. You could add an amendment for the non public schools so that they would be included. The tribal courts are not governed by our laws so this would not affect them. He stated that all records maintained by the school are confidential. Schools may form a law enforcement unit and then those records gathered by the law enforcement unit would not apply.

Rep Eekre could you clarify and give examples of generated records and collective records.

Jim Flemig: If there were a fight on school grounds and the law enforcement unit was notified that record would be a generated record. If there was a fight somewhere off the school grounds and the city officials were involved that would be a collected record.

Rep Grande: Just for clarification, this is in regard to requesting access to juvenile records, if a teacher applies, isn't that a request from an official.

Jim Flemig: The language refers to the school. Teachers would be allowed to make the request, but the custodian of the records has the discretion to give out the records.

Vice Chr Kretschmar: Thank you for appearing in front of the committee. Is there anyone else wishing to appear for or against or neutral on HB 1267. We will close the hearing on HB 1267 and be in recess until 3:30 pm

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1267a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE 1		x	973 to 1489
Committee Clerk Signature <i>Joan D. ...</i>			

Minutes:Chairman DeKrey called the committee to order on :HB 1267.

Rep Grande explains the amendments.

COMMITTEE ACTION

DISCUSSION on the amendments

A voice vote was taken on the amendments. The amendments pass

Chairman DeKrey what are the wishes of the committee? Rep Grade moved a DO PASS as amend, seconded by Rep Kingsbury.

The clerk will call the roll on a DO PASS as amend on HB 1267. The motion passes with 14 YES, 0 NO, 1 ABSENT. Carrier Rep Grande.

PROPOSED AMENDMENTS TO HOUSE BILL 1267

Page 1, line 1, replace the second "a" with "two" and replace "section" with "sections"

Page 1, line 2, after "unit" insert "and retention of records"

Page 1, line 9, replace "The board of a" with "A" and remove "district"

Page 1, line 18, replace "Officials" with "A superintendent or principal" and replace "other schools" with "another school"

Page 1, line 19, replace "or" with a comma and after "guardian" insert ", or legal custodian"

Page 1, after line 23, insert:

"SECTION 2. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Record Retention. Records obtained by a school under this act regarding a student must be destroyed when the student reaches the age of eighteen."

Page 3, line 21, replace "officials" with "a superintendent or principal"

Page 4, line 24, replace "Officials" with "A superintendent or principal" and remove the second "officials"

Date: 02-07-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1267

House JUDICIARY

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep Grande Seconded By Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemm	✓				
Rep John Mahoney					
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Grande

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

REPORT OF STANDING COMMITTEE

HB 1267: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1267 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 2, after "unit" Insert "and retention of records"

Page 1, line 9, replace "The board of a" with "A" and remove "district"

Page 1, line 18, replace "Officials" with "A superintendent or principal" and replace "other schools" with "another school"

Page 1, line 19, replace "or" with an underscored comma and after "guardian" Insert ", or legal custodian"

Page 1, after line 23, Insert:

"SECTION 2. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Record retention. Records regarding a student obtained by a school under this chapter must be destroyed when the student reaches the age of eighteen."

Page 3, line 21, replace "officials" with "a superintendent or principal"

Page 4, line 24, replace "Officials" with "A superintendent or principal" and remove "officials"

Renumber accordingly

2001 SENATE JUDICIARY

HB 1267

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1267

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 13th, 2001

Tape Number	Side A	Side B	Meter #
1		x	15.6-47.8
March 21 tape 1	x		39.9-49.6
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1276.

Rep. Carlisle, (testimony attached and proposed amendments attached), prime sponsor of the bill.

Senator Traynor, You were asked to introduce this bill by school administrators?

Rep. Carlisle, yes.

Bev Neilson, ND school board association, supports the bill. Allows to take advantage of law enforcement units and contact them within the school for safety reasons.

Senator Trenbeath, on page 3, line 20 where we are deleting the language. We're brooding the scope of that subsection. Now your saying that the entire juvenile court file no matter what it might pertain to is releasable to the school? Could you elaborate?

Bev Neilson, plea bargains or anything dealing with the court that may indicate violence.

Senator Trenbeath, that's my concern.

Max Laeder, Classroom Teacher, how do we maintain confidentiality. Initially there was an attempt to punish a teacher who reveals information. I have taught in schools where students have brought weapons to school. I support this legislation.

