

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2260

2007 SENATE JUDICIARY

SB 2260

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1671

Committee Clerk Signature

Mona L. Solby

Minutes: Relating to criminal history record checks.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Larry Robinson, Dist. #24 Introduced bill (meter :50) Gave testimony –Att. #1

Rep. Kim Koppelman, Dist. #13 (meter 3:58) This is a very somber issue and I am personally interested in the because it is the most basic function of the government is to protect the people. Most places do a background check but it is not the law. Some bills are reactive some are proactive. The Representative referred to Federal regulation was used as our directive and we also included other industries, who requested to be included. The fiscal note will be offset by the fees collected.

Rep. Mueller, Dist #24 (meter 7:35) Spoke in support of the bill, commended the A.G.'s office, the House and the Senate. I live a short distance from a temporary memorial for a young college girl. Stated how this bill could have helped her.

Wayne Stenehjem, ND Attorney General (meter 9:42) Thanked the Legislators and Governor Hoeven. This bill will more then double the authorization of background checks that can be done when they apply for employment and licensing in the future. This is only allowed under

statute requirement. Stated who will be authorized to do the background checks (meter 11:00)

Discussed the Federal "Adam Walsh" act that passed in October and what industries will be required to have criminal background checks. Spoke of the fiscal impact the 8,350 more background checks this bill will have increased. Stated other bills in session that will impact the department financially.

Judy Volk, Information Services Manager, BCI (meter 15:20) Gave Testimony – Att. #2a reviewed records check flow chart – Att. #2b.

Ryan Bernstein, Legal Counsel for the Governor (meter 26:34) Att. #3

Constance B. Kalanek, PhD., RN Executive Director ND Board of Nursing (meter 28:40) Gave Testimony – Att. #4

Dale Patrick, Asst. Dir. Dept. of Public Instructions (meter 32:00) Gave Testimony - Att. #5

Jo Zschomler, Dir. OMB Risk Management Div. (meter 34:24) Gave Testimony - Att. #6

Howard Anderson –Ex Dir. Of Board of Pharmacy, (meter 36:07) Spoke in support of the bill and how he approached the A.G.'s office with a bill that they combined into this one. Gave a story of an out of state applicant and the problem they had with the existing licensing process.

Pat Jergenson, Secretary Treasurer ND Real Estate Commission (meter 38:52) Gave his testimony – Att. #7

Robert J. Entringer, Asst. Comm. Dept. of Financial Institutions (meter 40:00) Gave Testimony – Att. #8

Tom Tupa, ND Board of Social Work Examiners (meter 41:49) Gave Testimony – Att. #9

Rita Sommers, Ex. Dir. Of ND State Board of Dental Examiners submitted testimony – Att. #10

Tara Lea Muhlhauser, Deputy Dir. Of Children and Family Services Div.(meter 44:40) Gave Testimony – Att. #11.

Sen. Fiebiger questioned (meter 48:10) on page 4, 2 F were they not duplicating efforts and what about time limits? Tara responded that they were waiting on further direction from Federal regulation generated from the "Adam Walsh" Act. We do not want to contradict it.

Leann Bertsch, Dir. Of the ND Dept. of Corrections and Rehabilitation (meter 50:47) Gave Testimony – Att. #12

Bonnie Random – Mother of the Son who's girl friend was murdered. (meter 52:00) My testimony is not a professional one but a personal one. Mindy was my son's girlfriend. She was so excited to move into her first apartment. She felt secure knowing that a police officer lived across the street and one lived in the building next door. Right below her was a man that worked at the jail and she was murdered! The biggest question my community has asked is how could this have happened! How could a man be hired into the law enforcement world with a background like his. Spoke of the "local" police check that is standard procedure-that told you no more then the neighbors new!. Spoke of the access, this man had with the terrible record he held.

Ken Seaworth, ND University Systems (meter 55:18) and State Board Association. Referred to Page 6, language added to state law authorizing FBI checks for Application or Employees in the University System as specified by the Chancellor. This language is at our request. Discussed current system and how this bill would change it. Spoke of current systems doing checks off of the computer-not very accurate. Stated how many checks he is doing and how many this legislation would increase it to.

Sen. Fiebiger questioned how many and would every student be checked. (meter 1:00:36) Discussion of this.

