

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2105

2001 SENATE JUDICIARY

SB 2105

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2105

Senate Judiciary Committee

Conference Committee

Hearing Date January 16,2001

Tape Number	Side A	Side B	Meter #
2	X		14-52.9
3	X		10-30
January 17, 2001 (tape 2)		X	12.1-31.4
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2105: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 27-21 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE FILES AND RECORDS OF THE DIVISION OF JUVENILE SERVICES; AND TO AMEND AND REENACT SECTION 27-20-51.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DISCLOSURE OF INFORMATION NEEDED TO APPREHEND JUVENILES.

KEN SORENSON, Assistant Attorney General testifying on behalf of the North Dakota Department of Corrections and Rehabilitation's Division of Juvenile Services. Supports SB 2105. (testimony attached)

SENATOR TRAYNOR why are you removing references to code of constitution.

KEN SORENSON its a redundancy.

SENATOR TRAYNOR OK.

SENATOR WATNE your putting a limitation. But your not saying if it gets disclosed.

KEN SORENSON there is a limitation. But your not saying if it gets disclosed.

SENATOR NELSON we're talking about agency and districts. Who gets the information? Is there a limitation to this?

KEN SORENSON that was a concern.

SENATOR LYSON I would guess information disclosed would get a felony.

KEN SORENSON the only law is the Federal school privacy act. It is a concern. There should be a provision.

JOE WETBE, ND education association, has two concerns: First, the student who will be damaged by an allegation. A tendency of the pendulum to swing, with violence in schools. The second is erring on the side of confidentiality. Concern for potential harm by violence of this kind. I support SB 2105. I suggest on line 25 to remove period and add; including the teacher in whose classroom the student is placed. I agree with the other tenants of the law, however, I believe the teacher should know.

SENATOR LYSON I believe this is good but is not far enough. We should protect people from a class C felony.

SENATOR TRENBEATH how about this: "the school district or multischool district special education system in which a juvenile is enrolled, but only to such persons employed there by to whom such knowledge is reasonably necessary for the education of the juvenile and the protection of others (meter # 33.1-33.5).

SENATOR NELSON starting at line eight, I think this applies to all of those agencies.

SENATOR TRAYNOR you suggest a new paragraph to correct the language.

SENATOR TRENBEATH line 1, 2, page could be changed.

KRISTA ANDREWS, ND attorney General for Department of human services. (testimony attached)

LISA BJERGAARD, representing the Division of Juvenile Services, testifies in favor of SB 2105.

SENATOR BERCIER Kristy's suggestion adding into L in subsection 2. Is there a place in the bill, maybe a better place. Other than the center of it.

KEN SORENSON regarding placement isn't all that critical.

SENATOR BERCIER my point is to direct them to that first.

KEN SORENSON I can draft that.

SENATOR NELSON wide openness of the way things are listed here, it needs to be changed.

No restriction. Only people directly related to juvenile.

LISA BJERGAARD there are variations from school size in districts. In smaller areas the treatment needs might be dealt with differently.

SENATOR WATNE question for KEN. AS we go through here, division may be referred, the division shall disclose. 12.1-34-02.

KEN SORENSON that is the victim notification provision. It's a mandatory requirement.

↙ January 16th, 2001 tape 3, meter # 10.0

KEN SORENSON, proposed amendment to SB 2105. (attached and explains to committee)

SENATOR NELSON move up to top so it's not just a school issue. I don't want everyone to know. I want line 25 on top.

KEN SORENSON we are looking at this from a law suit point of view.

SENATOR NELSON you are connected to that child.

SENATOR TRAYNOR so you want that moved?

Page 4
Senate Judiciary Committee
Bill/Resolution Number SB 2105
Hearing Date January 16, 2001

SENATOR NELSON yes.

SENATOR BERCIER I agree with SENATOR NELSON.