Senator Trenbeath, what did your organization do about take with respect to sanctions and confidentiality.

Max Laeder, we supported that.

Senator Watne, with students, if you had known what kind of problems could you have prevented.

Max Laeder, not knowing that information you wonder why the student isn't performing.

Greg Wallace, from the state court office, (testimony attached). Hopes amendments on line 2 and 3 be added.

Senator Trenbeath, on lines 20-22, you went from a restrictive perspective to a broader one.

Greg Wallace, we can change the language. We believe all delinquent acts should be open.

Senator Nelson, you've delineated who is going to be questioned.

Greg Wallace, from a juvenile court perspective we think all acts should be reported. It would help with students coming from out of state.

Jim Fleming, from the office of the attorney general. Acted to provide technical support to this bill. On page 4, the confidentiality records make an exception. Federal law is pretty tight. We recommend forming a law within the school. A big provision on page 2, line 3 and 4 is the governmental actors. Bill will not put any new records into public. If the juvenile court hands information to the school it becomes confidential. The house judiciary committee removed one

potential for abuse, they felt that any teacher out of random curiosity should not be allowed information.

Senator Lyson, have you checked the federal law regarding this?

Jim Fleming, the federal law comes from their statute. I haven't seen anything why they would need licensed peace officers.

Senator Lyson, this may not be in ND law.

Jim Fleming, I will look into that so the Federal Government will know what we're doing.

Senator Watne, in other bills like this we have seen sections prohibiting re-release of information.

Senator Traynor, closed the hearing on HB 1267.

Discussion

SENATOR WATNE MOTIONED TO ADOPT REP. CARLISLES AND JIM FLEMINGS AMENDMENTS, SECONDED BY SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

SENATOR MOTIONED TO FURTHER AMEND GREG WALLACE'S AMENDMENTS FROM MARCH 19, SECONDED BY SENATOR WATNE. VOTE INDICATED 7 YEAS 0 NAYS AND 0 ABSENT AND NOT VOTING.

THIRD MOTION WAS MADE BY SENATOR WATNE TO DO PASS AS AMENDED, SECONDED BY SENATOR NELSON. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR NELSON VOLUNTEERED TO CARRY THE BILL.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267

Page 2, line 3, replace "~~this~~" with "section 1 of this act, section 27-20-51, or section 27-20-52"

Page 2, line 4, remove "~~chapter~~" and after "~~eighteen~~" insert "or no longer attends the school,
whichever occurs later"

Page 3, line 23, replace "~~Juvenile~~" with "A child's juvenile"

Page 3, line 25, after "~~enroll~~" insert "If the court finds that the child appears to present a danger
to self or to the students or staff of the school"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1267, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1267 was placed on the Sixth order on the calendar.

Page 2, line 3, replace "this" with "section 1 of this Act, section 27-20-51, or section 27-20-52"

Page 2, line 4, remove "chapter" and after "eighteen" insert "or no longer attends the school, whichever occurs later"

Page 3, line 23, replace "Juvenile" with "A child's juvenile"

Page 3, line 25, after "enroll" insert "[if the court finds that the child appears to present a danger to self or to the students or staff of the school]"

Renumber accordingly

2001 HOUSE JUDICIARY
CONFERENCE COMMITTEE
HB 1267

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HIB 1267- Conference

House Judiciary Committee

☐ Conference Committee

Hearing Date 04-02-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 87
Committee Clerk Signature <i>Joan Dees</i>			

Minutes: Chairman DeKrey called the conference committee to order. The clerk will call the roll.

Those present Chr DeKrey, Rep Kretschmar, Rep Mahoney, Senator Lyson, Senator Watne and Senator C. Nelson. Members of the committee NDEA came and saw me with a bill that they wanted to work on but this is not the right bill, so we should probably should have concurred right on the floor. Unless someone sees something that don't like, I would be in order for a motion.

Rep Mahoney: I would move that we accede to the Senate amendments.

Rep Kretschmar: Second.

Chairman DeKrey: It has been moved and seconded that the House accede to the Senate amendments. Any further discussion. All those in favor say aye. The vote was unanimous.

04-20-01 3:00 pm

Chairman DeKrey: called the conference committee back to order.

Rep Kretschmar: Moved to reconsider the action of the committee.

Senator Lyson: Second.