Randy Blaseg, ND Racing Commission (meter 1:04:01) We are in support of this bill.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1842

Committee Clerk Signature *Mona L Solby*

Minutes: Relating to criminal history record checks.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee discussed passing the bill. **Sen. Fiebiger** and **Sen. Olafson** had concerns that the college language was to broad. He had concerns that they would mandate all college applicants to do a background check. Discussion of what they currently do and this bill would greatly broaden that. Discussion of Chancellors powers. **Sen. Fiebiger** request holding the bill so he may do more research on it.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2881

Committee Clerk Signature *Maria L. Solby*

Minutes: Relating to criminal history record checks.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Fiebiger stated that he was satisfied with the bill the way it was.

Sen. Nelson made the motion to Do Pass SB 2260 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**.

Senator David Nething, Chairman closed the hearing.

FISCAL NOTE

Requested by Legislative Council

04/25/2007

Amendment to: SB 2260

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$33,240	\$59,400	\$618,120	\$691,400	\$378,120	\$691,400
Expenditures	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400
Appropriations	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows various entities the ability to request criminal background checks for certain individuals.

The amendments add post secondary students background checks.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will significantly increase the number of criminal background checks the Office of Attorney General processes. It is estimated to increase by about 24,000 the number of criminal background checks conducted by this office. Current staffing is unable to handle any additional criminal background checks based on current workload.

A section is pertaining to a construction manager for the Department of Corrections and Rehabilitation, which is not anticipated to have any fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Each criminal background check costs \$30 per person excluding the fingerprint fee charged by local law enforcement. The background fees are deposited in the general fund. Although the background check revenues do not cover the 2005-07 biennium costs, both the 2007-09 and 2009-11 biennium revenues are anticipated to exceed the costs associated with those biennia.

In addition, other fund revenues for FBI fees passed through to the FBI are included to allow entities requesting background checks to make one payment, rather than two, for the total cost of the background check. Currently, entities make two payments, one for the state's background check charge and one for the FBI's fee.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimate an additional five identification technician FTE's will be needed to handle the increased workload of this bill. The impact also reflects anticipated operating costs associated with these positions. We anticipate hiring 2 of the 5 FTE's in late fiscal year 2007.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency*

and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The appropriation was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	04/25/2007

FISCAL NOTE

Requested by Legislative Council

03/28/2007

Amendment to: SB 2260

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$33,240	\$59,400	\$378,120	\$691,400	\$378,120	\$691,400
Expenditures	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400
Appropriations	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows various entities the ability to request criminal background checks for certain individuals.

The amendments remove the appropriation which was added to the Attorney General's appropriation bill. Background checks for students entering certain higher education programs are removed.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will significantly increase the number of criminal background checks the Office of Attorney General processes. It is estimated to increase by about 16,000 the number of criminal background checks conducted by this office. Current staffing is unable to handle any additional criminal background checks based on current workload.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Each criminal background check costs \$30 per person excluding the fingerprint fee charged by local law enforcement. The background fees are deposited in the general fund. Although the background check revenues do not cover the 2005-07 biennium costs, both the 2007-09 and 2009-11 biennium revenues are anticipated to exceed the costs associated with those biennia.

In addition, other fund revenues for FBI fees passed through to the FBI are included to allow entities requesting background checks to make one payment, rather than two, for the total cost of the background check. Currently, entities make two payments, one for the state's background check charge and one for the FBI's fee.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimate an additional five identification technician FTE's will be needed to handle the increased workload of this bill. The impact also reflects anticipated operating costs associated with these positions. We anticipate hiring 2 of the 5 FTE's in late fiscal year 2007.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

The appropriation was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/29/2007

FISCAL NOTE
 Requested by Legislative Council
 03/14/2007

Amendment to: SB 2260

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$33,240	\$59,400	\$618,120	\$691,400	\$618,120	\$691,400
Expenditures	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400
Appropriations	\$52,598	\$59,400	\$459,877	\$691,400	\$468,849	\$691,400

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows a number of entities the ability to request criminal background checks for certain individuals.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will significantly increase the number of criminal background checks the Office of Attorney General processes. It is estimated to increase by about 24,000 the number of criminal background checks conducted by this office. Current staffing is unable to handle any additional criminal background checks based on current workload.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Each criminal background check costs \$30 per person - this does not include the fingerprint fee charged by local law enforcement. These fees are deposited in the general fund. Although the background check revenues do not cover the 2005-07 biennium costs, both the 2007-09 and 2009-11 biennium revenues are anticipated to exceed the costs associated with those biennia.