JIM JACOBSON, director of protection and advocacy. (testimony attached)

January 17th, 2001 tape 2 side B

**MOTION WAS MADE BY SENATOR WATNE TO ACCEPT KEN SORENSONS
AMENDMENTS; AS TO PAGE 1 & 2 AFTER LINE 29, AS WELL AS SENATOR
TRENBEATHS AMENDMENTS. SECONDED BY SENATOR LYSON. VOTE
INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING.**

Date: 1/17/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2105

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Accept Kia Soranus Amendments; as to pp. 1+2 and line 29; and S. Trenbeath's.

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 1/19/01
 Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2105

Senate Judiciary _____ Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE

SB 2105: 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). SB 2105 was placed on the Sixth order on the calendar.

Page 1, line 19, remove "are not public records subject to section 44-04-18 and"

Page 1, line 20, remove "section 5 of article XI of the Constitution of North Dakota and"

Page 1, line 23, after "confidentiality" insert ", except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws"

Page 2, line 2, after "to" insert "individuals employed by" and replace "follow persons or agencies" with "following if the knowledge is reasonably necessary in the best interest of the juvenile and for the protection of others"

Page 2, after line 29, insert:

- "3. A person, agency, or institution receiving information or records under this subsection may not redisclose the information or records and shall maintain the confidentiality of the information or records.
4. The division may disclose nonidentifying information for research and statistical purposes."

Page 2, line 30, replace "3" with "5"

Page 3, line 1, replace "4" with "6"

Page 3, line 3, replace "5" with "7"

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2105

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2105

House Judiciary Committee

Conference Committee

Hearing Date 02-28-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		5932 to 6231
TAPE I		x	01 to 1582
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2105. Relating to the files and records of the division of juvenile services, relating to disclosure of information needed to apprehend juveniles.

Al Lick: Director of Juvenile Services which is YCC of North Dakota. The law changed relating to confidentially for juvenile records. This is the companion bill that started on the senate side.

We made some changes and would like to introduce the bill on this side.

Ken Sorenson: Assistant Attorney General (see attached testimony).

TAPE I SIDE B

Sorenson's testimony continues. He submitted some amendments to make a change in the language.

Rep. Onstad: How does this address the same action in the tribal courts.

Ken Sorenson: This does not effect tribal courts.

Rep. Grande: Who will be the Division of Juvenile services?

Page 2
House Judiciary Committee
Bill/Resolution Number SB 2105
Hearing Date 02-28-01

Ken Sorenson: It was created in 1989 under the Department of Corrections and Rehabilitation's.

Rep Grande: You referred to taking custody of the child, where are the parental rights?

Ken Sorenson: On page two of the engrossed bill provides for access of parents.

Rep Grande: I understand about access, but do you have to ask for my permission before you release my child's records.

Ken Sorenson: We do not have to ask the parents permission if they are being released to the persons enumerated in this bill.

Chairman DeKrey: If there are no further questions, thank you for appearing before our committee. Anyone else wishing to testify in support of SB 2105?

Krista Andrews: attorney with the North Dakota Department of Human Services Legal Advisory Unit. (see attached testimony)

Chairman DeKrey: At 18 years old, how are the records destroyed?

Krista Andrews: Records are treated the same whether juvenile or adult.

Rep Mahoney: Juvenile records aren't technically destroyed. If a 25 year old is convicted of a crime I can use juvenile records to enhance the sentence.

Chairman DeKrey: If there are no further questions, thank you for appearing, have you discussed these amendments with Department of Corrections.

Krista Andrews: Yes I have.

Chairman DeKrey: they were ok with them.

Krista Andrews: Yes.

Galen Becker: Assistant Director of Public Instruction (see attached testimony).

Page 3
House Judiciary Committee
Bill/Resolution Number SB 2105
Hearing Date 02-28-01

Chairman DeKrey: If there are no questions, thank you for appearing.

Bev Nielson: North Dakota School Board Association, testified in support of the bill.