A voice vote was taken, the motion passes.

Max Laird: NDEA asked to reconsider the bill. Please consider the sentence that begins on line 24 page three of the engrossed version of the Senate bill. I would also like to address lines 27 and 28. The amendment that was added in the Senate - if the court finds that the child to present a danger to self or student or staff of the school -, I understand the language, it appears for the law enforcement unit to receive information there will be a required finding by the juvenile court. There will need to be a means test. Our feeling is that the original language in the House Bill will allow the school to exchange information with the juvenile court in a way that is on a need to know basis. But would allow for educational needs, based on issues that are outside of academics for the student. This was brought to my attention by the Attorney General's Office by the Juvenile Court.

Chairman DeKrey: I understand that this bill is important to a lot of teachers. We need to get it into a form that is most usable.

Max Laird: Having tried in a number of sessions to have a system that is both legal and respectful of confidential of both student and parents needs. I believe this vehicle offers us the opportunity for the law enforcement, juvenile court and the school system can close the loop.

Senator Lyson: I will make a statement and maybe Max can speak to that, I don't believe that anyone on the Senate side had a problem with the disposition, but the details of the court case, we did not believe was important to the school or any body else but the court, unless the court felt there was a danger.

Chairman DeKrey: How did this pass in the Senate, did it pass ok.

Senate Lyson: No problems, but I think we probably tightened it down.

Chairman DeKrey: We have it too tight now, we have to figure a way to loosen it now.

Senator Watne: If a child is deprived, and has a bad problem at home, that is not a criminal action, but that child may need help, the school officials may know, can help. They said that even in a case like that, there is a disposition.

Max Laird: I would have to defer to the juvenile court.

Jim Fleming: I have a fit for one question. The first is, do you want to change current law. Under current law there is an over strike in that language. A broader language was proposed, as amended in the Senate, the over striking is still there, but now in new language, the new language all records would be closed unless the court makes a finding. One question then is do you want to continue current law. There is some minor modifications that would be needed. The second question is - ok, current law is what we want, do school officials have a right to all records in the file. Does the juvenile court have the discretion to give out everything in the file, or do they have to give up the disposition orders if the court finds. I can't help you with that.

Senator Lyson: When we got the bill, the overstrike was in the law. I think that the over strike should come out of there with further amendments to say, you git the disposition, but I think you should be able to get more.

Rep Mahoney: The new language it does say may be disclosed, it doesn't say must be disclosed. My interpretation is that the juvenile court could disclose what was appropriate. We want to make sure that we are not going backward in the law. You could removed the overstrike and leave something of the new language in as well.

Jim Fleming: I think that easily takes care of the first question. I think that Mr Laird would question you if that is the right way to handle the access from the schools.

Rep Mahoney: he goes over the language of the first engrossment, suggesting using more permissive language.

Chairman DeKrey: If we take the over strike off starting on line 20, it would still be must for a felony and may for the rest of it.

Jim Fleming: That would leave the concern for the guidance counselor or school administrator. The juvenile referee would still have to go to the court to have a finding. Maybe that barrier should come down. The word finding poses the second question.

Rep Mahoney: It is not in that language.

Jim Fleming: This is the language prior to the Senate amendments. I did not intend to remove the right of access.

Rep Mahoney: The word may does not have anything about a court finding.

Jim Fleming: They felt that the court finding is a helpful safeguard.

Senator Lyson Discusses the word may.

Jim Fleming: You are correct.

Senator Lyson: If we do that, should there be something in there in writing for the reason that they are not giving it to you.

Jim Fleming: If the court believes the child present a danger then they grant that request. But it is only in time of danger that you want the request to be granted.

Senator Lyson: Danger to himself covers that.

Jim Fleming: Under the Senate version you now have a court finding and the concept of a danger to the child.

Gregg Wallace: juvenile court, we would prefer the House version and explains why. On page four if we could loosen the language. If you remove the overstrike with the House amendments would take care of that. On the Senate side there was concern that we are opening it up too much. We have a problem with making an official finding.

Senator Lyson: It bothers me, they are coming to get all the information and is all that information necessary.

Greg Wallace: We share that concern and goes on to explain his concerns.

Senator Lyson: Arn't we putting the same burden on the juvenile supervisor.

Gregg Wallace: Yes.

