

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1139

2005 HOUSE JUDICIARY

HB 1139

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1139

House Judiciary Committee

Conference Committee

Hearing Date 1/11/05

Tape Number	Side A	Side B	Meter #
1	xx		4.5-12.1
2	xx		25.6-31.1

Committee Clerk Signature



Minutes: 13 members present, 1 member absent (Rep. Zaiser).

**Chairman DeKrey:** We will open the hearing on HB 1139.

**Amy Vorachek, Crime Victim Coordinator, ND Dept. Of Corrections and Rehabilitation:**

(see written testimony).

**Representative Kretschmar:** Have you had any instances when the media has tried to get this information for publication.

**Amy Vorachek:** I have had instances where the press has requested. We do ask them to be respectful and considerate of a close meeting. Thus far, the media has been respectful. To be quite honest, if they wanted to press the issue, there is nothing legally keeping them from that meeting.

**Representative Onstad:** In the typical parole hearing, the defendant, is what they discuss kept separate from the victim, and the victim's statements kept separate from the defendant, whether written or in person.

**Amy Vorachek:** Yes, we do have separate meetings and they do not meet at the same time as we meet with the victim. If a victim chooses to submit a letter, that is submitted before the Parole Board at an earlier time and not reviewed when the offender is in the room. We do consider it separate, but again, if that defender or inmate was to receive information through a third party that the person was coming, and they wanted that information or a copy of the testimony, we could try to argue it that it is exempt, but there is nothing legally saying that we can keep it from them.

**Representative Onstad:** Right now you can't keep statements from them.

**Amy Vorachek:** If they wanted to pursue it, there is nothing that legally binding that we can't keep it from them.

**Chairman DeKrey:** Thank you for your testimony. Further testimony in support of HB 1139.  
**Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator, ND Council on Abused Women's Services:** (see written testimony).

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1139. Testimony in opposition to HB 1139. We will close the hearing.  
(Reopened in the same session, Tape 2, side A).

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1139.

**Representative Delmore:** I move a Do Pass on HB 1139.

**Representative Meyer:** Second.

**Representative Kretschmar:** I would like to add an emergency clause to this bill.

**Chairman DeKrey:** I think that is a good idea.

**Representative Delmore:** I withdraw my Do Pass motion.

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1139  
Hearing Date 1/11/05

**Representative Kretschmar:** I move that we amend the bill to add an emergency clause.

**Representative Koppelman:** Second the motion.

**Chairman DeKrey:** All in favor - motion carried.

**Representative Delmore:** I move a Do Pass as Amended on HB 1139.

**Representative Meyer:** Seconded.

**14 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Zaiser**

VJR  
1/11/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1139 JUD 1-12-05

Page 1, line 3, after "review" insert "; and to declare an emergency."

HOUSE AMENDMENTS TO HB 1139 JUD 1-12-05

Page 2, after line 3, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1/11/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1139

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Delmore* Seconded By *Rep. Meyer*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) *14* No *0*

Absent *0*

Floor Assignment *Rep. Zaiser*

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

REPORT OF STANDING COMMITTEE (410)  
January 12, 2005 3:14 p.m.

Module No: HR-07-0368  
Carrier: Zaiser  
Insert LC: 58162.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1139: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1139 was placed on the Sixth order on the calendar.

Page 1, line 3, after "review" insert "; and to declare an emergency."

Page 2, after line 3, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



2005 SENATE JUDICIARY

HB 1139

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1139

Senate Judiciary Committee

Conference Committee

Hearing Date February 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		3293 - 6000

Committee Clerk Signature

*Maria L Solberg*

Minutes: Relating to confidentiality of victim statements in parole and pardon reviews; emergency.

**Senator Syverson**, Vice Chairman called the Judiciary committee to order. All Senators were present except for Sen. Traynor. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Amy Vorachek**, Crime Victim Coordinator ND Dept. of Correction and Rehab (meter 3293)

Gave Testimony - Att. #1. Amy also sited two examples of stalking victims and how any information even negative fires them up. The committee asked about Media request. The media has been very respectful to date. The process on how the parole board works (meter 3795) and rule 32.C and the Judges decisions of discretion of information in what already exists in law.

Discretion and non-discretion also when the court over site is involved.

**Jessica McSparron-Bien**, Sexual Assault Program and Policy Coordinator (meter 4287) Gave Testimony - Att. #2.

**Ken Swarnson**, Att. Generals Office - (meter 4425) Council for parole board and the pardon advisory board. I am here for any questions.

**Sen. Trenbeath** stated that flat prohibitions like this raise some red flags. Is there language that we could craft to make it the responsibility of the parole board to make the decision themselves. Discussion of "exempt" records Sec. 12-46 records. The process using the discretion of the agency verses the restriction of releasing of information and having to have proof of safety / security compromise to be able to release information. Would not a parole board use the same type of confidentially release of info? Yes This is all done in the Executive Hearing.

**Senator Syverson** asked they were worried of the media getting access to herring information in an executive session? Not to date, but it is not the media we always worry about sometimes it is other offenders or offenders families.

**Senator Hacker** asked what other states do? I do not know.

**Senator Triplett** read ND Rule: 32 Sub. B sub 4 part A. (meter 5476) How the prisoners rights protected from exaggerations and lies? Amy discussed that the charges are brought to the prisoner in a way that the source is not disclosed but they are cross examined to make sure the credibility of the accuser.