Joe Westby: North Dakota Education Association, testified in support of the bill.

Chairman DeKrey: Are there any questions, if none, thank you for appearing.

:Corinne Hofmann Protection and Advocacy Project, (see attached testimony).

Rep Disrud: Under what circumstances would you need these records?

Corinne Hofmann: we serve the children in a wide variety of circumstances. We have custody of children, and would request the records for medical purposed. I have some amendments attached to the back of my testimony.

Rep Delmore: Without your amendments you would have no access even in court?

Corinne Hofmann: Without the amendment, this tells the Division of Juvenile Services they cannot release records without permission of the court. The creates a problem with state and federal law.

Rep Delmore: Did you talk to the senate with your amendments.

Corinne Hofmann: We did not have the opportunity to discuss the matter with the Department of Corrections, we did bring them to the senate.

Rep Eckre: You answered my question.

Chairman DeKrey: If there any further questions, if not thank you for appearing before our committee.

Ken Sorenson: we have had meetings since the senate.

Chairman DeKrey: Any further testimony in opposition of SB 2105, we will close the hearing on SB 2105.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2105b

House Judiciary Committee

Conference Committee

Hearing Date 03-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		891 to 1613

Committee Clerk Signature *Joan Diers*

Minutes: Chairman DeKrey called the committee to order on SB 2105.

Ken Sorenson: Attorney General Office came to explain the amendments.

DISCUSSION

Chairman DeKrey: What are the wishes of the committee. Vice Chr Kretschmar moved the amendments on page two line eight, Rep Mahoney seconded. Voice vote on the amendments carries. Rep Wrangham moved a DO PASS as amend on SB 2105, seconded by Rep Disrud. The motion passes with 13 YES, 0 NO and 2 ABSENT. Carrier Rep Kretschmar.

18231.0301
Title.0400

Adopted by the Judiciary Committee
March 14, 2001

VR
3/14/01

HOUSE AMENDMENTS TO REENGROSSED SENATE BILL 2105 **HOUSE JUDICIARY 03-15-01**
Page 2, line 8, remove "this" and after "chapter" insert "27-20"

Renumber accordingly

Date: 03-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 58-2105

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 18231.0301 .0400

Action Taken Do Pass as amend

Motion Made By Rep Wrangham Seconded By Rep Disrud

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. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Kretschmar

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 8:18 a.m.

Module No: HR-45-5644
Carrier: Kretschmar
Insert LC: 18231.0301 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2105, as reengrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2105 was placed on the Sixth order on the calendar.

Page 2, line 8, remove "this" and after "chapter" insert "27-20"

Renumber accordingly

2001 TESTIMONY

SB 2105

TESTIMONY ON SENATE BILL NO. 2105
SENATE EDUCATION COMMITTEE
JANUARY 16, 2001
BY GAYLYNN BECKER, ASSISTANT DIRECTOR:
COUNSELING & TESTING
328-2755
Department of Public Instruction

Mr. Chairman and members of the Senate Education Committee:

My name is Gaylynn Becker and I am the Assistant Director of Counseling, and Testing for the Department of Public Instruction.

I am in favor of Senate Bill 2105. This bill will:

- Help schools in working with these students,
- Help other agencies that work with these students,
- Help protect students and others in the school, and especially
- Help the student.

I hope that you vote in favor of Senate Bill 2105.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2105

Page 1, line 19, remove "are not public records subject to section 44-04-18 and"

Page 1, line 20, remove "section 5 of article XI of the Constitution of North Dakota and"

Page 1, line 23, after "confidentiality", insert "except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws"

Page 2, line 24, after "A", insert "teacher, administrator, or guidance counselor in the"

Page 2, line 25, after "enrolled", insert "who is responsible for making decisions concerning the education, treatment, welfare, or discipline of the juvenile."