Rep Mahoney: The Juvenile supervisor uses discretion all the time, the way it is worded, the school would have to ask to see the file, but they would only get what is appropriate.

Gregg Wallace: I would agree.

Jim Fleming: One point, if the supervisor feels that a child presents a danger, then they can release it. The way I interrupt it, not a finding by the supervisor but by the court.

Chairman DeKrey: If the court believes the child, would that soften it enough.

DISCUSSION

Chairman DeKrey: Take the overstrike off of lines 20 through 23, and on the Senate amendment change that to - if the child appears to present a danger to self - does that solve the problem.

DISCUSSION

Chairman DeKrey: If the House accede to the Senate amendments and further adopt.

Page 6
House Judiciary Committee
Bill/Resolution Number HB 1267-conference
Hearing Date 04-02-01

DISCUSSION

Chairman DeKrey: If we (HOUSE) accede to the Senate amendments and further amend by removing the overstrike from lines 20 through 23. Then further amend. The Legislative Council says that we cannot change their amendments so we have to - Senate - recesses from the Senate amendments and further amend with LC 18277.0302.

Rep Mahoney: Moves the motion.

Rep Kretschmar: Second.

Chairman DeKrey: We will take a voice vote on the amendments. Motion carries.

Max Laird: makes a statement.

VR
4/2/01

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1267 JUD 04-03-01

That the Senate recede from its amendments as printed on page 1097 of the House Journal and page 908 of the Senate Journal and that Engrossed House Bill No. 1267 be amended as follows:

Page 2, line 3, replace "this" with "section 1 of this Act, section 27-20-51, or section 27-20-52"

Page 2, line 4, remove "chapter" and after "eighteen" insert "or no longer attends the school, whichever occurs later"

Page 3, line 20, remove the overstrike over "~~Following an adjudication of delinquency for an offense that would be a felony if~~"

Page 3, remove the overstrike over lines 21 and 22

Page 3, line 23, remove the overstrike over "~~the disposition order~~", replace "Juvenile" with "Any other juvenile", and after records insert "of a child"

Page 3, line 25, after "enroll" insert "if the child appears to present a danger to self or to the students or staff of the school"

Renumber accordingly

Date: 04-02-01

Roll Call Vote # /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. *HB-1267*

House

☒

Legislative Council Amendment Number

Action Taken

Motion Made By

[illegible]**Total**

Absent

Floor Assignment

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

Date: 04-02-01

Roll Call Vote # 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. *HB-1267*

House

Judiciary

Committee



Subcommittee on

or

X

Conference Committee

Legislative Council Amendment Number

Action Taken

Senate recede from Sen. amend & ^{adopt} further

Motion Made By

Rep Mahoney

Seconded By

Rep Kretschmar

[illegible]

Total

(Yes)

6

No



Absent

Floor Assignment

REPORT OF CONFERENCE COMMITTEE

HB 1267, as engrossed: Your conference committee (Sens. Lyson, Watne, C. Nelson and Reps. DeKrey, Kretschmar, Mahoney) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1097, adopt further amendments as follows, and place HB 1267 on the Seventh order:

That the Senate recede from its amendments as printed on page 1097 of the House Journal and page 908 of the Senate Journal and that Engrossed House Bill No. 1267 be amended as follows:

Page 2, line 3, replace "this" with "section 1 of this Act, section 27-20-51, or section 27-20-52"

Page 2, line 4, remove "chapter" and after "eighteen" insert "or no longer attends the school, whichever occurs later"

Page 3, line 20, remove the overstrike over "~~Following an adjudication of delinquency for an offense that would be a felony if~~"

Page 3, remove the overstrike over lines 21 and 22

Page 3, line 23, remove the overstrike over "~~the disposition order.~~", replace "Juvenile" with "Any other juvenile", and after records insert "of a child"

Page 3, line 25, after "enroll" insert "if the child appears to present a danger to self or to the students or staff of the school"

Renumber accordingly

Engrossed HB 1267 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

HB 1267



Representative Ron Carlisle
District 30
P.O. Box 222
Bismarck, ND 58502-0222

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Appropriations

Summary of House Bill 1267

Purpose: Allow schools, law enforcement agencies, and juvenile court officials to share confidential records with each other but to otherwise maintain the confidentiality of those records.