In addition, other fund revenues for FBI fees passed through to the FBI are included to allow entities requesting background checks to make one payment, rather than two, for the total cost of the background check. Currently, entities make two payments, one for the state's background check charge and one for the FBI's fee.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimate an additional five identification technician FTE's will be needed to handle the increased workload of this bill. The impact also reflects anticipated operating costs associated with these positions. We anticipate hiring 2 of the 5 FTE's in late fiscal year 2007.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The appropriation was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/16/2007

FISCAL NOTE
 Requested by Legislative Council
 01/17/2007

Bill/Resolution No.: SB 2260

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$33,240	\$59,400	\$492,120	\$572,000	\$492,120	\$572,000
Expenditures	\$50,886	\$59,400	\$354,820	\$572,000	\$376,010	\$572,000
Appropriations	\$50,886	\$59,400	\$354,820	\$572,000	\$376,010	\$572,000

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows a number of entities the ability to request criminal background checks for certain individuals.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will significantly increase the number of criminal background checks the Office of Attorney General processes. It is estimated to increase by about 20,000 the number of criminal background checks conducted by this office. Current staffing is unable to handle any additional criminal background checks based on current workload.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Each criminal background check costs \$30 per person - this does not include the fingerprint fee charged by local law enforcement. These fees are deposited in the general fund. Although the background checks revenues do not cover the 2005-07 biennium costs, both the 2007-09 and 2009-11 biennium revenues are anticipated to more than cover the costs associated with those biennia.

In addition, other fund revenues for FBI fees passed through to the FBI are included to allow entities requesting background checks to make one payment, rather than two, for the total cost of the background check. Currently, entities make two payments, one for the state's charge for background checks, and one for the FBI's fee.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

We estimate an additional four FTE's - identification technicians will be needed to handle the increased workload of this bill. The impact also reflects anticipated operating costs associated with these positions. We anticipate hiring 2 of the 4 FTE's in late fiscal year 2007.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount to be appropriated was not included in the Executive Recommendation.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/22/2007

Date: 1-31-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2260

Senate _____ Judiciary _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Nelson Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebiger

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2007 1:25 p.m.

Module No: SR-21-1647
Carrier: Fiebiger
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2260: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2260 was placed on the
Eleventh order on the calendar.

2007 SENATE APPROPRIATIONS

SB 2260

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2260

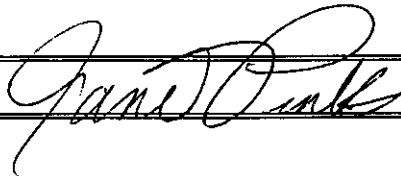
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 2/08/07

Recorder Job Number: 3102

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2260.

Senator Larry Robinson, District 24, Valley City, testified in support of SB 2060 which was brought about because of the recent tragedy and death of Mindy Morgenstern at Valley City.

He discussed the importance of background checks, and the scope of background checks across the state as it is clearly a matter of safety. He distributed a proposed amendment to SB 2260 on behalf of the Department of Public Instruction.

Dale Patrick, Department of Public Instruction, presented written testimony (3a) testified in support of SB 2260 identifying the background checks that are done through the schools as well as the costs to the school districts.

Questions were asked if the costs would stay the same or if they would go down as time goes on.

Wayne Stenejhem, Attorney General, State Capitol, Bismarck, introduced Judy Volk

Judy Volk, Information Services Manager, Bureau of Criminal Investigation, presented written testimony (2) and flow chart of the various criminal checks (3), and testified in support of SB 2260.

Bonnie Ranum, Valley City, presented written testimony (4) and testified in support of SB 2260.

Page 2

Senate Appropriations Committee

Bill/Resolution No. 2260

Hearing Date: 02-08-07

Senator Robinson moved a DO PASS on the proposed amendment. Senator Krauter seconded. There was no discussion. An oral vote was taken resulting in a unanimous vote for the amendment.

Senator Robinson moved a DO PASS as amended on SB 2260. Seconded by Senator Krauter. There was no discussion. A roll call vote was taken resulting in 11 yes 0 no and 3 absent. The motion carried and Senator Robinson will carry the bill.