Page 2, after line 29, insert:

"j. The division may disclose non-identifying information for research and statistical purposes.

k. A person, agency or institution receiving information or records under this subsection may not redisclose the information or records and shall maintain their confidentiality."

Renumber accordingly

PROPOSED AMENDMENT TO SENATE BILL 2105

Page 2, after line 29 insert:

1. The protection and advocacy project, acting under authority of state or federal law.

Renumber accordingly

**TESTIMONY ON PROPOSED AMENDMENT TO
SENATE BILL 2105**

**BEFORE THE
JUDICIARY COMMITTEE
JANUARY 16, 2001**

**CORINNE HOFMANN
PROTECTION AND ADVOCACY**

Chairman Traynor and Members of the Committee, my name is Corinne Hofmann and I am testifying on behalf of the Protection and Advocacy Project. We are proposing an amendment to Senate Bill 2105. Our proposed amendment will ensure that, if passed, the resulting statutes are consistent with other state and federal laws that allow the Protection and Advocacy Project to access confidential records.

The Protection and Advocacy Project [the Project] is a state agency. The Project is granted authority under federal and state laws to advocate for and protect people with developmental disabilities, mental illness, and other disabilities. The Project is authorized to pursue legal, administrative and other appropriate remedies and approaches to achieve this purpose. Federal and state laws also grants authority to the Project to access the records of individuals we serve. Many of these individuals are children, some of whom are also receiving services or are in the custody of the Division of Juvenile Services, Department of

Corrections. Obtaining records is a necessary and integral component in the process we use to assist these individuals.

North Dakota Century Code § 12-47-36 governs access to records of the Division of Juvenile Services. In its current form, that statute provides that records can be released by order of a court after a showing that there is a proper and legitimate purpose for inspecting the records. The law then includes a fairly lengthy list of exceptions to this requirement. The Protection and Advocacy Project is not specifically included in that list. This has created unnecessary confusion regarding the Project's right to access records of the Department of Corrections, including the Division of Juvenile Services.

House Bill 1044 amends § 12-47-36. If passed, it will limit the application of that statute to adult services. Senate Bill 2105, if passed, will restrict access to the Division of Juvenile Services' records in a manner similar to that of the current law.

There has been considerable resistance on the part of the Division of Juvenile Services, and in the Department of Corrections as a whole, to honoring the Project's authority under other state and federal laws. We have been denied access to individuals requesting our services and access to records of individuals we are attempting to serve. Amending this bill will eliminate confusion and possible conflict with other state and federal laws.

The amendment will also eliminate the need for the Project to seek a court order when we require access to records of the Division of Juvenile Services. It is a waste of state resources for the Division of Juvenile Services to require the Project to resort to litigation. This wastes state resources entrusted to the Department of Corrections' Division of Juvenile Services and the Project, while imposing additional burdens on an already busy judicial system.

We ask that the Judiciary Committee approve and include our proposed amendment in Senate Bill 2105.

I thank the Committee for your time and would be happy to answer any questions you may have.

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING
SENATE BILL NO. 2105
January 16, 2001**

Chairman Traynor and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. I am here to comment on subsection 2 of Senate Bill No. 2105, and its relation to 42 CFR Part 2, Subpart A.

Senate Bill No. 2105 allows the division of juvenile services to disclose treatment records, notwithstanding any other provisions of law relating to confidentiality, to nine various persons or entities. However, the federal law addressing disclosure of drug and alcohol treatment records, found at 42 CFR Part 2, Subpart A, is very restrictive in regards to when the drug and alcohol treatment records of a patient may be released.

Absent client consent, drug and alcohol treatment records may only be released, essentially, in a few situations: 1) to medical personnel for a medical emergency; 2) to qualified personnel to conduct scientific research, to conduct audits, or to conduct program evaluations; or 3) if authorized by a court order after a showing of good cause. Furthermore, 42 CFR §2.20 provides that although state law may be more restrictive than the federal law, "no State law may either authorize or compel any disclosure prohibited by these regulations." According to the current language of Senate Bill No. 2105, it could be argued that the bill is less restrictive than 42 CFR, and attempts to supersede all other provisions of law.