Current Law

- Federal law (Family Educational Rights and Privacy Act - FERPA) generally makes confidential all records maintained by schools about students.
- FERPA does not prohibit disclosure of records generated by a school law enforcement unit. However, schools have not created law enforcement units because if FERPA does not prohibit disclosure, then the records would be open to the public under the state open records law.
- Records of a juvenile court are confidential, N.D.C.C. Subsection 27-20-51. School officials can only find out if a juvenile has been found delinquent of an offense which would be a felony if committed by an adult. With written permission from the juvenile court, school officials also can have access to juvenile court records to the extent necessary to enforce the rules of the North Dakota High School Activities Association (drug and alcohol offenses).
- Records of law enforcement agencies regarding juveniles who are alleged or found to be unruly, delinquent, or deprived are generally confidential, N.D.C.C. Subsection 27-20-52, although school officials must be notified if law enforcement has probable cause to believe a student has committed certain drug or alcohol offenses. N.D.C.C. Subsection 15.1-24-05.

Law if House Bill 1267 is enacted

- Schools are authorized to create law enforcement units and take advantage of the exception in FERPA without the records of the unit becoming open to the public.
- Disclosure of juvenile court records and law enforcement records of a juvenile to a school is no longer limited to drug and alcohol offenses.
- Law enforcement unit records of a school may be shared with law enforcement agencies and juvenile courts but the records otherwise remain confidential.
- Records of law enforcement agencies about juveniles may be shared with juvenile courts and with a school in which the child is enrolled or seeks to enroll, but the records otherwise remain confidential.
- Records of the juvenile court may be shared with a school in which the child is enrolled or seeks to enroll, and with the agency which referred the child to the juvenile court, but the records otherwise remain confidential.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1267

Page 1, line 18, after the period insert "Administrators or teachers in the school in which the student is enrolled who provide educational services directly to the student and"

Renumber accordingly.

**Testimony in support of House Bill No. 1267
To the House Judiciary Committee
On January 22, 2001**

We are testifying in support of House Bill number 1267, because it will help schools provide services to students and provide a safe learning environment. The bill will do this by improving communication between law enforcement agencies and school officials.

As members of the School Violence and Emergencies Committee of the West Fargo Public Schools, we are concerned about impediments to communication between school and law enforcement officials. Existing state laws, which protect the privacy rights of juvenile offenders, can create roadblocks to protecting the safety of students and staff. Under current law, school officials shall be notified within two weeks if a law enforcement agency has probable cause to believe a student has committed a drug or alcohol offense. However, law enforcement agencies are prohibited from notifying school officials if a student has been arrested for a serious offense against person or property. If a juvenile has been adjudicated and registered as a sexual offender, a law enforcement agency may release information to school officials if disclosure is necessary to protect public health or safety. However, the process of adjudication can take months.

Many school administrators are frustrated by current laws designed to protect the privacy rights of juveniles who may be involved in a serious or violent crime as a victim, witness, or perpetrator. This involvement may result in problems at school, such as poor attendance, poor performance, fights, suicide attempts, threats or intimidation, and even extreme violence. We feel House Bill 1267 will improve communication between law enforcement and schools to help solve these problems.

Section 1 allows schools to establish a law enforcement unit to maintain separate law enforcement records on students for the purpose of law enforcement. These files would not contain educational records. School officials would have access to the law enforcement records of their current students and incoming students.

Section 2 allows school officials to have access to the law enforcement records of current and incoming students who are alleged or found to be delinquent, unruly or deprived.

These two sections will improve a school official's access to law enforcement records of a student, but school officials need to be made aware that such records exist before they can access them. Therefore, the West Fargo School Violence and Emergencies Committee **recommends that another section be added** to this bill. This section could be similar to 15.1-24-05, which involves notification for drug and alcohol offenses, but would refer to other sections of the code. We feel school officials should be notified by law enforcement agencies when there is probable cause that a juvenile student from that school has committed certain crimes against person or property, such as assault, sexual assault, robbery, threats, harassment, or arson. This reporting is necessary to protect the safety and well-being of students and staff at the school as well as school property. This reporting also would open channels for counseling and other services for the juvenile offender. It would alert school officials to victims and potential victims on campus. The report could also be considered in threat assessments by a threat assessment team.

We ask you to vote in favor of this bill and to add the third section described above. These three sections would ensure that school principals are made aware of crimes committed by or against students in their schools, have access to law enforcement records about the crimes, and can maintain law enforcement records at school.