Chairman Holmberg closed the hearing on SB 2260.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2260

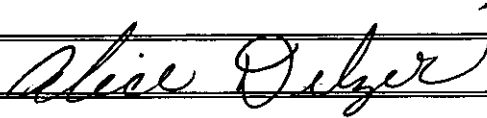
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-08-07

Recorder Job Number: 3228

Committee Clerk Signature



Minutes:

Chairman Holmberg Reopened the hearing on SB 2260 on 02-08-07.

Senator Robinson requested taking the amendment off the bill to allow the bill to pass quickly. **There was a motion to take amendment off the bill by Senator Robinson,**

seconded by Senator Mathern. The amendment was removed from the bill.

Senator Robinson moved a DO PASS WITHOUT AMENDMENT, Senator Mathern seconded. A roll call vote was taken resulting in 11 yeas, 0 nays, 3 absent. The motion carried. Senator Robinson will carry the bill.

The hearing on SB 2260 closed.

Date: 2/8/09
 Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2260

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Robinson Seconded By Krauter

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm			Senator Tim Mathern	✓	
Senator Randel Christmann			Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Robinson

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

Date: 2/8/07
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Open w/o Amendment

Motion Made By Robinson Seconded By Matherne

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer			Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment ~~Back to Gen. Council~~ Robinson

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

REPORT OF STANDING COMMITTEE (410)
February 9, 2007 7:37 a.m.

Module No: SR-28-2632
Carrier: Robinson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2260: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2260 was placed on the
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

HB 2260

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2260

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/5/07

Recorder Job Number: 4316

Committee Clerk Signature

A. Lemose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2260.

Rep. Kim Koppelman: Sponsor, support.

Chairman DeKrey: Thank you. Further testimony in support.

Tom Trenbeath, AAG, AG's office: (see attached testimony). A number of groups approached Legislative Council, the AG's office, or individual legislators in order to be included in an effort requiring criminal background checks. There were actually several that were introduced and several remain. This is the major of those; it's the major criminal history check legislation of this session. As you are probably aware, this bill is an important tool for public safety. ND enjoys a reputation as the safest state in the Union, and this bill will help us maintain that position.

Rep. Griffin: I see a few of these are discretionary in case the Boards want to do them.

Tom Trenbeath: Correct.

Rep. Griffin: Are they not allowed to do them, do they have authority to order them.

Tom Trenbeath: No, there must be an authorization in statute in order for those groups to access the federal files. Anybody can call up or write in asking for a background check, but it's

only statewide, and that doesn't amount to a lot by comparison to what you can obtain by the federal check.

Rep. Koppelman: We heard in SB 2062 that it requires background checks on all security personnel, not only registered security firms, but also private security people, such as the Target store in Bismarck if they wanted to hire a security guard under that bill, would have to register. There is a line in the bill that says the employer, I assume we are talking about the private employer, must obtain a copy of the results of the state or national criminal history background check and file a copy with the board within 90 days. If I heard you correctly, you said you can't do that.

Tom Trenbeath: At first blush, that might be a problem.

Rep. Koppelman: Could you talk to the AG's office and find out for sure.

Chairman DeKrey: Thank you. Further testimony in support.

Sen. Larry Robinson: Sponsor (see attached testimony). This is an important issue.

Chairman DeKrey: Thank you. Further testimony in support.

Judy Volk, Information Services Manager, BCI: (see attached testimony and handout).

Rep. Koppelman: You talked about release of records and how information was then redacted. How does that work, when the FBI says the records can't be released to the public?

Judy Volk: You are talking specifically about the security officers, correct.

Rep. Koppelman: I am looking for the general answer in terms of how a federal criminal background is processed. I think what was indicated, was that those records have to be released to a public entity cannot be released to a private entity, or I assume the general public, but you were talking about redacting information before it is released to the public or private entity.

Judy Volk: We do the redacting for the state of ND records, not the FBI.

Rep. Koppelman: So the FBI simply cannot be released at all.

Judy Volk: Specifically your question, can it be released to a non-government entity; it cannot be released by our office. An individual has the ability to submit a fingerprint card to the FBI and get a response directly to them. So if you wanted to check your FBI record, you can submit a fingerprint card to the FBI and get a response of the same type. You can take that response and give it to your employer, for example.

Rep. Koppelman: So that's how it happens if XYZ entity wants to employ me and I submit to a records check and the FBI comes back and says here is what we found, and I would be the one as the proposed employee to release that to the employer.

Judy Volk: Yes. We cannot, under law, provide FBI records to a nongovernmental entity.