The Department of Human Services would recommend clarifying the provisions of Senate Bill No. 2105, so that it clearly states that the bill does not attempt to curtail the provisions of federal law.

I would be happy to answer any questions the Committee may have.

Presented by:

**Krista Andrews
Attorney, Legal Advisory Unit
ND Department of Human Services**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2105

Page 1, line 19, remove "are not public records subject to section 44-04-18 and"

Page 1, line 20, remove "section 5 of article XI of the Constitution of North Dakota and"

Page 2, after line 29, insert:

"j. The division may disclose non-identifying information for research and statistical purposes.

k. A person, agency or institution receiving information or records under this subsection may not redisclose the information or records and shall maintain their confidentiality."

Renumber accordingly

Testimony SB 2105

**Tuesday January 16, 2001 Judiciary Committee 10:30AM
Fort Lincoln room**

Good morning Chairman Senator Traynor and members of the Judiciary Committee,

My name is Susan Beehler, a working mom with 5 children, a custodial parent, and a Girl Scout leader to two troops in Mandan, and training to become an advocate for AARC.

As a concerned parent I am for SB2105 it is very similar to other laws in other states.

I am here to request that another party be able to request at least some of a juvenile's records.

The victim or victim's parent when a sexual offense has been committed. Currently there is no way for a parent of a child that has been molested or raped to know if the offender followed through on a treatment plan, what the prognosis was and what risk that individual poses to society, the victim and to society.

Access to these records could aid in the victim's and victim's parents recovery.

I urge you to consider adding the victim and victim's parents to SB 2105.

Susan Beehler 663-4728

susieqbee@prodigy.net

Fifty-seventh
Legislative Assembly
Of North Dakota

SENATE BILL NO. 2105
Before the Senate Judiciary Committee
Jack Traynor, Chairman
January 16, 2001

Mr. Chairman, Members of the Senate Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation's Division of Juvenile Services.

Senate Bill No. 2105 has been introduced at the request of the North Dakota Department of Corrections (DOCR) and its Division of Juvenile Services (DJS).

The present status of the juvenile records maintained by DJS is that they are all treated as confidential records. This is due to DJS being a part of the DOCR and in a letter opinion from February 2000, the Attorney General advised Elaine Little, Director of the DOCR, that all DOCR records are confidential.

House Bill No. 1044, which was introduced at the request of the interim Criminal Justice Committee, relates to the DOCR's adult inmate records. After it is passed and signed into law, it will make the Attorney General's letter opinion moot. Then, much of Division's records will become open records even though the records include information that would otherwise be considered confidential, such as juvenile court information, medical, psychiatric, and psychological information, treatment information, and education information. In order to consider these records as closed or confidential records, there generally needs to be some specific authority. While there is specific federal authority for drug and alcohol treatment and rehabilitation records as confidential records, namely 42 United States Code Section 290dd-2 and 42 CFR part 2, and it is arguable that records from the juvenile court are confidential under North Dakota Century Code Section 27-20-15 even when in the possession of another person or agency, that issue has not been formally addressed, and while the North Dakota Supreme Court has addressed the issue of there is an implied right of privacy as an exception to the open records laws, the court did not make it clear that there was such an exception. Senate Bill No. 2105 is intended to resolve this issue regarding the juvenile records in the possession of the Division of Juvenile Services.

Senate Bill No. 2105 also addresses another situation, the release of information to apprehend juveniles. North Dakota Century Code Section 27-20-51.1 allows law enforcement and the juvenile court to release identifying information about a juvenile who has committed a serious offense involving actual or threat of serious bodily harm and has escaped or left without authorization from a secure facility. Oftentimes, DJS

may possess more information about the juvenile than law enforcement or the juvenile court. Senate Bill No. 2105 includes DJS as an agency that may release identifying information to assist in the apprehension of the juvenile.