Thank you for your attention to House Bill 1267 and your interest in safe schools.

Coleen A. Bremer, Principal, West Fargo Community High School

Gary Clark, Principal, West Fargo High School

Greg Grooters, Assistant Principal, West Fargo High School

Rob Kaspari, Principal, West Fargo Middle School

Edsel Kercher, Principal, Eastwood Elementary School

Mike Lavelle, West Fargo Public Schools Board of Education

Lt. Rich Majerus, Cass County Sheriff's Department

Sgt. Mike Reitan, West Fargo Police Department

Michelle Strinden, Guidance Counselor, West Fargo Community High School

Juvenile Officer Terry Styf, West Fargo Police Department

**House Committee on the Judiciary
Testimony on House Bill No. 1267
January 22, 2001**

Chairman DeKrey and members of the House Judiciary Committee; my name is Jean Doll, Administrator of the Foster Care Program, Children & Family Services, Department of Human Services. The department is neutral on House Bill No. 1267.

On behalf of the Department of Human Services, I am here to request that HB 1267, Section 1, include a provision allowing release of records to "the student's lawful custodian" or words to that effect. While it may appear that the custodian would be covered by subsection 1(c) "Officers of public entities to whom the student is committed", children are not "committed" to foster care. By indicating that records are to be released to the lawful custodian, this concern would be remedied.

Similarly, the department would request that section 3 of the bill, specifically subsection 3, contain language allowing the release of records to "the student's lawful custodian."

Thank you for your consideration.

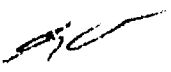


KEITHE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

January 22, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

TO: House Judiciary Committee
FROM: Greg Wallace 
SUBJECT: House Bill 1267

Members of the House Judiciary Committee, I am Greg Wallace, Assistant State Court Administrator for Trial Courts with the North Dakota Supreme Court.

This bill is the result of a series of meetings held across the state which were attended by educators, law enforcement, and juvenile court personnel. Without exception, confidentiality restrictions was raised as the paramount barrier to those trying to work together for the benefit of children.

Recently, the drafters of this legislation met with the directors of juvenile courts where we asked that two provisions be added to the original bill. Those provisions may be found on page 3 of the bill.

The first amendment, found on lines 18-23, allows the juvenile court to disclose information about a juvenile to appropriate school officials. This is especially important since this bill allows school access to law enforcement information. Thus, schools will not only have information relating to the original charge by law enforcement, they will also be able to obtain information relating to the status of a case and how the case is finally disposed of. The amendment will also allow courts to inform schools of situations that may pose a threat or concern to a school or other students.

The second amendment may be found on line 27. This amendment simply allows juvenile courts to report back to an agency the final outcome of a case.

GW/es

January 22, 2001

HOUSE JUDICIARY COMMITTEE
HB 1267

REPRESENTATIVE DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. As you know, we track legislation that involves open meetings and open records.

We would eventually like to see more openness in the juvenile justice system and we feel this bill is a step in the right direction. We think this openness would benefit the entire juvenile process.

HB 1267 deals with information that should be shared with school officials. And, since it doesn't make additional records confidential, we do not oppose it.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.



KEITHE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 13, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

TO: Senate Judiciary Committee
FROM: Greg Wallace
SUBJECT: House Bill 1267

Members of the House Judiciary Committee, I am Greg Wallace, Assistant State Court Administrator for Trial Courts with the North Dakota Supreme Court.

This bill is the result of a series of meetings held across the state which were attended by educators, law enforcement, and juvenile court personnel. Without exception, confidentiality restrictions was raised as the paramount barrier to those trying to work together for the benefit of children.

Recently, the drafters of this legislation met with the directors of juvenile courts where we asked that two provisions be added to the original bill. Those provisions may be found on page 3 of the bill.

The first amendment, found on lines 20-25, allows the juvenile court to disclose information about a juvenile to appropriate school officials. This is especially important since this bill allows school access to law enforcement information. Thus, schools will not only have information relating to the original charge by law enforcement, they will also be able to obtain information relating to the status of a case and how the case is finally disposed of. The amendment will also allow courts to inform schools of situations that may pose a threat or concern to a school or other students.

The second amendment may be found on line 29. This amendment simply allows juvenile courts to report back to an agency the final outcome of a case.