You however, as an individual can get your own record from the FBI and provide it to whomever you wish.

Rep. Boehning: I am looking at the fiscal note. In your testimony you said approximately 8300 people need to have the background checks. Now it says in the fiscal note that there would be 20,000.

Judy Volk: I am not familiar with that, it would be at the discretion of how many total there would be afterwards.

Rep. Boehning: In looking through this, there is a disparity in this.

Judy Volk: I can't.

Rep. Onstad: You mentioned that dismissed charges in the criminal history goes back three years.

Judy Volk: With the ND record, if you have an arrest and the disposition was more than 3 years ago, we cannot release that to the public. So if you had a charge that was a year ago,

and it was dismissed, we could release it. But once three years have passed, we may not by law.

Rep. Boehning: On a criminal background check, if you are a realtor, every time you get new employment, you would have to have a new background check done?

Judy Volk: No, once you are licensed, the background check is done in conjunction with the licensure. So regardless of where you work in the state, once you are licensed you are good to go. If they move from one place to another within ND, they don't have to have another check done.

Rep. Boehning: There isn't or is.

Judy Volk: Is not another check done.

Rep. Delmore: If we look at all these new additions, I know that one of the problems we've had, in sometimes getting the information back to the schools, to the Standards and Practices and getting the certificate out. Will this complicate that even more, or will the FTE's take care of the problem.

Judy Volk: We propose to add additional staffing in order to ensure that all the response times don't go out even further than they currently are. We are concerned that we will be negatively impacting agencies that are currently getting record checks from our office, because of the time involved for each check.

Chairman DeKrey: Thank you. Further testimony in support.

Tom Tupa, ND Board of Social Work Examiners: (see attached testimony) support.

Rep. Delmore: That would be the only group subject to that index.

Tom Tupa: It is my understanding that we are the only one in the law with that extra provision.

Chairman DeKrey: Thank you. Further testimony in support.

Howard Anderson, Executive Director, Board of Pharmacy: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Ryan Bernstein, Legal Counsel to Governor: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Dr. Constance Kalanek, Executive Director, ND Board of Nursing: (see attached testimony).

Rep. Meyer: Are the nurses who are practicing now, grandfathered in.

Dr. Constance Kalanek: This is for new nurses only, not on renewals.

Rep. Charging: What part of this goes to home health care people, will they be included.

Dr. Constance Kalanek: It would include all new licensees, so it wouldn't be specific by setting, with individuals who apply for licensure, the criminal background check would be conducted.

Chairman DeKrey: Thank you. Further testimony in support.

Tara Lea Muhlhauser, Deputy Director, Children & Family Services Division and Program Administrator for Child Protective Services, of DHS: (see attached testimony).

Rep. Meyer: Currently, the background checks that you do now, are they just the ND record check, or are they automatically the national FBI record check also.

Tara Lea Muhlhauser: We do a variety, depending on the type of provider right now. In truth, by policy, we have tried to do as many fingerprint based background checks as we're allowed, as of October 1, but again, we need this full authorizing language to be able to do it on all care providers for children of the home, so not to get it confused with childcare providers. We are trying to do as many fingerprint background checks as possible.

Rep. Meyer: Is the financial aspect a deterrent, or just the level of care.

Tara Lea Muhlhauser: For us, the financial is not a deterrent, because we do pay those checks, because we feel it is a cost that we should bear, when people are willing to provide

care for kids outside their home. The deterrent for us was more the authorizing language that the FBI would require in order to do those checks. Again, as Judy explained earlier, we could use the voluntary process where we ask people to apply themselves, but we feel in the department, that we should bear the cost because they are providing care for children in the Child Welfare System.

Rep. Wolf: You mentioned in your answers to Rep. Meyer's question, you didn't mention daycare providers. I don't see them. Are they covered someplace else.

Tara Lea Muhlhauser: There is a small reference to childcare providers; there is a reference to the childcare check. I apologize that this is not a program that I work with frequently. I believe there is a voluntary process in the state for child care providers to have background checks and people can check that registry when they find child care provider and find out whether they voluntarily placed themselves on that check.

Rep. Wolf: Do daycare centers require employees to have background checks.

Tara Lea Muhlhauser: I don't know. I will get an answer to you later. That child care check system has been in place for number of years, it is a voluntary system. I'm not sure what kind of check they do.