**Sen. Trenbeath** stated that the problem he had with this is we are relying on practice and not statute, we ought to be relying on statute.

**Testimony in Opposition of the Bill:**

none

**Senator Syverson** , Vice-Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1139

Senate Judiciary Committee

Conference Committee

Hearing Date February 23, 2005

Tape Number	Side A	Side B	Meter #
1	X		94-480

Committee Clerk Signature

Minutes:

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order to discuss HB 1139. All Senators were present with the exception of Senator Triplett.

Syverson- Would rule 32 apply to parole board activities?

Trenbeath- The judge has discretion to disseminate it. The question is whether or not we want to take discretion that was previously exercised by a judge, and if it should be confidential or exempt.

The committee agreed to hold HB 1139 until the following week.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1139

Senate Judiciary Committee

Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1		X	1297 - 2445

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to confidentiality of victim statements in parole and pardon reviews.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Sen. Trenbeath** stated that under rule 11 C and in reviewed of the statute that is referenced, they are consistent in language. It sounds conflicting but it is fact the way the language is. The parole and pardon boards are like the Judge and can allow a limited amount of information to the authorized representatives. I had issues with the inmates having protection also against people making what ever statements they want and are impervious to challenge. Discussed the parole boards roll in questioning this. Discussed emergency clause.

**Senator Syverson** was concerned about the right of the parolees privacy. This information was probably used in a pre sentencing. The victims statement would not change other then to say-"I do not want the S.O. B. out..." The least the victim would have done is give a statement to the

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1139

Hearing Date February 28, 2005

police. They may never and mostly don't appear in court do to the fact that most cases don't go to trial. Discussion of the victims relationship with giving statement, "post sentence threats", and the balance of the victim and the inmate. The parole process of cross checking indirectly the victims statement if it changes. **Senator Syverson** sited his dilemma on not being comfortable going either way with this.

**Sen. Trenbeath** made the motion to do pass and Senator Hacker seconded the motion.. All except **Senator Syverson** and **Senator Triplett** voted for the motion. Majority Rules and motion passes.

Carrier: **Sen. Trenbeath**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing



**REPORT OF STANDING COMMITTEE (410)**  
February 28, 2005 1:47 p.m.

**Module No: SR-36-3781**  
**Carrier: Trenbeath**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1139, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1139 was placed on the Fourteenth order on the calendar.**



2005 TESTIMONY

HB 1139

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE DUANE DEKREY, CHAIRMAN  
January 11, 2005

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AMY VORACHEK, CRIME VICTIM COORDINATOR  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
FIELD SERVICES DIVISION  
PRESENTING TESTIMONY RE: HB 1139

My name is Amy Vorachek and I am the Crime Victim Coordinator for the DOCR. I am here to testify in support of House Bill 1139.

The Parole Board and the Pardon Advisory Board are public entities and are subject to North Dakota's Open Meetings and Records laws, subject to statutory exceptions relating to offender records, including offender treatment, medical, and psychological records and miscellaneous offender case history records.

Currently there are no express statutory provisions relating to the confidentiality of victim testimony and written statements when the testimony and statements are for Parole Board and Pardon Advisory Board proceedings.

As a consequence, victims and family members related to victims may be reluctant to provide testimony or a written statement for a number of reasons unless they are given an assurance of confidentiality. Reasons include:

1. Many victims fear retaliation from their convicted offenders. Victims worry that their offender may be able to receive copies of their submitted documents or a copy of their verbal testimony. This creates fear and anxiety for them.
2. Victims may not be willing to be candid when concerned that their statements or testimony will be part of an open record. It is important for the Parole Board and Pardon Advisory Board to get accurate statements from victims. It also important for victims to feel empowered and safe with what they are submitting.
3. Victims may also feel that they will be publicly re-victimized in the proceedings. Victims do not generally want the press/or general public extorting their feelings. Victims have already been violated by the offender is some way; to have the public re-victimize them is horrific.

In response to these same concerns, the North Dakota Supreme Court, in Rule 32(c) of the North Dakota Rules of Criminal Procedure, relating to pre-sentence investigations, requires that any victim impact statement and any information relating to the victim or victims, and any other matters the court may consider confidential, that if disclosed, might result in harm, are confidential.

In order to encourage victims to come forward in Parole Board and Pardon Advisory Board proceedings, the DOCR feels that victims should have the same consideration before the Parole Board and the Pardon Advisory Board as they would have before a sentencing court through the pre-sentence investigation.

Att #1

SENATE JUDICIARY COMMITTEE  
SENATOR JOHN TRAYNOR, CHAIRMAN  
February 14, 2005

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AMY VORACHEK, CRIME VICTIM COORDINATOR  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
FIELD SERVICES DIVISION  
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**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

#2

3 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson Traynor and Members of the Senate Judiciary Committee

Date: Monday, February 14, 2005

Re: Testimony in support of HB 1139, relating to confidentiality of victim's statements in parole and pardon review.

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator at the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of confidentiality of victim's statements in parole and pardon review.

Victims of violent crimes, in particular sexual assault hesitate to report the crime for fear of the judgment and scrutiny they may face. In fact, the National Crime Victimization Survey indicates that as few as 16% of sexual assaults are ever reported to law enforcement. When looking at the larger picture of sex offenses, this is absolutely frightening. Any attempt to encourage the reporting of violent crimes and encouraging victims to participate in the criminal justice system is critical. This is one step to help victims actively participate in the justice system and one that is important to public safety as well.

Thank you.