Synopsis of Senate Bill No. 2105

Subsection 1 of the proposed statute establishes the exception to the open records laws for DJS records. The subsection includes redundant language and DJS will submit an amendment to remove the unnecessary language.

Subsection 2 identifies various persons, agencies, or institutions that regularly need access to DJS records. While it is worded somewhat differently, it generally reflects the exceptions to juvenile court records that are included in the Juvenile Court Act confidentiality statute, North Dakota Century Code Section 27-20-51. Several differences are that Senate Bill No. 2105 includes a provision to allow DJS to comply with the North Dakota Sex Offender Registration Statute, North Dakota Century Code Section 12.1-32-15, and to comply with its victim notification obligations under Section 12.1-34-02. The Bill in its current form does not include any prohibition on redisclosure, which was a drafting oversight, and DJS will submit an amendment to prohibit redisclosure and to require that a person, agency or institution that has access to DJS records maintain the confidentiality of the records. Also, it has been suggested that like the Juvenile Court confidentiality statute, there should be a provision for release of non-identifying information for research and statistical purposes. The Division will also provide that amendment.

Fifty-seventh
Legislative Assembly
Of North Dakota

ENGROSSED SENATE BILL NO. 2105
Before the House Judiciary Committee
Duane DeKrey, Chairman
February 28, 2001

Mr. Chairman, Members of the House Judiciary Committee:

My name is Ken Sorenson, Assistant Attorney General, and I am submitting this written testimony on behalf of the North Dakota Department of Corrections and Rehabilitation's Division of Juvenile Services.

Engrossed Senate Bill No. 2105 has been introduced at the request of the North Dakota Department of Corrections (DOCR) and its Division of Juvenile Services (DJS).

The present status of the juvenile records maintained by DJS is that they are all treated as confidential records. This is due to DJS being a part of the DOCR and in a letter opinion from February 2000, the Attorney General advised Elaine Little, Director of the DOCR, that all DOCR records are confidential.

House Bill No. 1044, which has already been before this Committee and passed by the House, relates to the DOCR's adult inmate records. House Bill No. 1044 will make the Attorney General's February 2000, letter opinion moot. Then, much of Division's records will become open records even though the records include information that would otherwise be considered confidential, such as juvenile court information, medical, psychiatric, and psychological information, treatment information, and education information. In order to consider these records as closed or confidential records, there generally needs to be some specific authority.

While there is specific federal authority for drug and alcohol treatment and rehabilitation records as confidential records, namely 42 United States Code Section 290dd-2 and 42 CFR part 2, and it may be argued that records from the juvenile court are confidential under North Dakota Century Code Section 27-20-51 even when in the possession of another person or agency, that issue has not been formally addressed, and while the North Dakota Supreme Court has addressed the issue of there is an implied right of privacy as an exception to the open records laws, the court did not make it clear that there was such an exception. Senate Bill No. 2105 is intended to resolve this issue regarding the juvenile records in the possession of the Division of Juvenile Services.

Senate Bill No. 2105 also addresses another situation, the release of information to apprehend juveniles. North Dakota Century Code Section 27-20-51.1 allows law enforcement and the juvenile court to release identifying information about a juvenile who has committed a serious offense involving actual or threat of serious bodily harm and has escaped or left without authorization from a secure facility. Oftentimes, DJS may possess more information about the juvenile than law enforcement or the juvenile court. Senate Bill No. 2105 includes DJS as an agency that may release identifying information to assist in the apprehension of the juvenile.

Synopsis of Engrossed Senate Bill No. 2105

SECTION 1 OF ENGROSSED SENATE BILL NO. 2105

Section 1 provides an amendment to N.D.C.C. § 27-20-51.1, as mentioned above. The amendment will allow the Division of Juvenile Services, which may have more useful information, to disclose identifying information to law enforcement to

assist in the apprehension of a juvenile who has committed a serious offense or who escaped from a secure facility.