Rep. Wolf: On page 14 of the bill, it talks about adult foster care, they have foster care homes for adults, I noticed on the top of page 15, it takes out from August 1, 1999 that they are exempt from that. Is there a reason we are going back 8 years.

Tara Lea Muhlhauser: I can't speak to that. When we drafted this and worked with the AG's office, we felt it was not our province in Child Welfare to provide any dictates for adult sponsored homes because that's really a program that Aging Services works with. We literally left that language in place. We have left it to them to speak to Aging about whether they feel that exemption is still necessary for their programs, we left that to them. The other thing is that

there is no federal law that puts a mandate upon services for aging, as it did for services for children. For us, much of the content of this background check are as much theory and mandate behind the background check came from the Adam Walsh legislation.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Klemin: I looked through the written comments and see here in the section about name changes, I don't see that addressed and I know there are changes required here for name change and not required. A person from another state, where that person had been divorced and the marriage had been the subject of domestic violence. In the 2003, we added language about the requirement that they publish notice in the newspaper about name changes, but we added a provision that the court may waive publication of notice when the change relates to domestic violence, because ex-spouses would be trying to track down these people when they moved out of state. We allowed the person not to have to publish the information. So what happens when the person has an outstanding warrant for their arrest in another state, and now the name change effectively precluded law enforcement from tracking her down to pick her up. This section does not apply to request for name change, for various reasons, such as annulments or divorces. I just want to make sure that the situation that I am describing it, is not going to be excepted either, because I think you do want background checks on those people. So if somebody was getting a divorce, where there was domestic violence, for example, we don't do the publication and the person was wanted in connection with an incident somewhere, they are not going to be subject to this background check for the name change like other people. I'm looking for assurances that we aren't going to have a problem here, or if we do, that there is something else we need to put in the bill.

Tom Trenbeath: I can look into that more closely. I do recall the conversations we had when this, this wasn't part of the original proposed legislation that suggested that we give a name

change an exemption, and it very rapidly became a situation where it blossomed to an economic alternative a point of diminishing return. That's a broad statement of the analysis that went into how we defined this section of the bill. All I can in terms of the particular situation, we didn't address that directly and I think it might be a good point for us to look at.

Rep. Boehning: Two questions, in section 20, where the IT officer may require a contractor to have background checks, how far down the line are we going to go.

Tom Trenbeath: I believe the requirement here is intended to encompass those contractors for technical services for IT. There are a lot of contracts that ITD enters into to provide technical services. I don't think it is intended for the situation where someone comes in and changes a circuit breaker because it blew. Having said that, I may not be the best person to say that's the definitive answer.

Judy Volk: It's for contract programmers.

Rep. Boehning: Do we want to clarify that, because as I read this, it says a contract with the state contractor, will I have to have all my employees have a background check, maybe we could put some other language in there.

Tom Trenbeath: It does limit it in some scope to contracts with respect to Information Technology projects. If you've got a contract with an entity that is going to come in and provide those ITD services, and part of the crew happens to be not the programmer but an electrician, then yes, the electrician ought to have the background check.

Rep. Boehning: What are the number of people that will need the checks.

Tom Trenbeath: It is based on my logic and a little bit of experience that I have here, and then I will get you a definitive answer before you break for lunch. That is, the 8,300 figure is based on one side of the transaction, the state or the federal, and actually the 20,000 figure is based on doing both.

Rep. Boehning: I would assume that the 8,300 number could decrease substantially after everybody is checked.

Tom Trenbeath: In most instances, we're not talking about existing licenses, because we're trying to cut down on that initial glut to find a number that is more of a continuing situation. So I don't think you will see that. I think this is based on a continuing situation. It's also based somewhat on court costs, as to what other bills are out there that might add some more to that. They are of such consequence that we wanted to define them individually, but we know that there are more out there.

Chairman DeKrey: Thank you. Further testimony in support.

Jo Zschomler, Director, OMB Risk Management Division: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Tom Trenbeath: I found the problem with the 8,300 as compared to the 20,000. I have, in my hand, a document that was generated by our office some time ago, which shows a number of 8,357/year and some of those are soft numbers. We have in foster care, affected by the Adam Walsh Act, the numbers is 414 included, but we expect that to triple; 20,000 is a pretty good shot.

Pat Jergenson, Secretary/Treasurer, ND Real Estate Commission: (see attached testimony). This will apply to new applications.