GW/cs

March 13, 2001

SENATE JUDICIARY COMMITTEE HB 1267

SENATOR TRAYNOR AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. As you know, we track legislation that involves open meetings and open records.

We would eventually like to see more openness in the juvenile justice system and we feel this bill is a step in the right direction. We think this openness would benefit the entire juvenile process.

HB 1267 deals with information that should be shared with school officials. And, since it doesn't make additional records confidential, we do not oppose it.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

Summary of Engrossed House Bill 1267

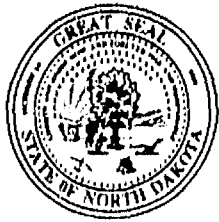
Purpose: Allow schools, law enforcement agencies, and juvenile court officials to share confidential records with each other but to otherwise maintain the confidentiality of those records

Current Law

- Federal law (Family Educational Rights and Privacy Act – FERPA) generally makes confidential all records maintained by schools about students.
- FERPA does not prohibit disclosure of records generated by a school law enforcement unit. However, schools have not created law enforcement units because if FERPA does not prohibit disclosure, then the records would be open to the public under the state open records law.
- Records of a juvenile court are confidential. N.D.C.C. § 27-20-51. School officials can only find out if a juvenile has been found delinquent of an offense which would be a felony if committed by an adult. With written permission from the juvenile court, school officials also can have access to juvenile court records to the extent necessary to enforce the rules of the North Dakota high school activities association (drug and alcohol offenses).
- Records of law enforcement agencies regarding juveniles who are alleged or found to be unruly, delinquent, or deprived are generally confidential, N.D.C.C. § 27-20-52, although school officials must be notified if law enforcement has probable cause to believe a student has committed certain drug or alcohol offenses. N.D.C.C. § 15.1-24-05.

Law if House Bill 1267 is enacted:

- Schools are authorized to create law enforcement units and take advantage of the exception in FERPA without the records of the unit becoming open to the public.
- Disclosure of juvenile court records and law enforcement records of a juvenile to a school is no longer limited to drug and alcohol offenses.
- Law enforcement unit records of a school may be shared with law enforcement agencies and juvenile courts but the records otherwise remain confidential.
- Records of law enforcement agencies about juveniles may be shared with juvenile courts and with the superintendent or a principal of a school in which the child is enrolled or seeks to enroll, but the records otherwise remain confidential.
- Records of the juvenile court may be shared with the superintendent or a principal of a school in which the child is enrolled or seeks to enroll, and with the agency which referred the child to the juvenile court, but the records otherwise remain confidential.
- Records obtained by a school under this act must be destroyed when the student reaches the age of 18.



KEITH E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 19, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
BISMARCK, ND 58565-0530
(701) 328-4216
(FAX) 701-328-4480

TO: Senator Jack Traynor
Members of the Senate Judiciary Committee

FROM: Greg Wallace (328-4269)

SUBJECT: House Bill 1267

The Committee asked for suggested amendments to House Bill 1267, relating to the court's sharing information with schools. It is my understanding that the Committee wanted the language more restrictive in terms of what can be shared with the school.

The primary impetus for the original amendment was to help ensure the safety of the child and the school so the amendments have been drafted with that purpose.

However, I would encourage the current language of the bill. As was mentioned in the hearing, this bill was a result of several meetings that took place across the state between law enforcement, schools, and juvenile courts. Without exception, the number one concern was communication in terms of safe schools and in terms of working together to benefit the child.

From the juvenile court perspective, one of the arguments in favor of the more open language is the inherent unfairness of the current reporting system. Schools are automatically notified if a child is picked up for an alcohol related offense and suffers consequences relating to extracurricular participation. Yet, the burglar, vandal, or assaultive individual cannot be reported to the school. It is at least the perception that most of the students and faculty, through the rumor mill are aware of law violations, or at least a version of the violation. The language would at least allow the courts to provide accurate information to the schools. We feel that with the reporting going to the principal or superintendent, the information will be handled appropriately.

GW/cs
Attachment

Proposed Amendments to Engrossed House Bill No. 1267

Page 3, line 23, replace "Juvenile" with "A child's juvenile"

Page 3, line 25, after "enroll" insert "if the child appears to present a danger to self or to the students or staff of the school"

Renumber accordingly