SECTION 2 of ENGROSSED SENATE BILL NO. 2105.

Subsection 1 of the proposed new statute to N.D.C.C. chapter 27-21 establishes the exception to the open records laws for DJS records.

Subsection 2 identifies various persons, agencies, or institutions that regularly need access to DJS records. This subsection generally reflects the exceptions to juvenile court records that are included in the Juvenile Court Act confidentiality statute, North Dakota Century Code Section 27-20-51. The exceptions in subsection 2 are for persons or agencies that have regular involvement with the Division of Juvenile Services and regularly need access to the Division's records. The Senate Judiciary Committee was concerned that the language proposed by DJS may have been too broad and allowed persons to have access who really did not have any professional interest in the juvenile's case intent of the committee and so the Senate Judiciary Committee amended subsection 2 by including the following language at the end of the first sentence in subsection 2: "to individuals employed by the following if the knowledge is reasonably necessary in the best interest of the juvenile and for the protection of others." Subdivision f of Subsection 1 in Senate Bill No. 2105 includes a provision to allow DJS to comply with the North Dakota Sex Offender Registration Statute, N.D.C.C. § 12.1-32-15.

Subsection 3 of Senate Bill No. 2105 provides a prohibition on redisclosure to require that a person, agency or institution that has access to DJS records maintain the confidentiality of the records.

Similar to a provision of the Juvenile Court Act confidentiality statute, N.D.C.C. § 27-20-51(6), subsection 4 allows release of non-identifying information for research and statistical purposes.

The provisions of subsection 5 refer to the statutes providing for background checks for child care providers, licensing for foster care, and early child hood services.

The provisions of Subsection 6 refer to the Division's obligations under N.D.C.C. § 12.1-34-02 relating to victim notification.

In the event a person or agency needs the records and are not included within the exceptions, subsection 7 provides for an application to the juvenile court, just like N.D.C.C. § 27-20-51(2)(b).

Fifty Seventh
Legislative Assembly of
North Dakota

MEMO ON PROPOSED AMENDMENT
TO REENGROSSED SENATE BILL NO. 2105

TO: Mr. Chairman DeKrey, members of the House Judiciary Committee

FROM: Ken Sorenson, Assistant Attorney General

DATE: February 28, 2001

On page 2, in line 7 and 8, there is a reference to "a proceeding under this chapter", as well as to a proceeding under section 27-21-02.1, which is in the Division of Juvenile Services chapter in which this law will appear. Part of the intent of this subdivision is to allow access to records for proceedings before the juvenile court under the Juvenile Court Act, which is at chapter 27-20 of the North Dakota Century Code. The reference to "this chapter" was meant to be to the Uniform Juvenile Court Act, which is at chapter 27-20. As it appears in the reengrossed bill, "this chapter" refers to chapter 27-21. The attached amendment is necessary to make this technical correction so that it applies to the Juvenile Court Act, chapter 27-20. . Thank you.

PROPOSED AMENDMENT TO REENGROSSED SENATE BILL NO. 2105

Page 2, line 8, remove "this" and after "chapter" insert: "27-20"

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING
SENATE BILL NO. 2105**

Chairman DeKrey and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit.

Subsection 3 of Senate Bill No. 2105 provides "A person, agency, or institution receiving information or records under this section may not redisclose the information or records and shall maintain the confidentiality of the information or records." Under the current language, the Department would be required to treat records received from a correctional facility differently than those received from other sources, thereby creating a sort of segregated file system. Further, the Department would not be allowed to "redisclose" records received from the correctional facility, even if the person or entity requesting the records would be able to properly receive those records through other means.

The Department's recommended amendments to Senate Bill 2105 are attached.

I would be happy to answer any questions the Committee may have.