Rep. Kretschmar: If you find that somebody lied and it comes back that they are a convicted felon, you don't issue a license to them.

Pat Jergenson: The Commission would take a look at it, and based on what the charge was or the conviction would be, they could deny the application and then the person has 60 days to appeal to the Commission and appear before them and explain the circumstances, then the Commission would take another look at it.

Chairman DeKrey: Thank you. Further testimony in support.

Pat Seaworth, ND University System General Counsel: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Darleen Bartz, Section Chief, Health Resources Section for ND DHS: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Bonnie Ranum, Valley City: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Boehning: What is the total cost, including fingerprinting.

Tom Trenbeath: I don't know, the State check is \$52.00.

Chairman DeKrey: Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2260

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4582, 4585

Committee Clerk Signature *Penrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2260.

Rep. Kretschmar: I move both the AG's and health department's amendments.

Rep. Koppelman: Second.

Chairman DeKrey: Discussion of the amendments.

Rep. Koppelman: I was contacted by someone from the Dept. of Public Instruction and they have warned us that there will be a fiscal note on the bill by passing this amendment, they want FTE's to shuffle paperwork. Other than the AG's office, to hire people to do the background check work, their cost will be offset in the fees. They have all kinds of every entity that is covered by the bill obviously will have some paperwork and things that they will need to do under the bill, but the only one that is threatening or trying to attach a fiscal note is the Dept. of Public Instruction. I visited with a couple of committee members about that, we will need to rerefer the bill and I think the best thing to do is put the amendment on and rerefer it down to Appropriations. They thought Standards and Practices might be a better spot for this than BC but it would be better to let them sort that out.

Rep. Delmore: The other problem that comes with that, is the fact that it covers all employees, unless we remove somebody. It's confusing and in that case, the Standards and

Practices will work with student teachers, etc. but if we're looking at all of the school employees, that's literally thousands of people if you look statewide.

Rep. Koppelman: I think this is the expressed wishes, I think it as more of an issue of the private school, that the folks there in the private school, that the repository would be BCI for that. That is what I think they are asking for the fiscal note for, for maybe Standards and Practices, they thought they could handle that.

Rep. Delmore: We should take out of this, student teachers, because school districts have nothing to do with that, that's Higher Education that takes care of making sure that they have their security checks. I don't want that you could do it, I want that you will do it, because the school districts have absolutely no say in student teachers getting that, but if they don't have it, someone cannot sue the school district. That's a requirement for licensure, etc. in ND. So it needs to be taken care of.

Bev Nielson, ND School Board Association: We did meet with him on these amendments, his feeling was that we didn't need to put the student teachers, name them specifically in Higher Ed, they are taken out of ours now. But rather those schools would make it a part of the requirement to accept student teachers, as long as we make the requirement to accept student teachers, Higher Ed is going to have to make it. He didn't want to list them separately in Higher Ed.

Rep. Wolf: The other area that I would like to take a look at. I had asked the question during testimony that several emails had come to me, do you know if licensed daycare providers, and licensed daycare center do not run background checks, they are not required to and they are not part of this bill. Isn't that odd.

Rep. Koppelman: Just to remind the committee, the bill originally started out to be used for correctional officers and law enforcement officials. Then everyone wanted to be a part of this.

I'm not saying that a lot of those folks that there isn't a good reason for them to be included, but the fiscal note was growing so large, the AG said we just decided to put a cut off point and say we need to draw a line in the sand and if other people want to be a part of this, there is nothing preventing them from doing it as part of their professional obligations if they want to, or come back later and asking to be a part of this, hopefully in a separate bill. We thought we needed to do some baby steps before we include every citizen in ND in this bill.

Rep. Wolf: The second problem with the bill is that, I'm really torn, I understand the concept of this and I understand that we're trying to protect everybody, but yet we're grandfathering everybody in. I know it would take a lot of money in a fiscal note if we let everyone in.

Chairman DeKrey: It would kill the bill.

Rep. Wolf: To me, this is just a half-thought through, rush job.

Chairman DeKrey: You may be right. Further discussion on the amendment.

Jack McDonald, Non Public School: I think the question in this whole bill about mandatory and required. The object of the law is not to require that all of these groups get record checks, only that they are allowed to go to BCI to get the nationwide check. Part of the problem to begin with, was that you couldn't get the national records check unless you went through BCI and only certain people could go to BCI.