Presented by:

**Krista Andrews
Attorney, Legal Advisory Unit
ND Department of Human Services**

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2105

Page 3, line 1, replace "A" with:

- "a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality of the information and records under those statutory confidentiality requirements.
- b. Except as provided in subdivision a, a"

Renumber accordingly

TESTIMONY ON SENATE BILL 2105

**BEFORE THE
HOUSE JUDICIARY COMMITTEE
FEBRUARY 28, 2001**

**CORINNE HOFMANN
PROTECTION AND ADVOCACY**

Chairman DeKrey and Members of the Committee, my name is Corinne Hofmann and I am testifying on behalf of the Protection and Advocacy Project. The Protection and Advocacy Project [the Project] is a state agency. The Project is granted authority under federal and state laws to advocate for and protect people with developmental disabilities, mental illness, and other disabilities. The Project is authorized to pursue legal, administrative, and other appropriate remedies and approaches to achieve this purpose. Federal and state laws also authorize the Project to access records regarding individuals we serve.

Senate Bill 2105, if passed, would conflict with state and federal laws that grant the Project authority to access records. Therefore, the Project is opposed to Senate Bill 2105 in its current form, but would support it if amended as I propose. The proposed amendment is attached.

Many of the individuals we serve are children, some of whom are also receiving services from or are in the custody of the Division of Juvenile Services, Department of Corrections. Obtaining records is a necessary and integral component of the process we use to assist these individuals.

North Dakota Century Code § 12-47-36 governs access to records of the Division of Juvenile Services. In its current form, that statute provides that records can be released by order of a court after a showing that there is a proper and legitimate purpose for inspecting the records. The law then includes a fairly lengthy list of exceptions to this requirement. The Protection and Advocacy Project is not included in the list of exceptions. This omission has created unnecessary confusion over the Project's right to access records of the Division of Juvenile Services.

House Bill 1044 would amend § 12-47-36. If passed, it will limit the application of that statute to adult services. Senate Bill 2105, if passed, would restrict access to the Division of Juvenile Services' records in a manner similar to that of the current law.

Chapter 25-01.3 of the North Dakota Century Code outlines the authority granted to the Project regarding individuals with developmental disabilities and mental illness. The Project's authority under state law is based on federal laws that authorize and fund the Project's programs. The Project's right to access records under state law is patterned after applicable federal law. Since the passage of Chapter 25-01.3, the Project has been given authority to serve individuals with other disabilities and our authority to serve individuals with mental illness has been expanded. Federal laws governing these changes give the Project authority

to access the records of the individuals we serve. Federal law allows the state to give the Project greater authority than granted under federal law, but does not allow the state to restrict that authority. To the extent that state law conflicts with federal law, state law is preempted.

This can be confusing for non-attorneys who are trying to do their jobs in a manner consistent with the law. Despite an agreement that was reached with the Division of Juvenile Services in April 1999, the Project has experienced difficulty in accessing Division of Juvenile Services records. Because of the conflicts in the law, the Division of Juvenile Services has denied the Project access to individuals requesting our services and access to records of individuals we are attempting to serve.

Recent meetings between the Division of Juvenile Services and the Project have resolved the confusion, but as long as the conflict in the law exists, there is potential for reoccurrence.

Amending this bill will eliminate confusion and reconcile existing conflicts with state and federal laws. It will eliminate the need for the Project and the Division of Juvenile Services to devote further resources to this issue.

We ask that the Judiciary Committee approve and include our proposed amendment in Senate Bill 2105.

I thank the Committee for your time and would be happy to answer any questions you may have.

PROPOSED AMENDMENT TO REENGROSSED
SENATE BILL 2105

Page 3, after line 7 insert:

"6. The division shall disclose information to the extent necessary to comply with chapter 25-01.3 and related federal statutes and regulations."

Page 3, line 8, replace "6" with "7"

Page 3, line 10, replace "7" with "8"

Renumber accordingly