Chairman DeKrey: A government entity.

Jack McDonald: But to Rep. Wolf's question that daycare is not required to get them, even if they had been required to get them, they should be allowed the chance to do it if they wanted to do it. That brings me to the one main point about the public schools, is that the very last part of the amendment says that, DPI for approval of schools, they have to have criminal history record checks required by section 12-60-24, and in my reading of 12-60-24, is not that any of those are required, it's just that they have access to it. I'm not sure how they are going

to turn around and say that approval is generated if you meet the required checks under 12-60-24. It doesn't make any sense. All of those, A-Z under that subsection 2, are all given a chance to go to BCI to get them.

Rep. Wolf: Can't they already do that.

Jack McDonald: Not to BCI, you can get a state record check, but not the national check, that is for law enforcement agency, FBI, highway patrol, etc. That's why Valley City, fell to the state, they couldn't get the national check. This just opens it up so that everybody is allowed to get them. That's why everybody said let us do it too, let us do it too. That's how you have such a mismatch, because some can't get access. That's why daycares can't.

Rep. Wolf: So with this, they won't be able to.

Jack McDonald: Not the nationwide check, no. You can get the statewide criminal history, but not the nationwide.

Rep. Delmore: So we're requiring from teachers going in...

Jack McDonald: They are already required now to do it.

Rep. Delmore: But that doesn't include a federal background check on them either.

Jack McDonald: This has been in law for several years that teachers are required now to do it and part of their teacher license. Remember, that was part of the problem if you hire someone from out of state because somebody quits in August, and it took so long because of the nationwide check, that they weren't ready for school to start sometimes. Some schools had problems getting the teachers in, because they were doing that nationwide check. This bill allows them to do the other employees now, not the teachers. This is for the janitors, cooks, playground supervisors, etc. who would not have a teacher's license.

Rep. Delmore: Is it required?

Jack McDonald: I disagree with this, I don't think it does require it, but she thinks it does. I asked where it says in there that it requires it, and it doesn't say.

Rep. Meyer: On page 7, on line 10, why right now they have to have a license to be a simulcast provider. That's how it is now, and 53-06.2 and this is saying that they need not be done.

Rep. Koppelman: This is saying that they wouldn't have to have the check.

Rep. Meyer: They need not be made unless required by the Commission. They are required right now, to get a license, you have to have a background check.

Rep. Koppelman: Is that the state check. I think that's unintentional, we could delete lines 11 and 12.

Rep. Delmore: I just think this bill is a mess. There are obvious reasons why it comes before us. But this wouldn't have made a single difference in what happened to Mindy. Now we've got everybody saying choose me, choose me, I think this muddies the waters with who is really going to need to have it and who isn't required to have it, even though the statute now makes it pretty clear who has to and I think the people required should be subject to those things. I just wonder if we shouldn't move to make this a study resolution that looks into the whole thing. Trying to go through amendment after amendment on a bill that's already got 20 pages.

Rep. Koppelman: I beg to differ. I believe this would have made a difference in what happened in Valley City, because it does deal specifically with corrections and law enforcement people and deals with many changes.

Jack McDonald: I'd have to say that in another section of the statute, not the section that they adding this to, there is some requirements that they be licensed. All of the people listed in a-z

are all required, they are required to give their consent to their employer so that the employer can go and get the check.

Rep. Delmore: But they are grandfathering everybody in. So if I've been here a year, I'm not going to be included on that record check. I don't have to ask them, they don't have to ask me to be cleared, because I'm already employed. I'm not talking about teachers, I'm talking about other employees that we have within every entity of this. That's why I say, that wouldn't change because everybody is grandfathered. I know we can't do everybody in the world and that's what this bill tries to do.

Rep. Koppelman: You're right, though I guess the other question is if we study it, then we're back in the same spot two years from now, and I don't think we would have anything that looks much different from what we have. So the question becomes, do you want the people that apply to these positions in the next two years, have to have background checks or not. If the answer is no, then study it; if the answer is yes, that's the bill before us.

Rep. Delmore: Do we need a laundry list this long.

Rep. Koppelman: That's what we have.

Rep. Delmore: And if it's not mandatory, if they can require or can't require, it gives them an option, but if the right people don't take that option it still doesn't protect citizens in this state.

Rep. Koppelman: I guess the question there is whether we want to micromanage all of that from the state, maybe we do. What the bill does do, is to allow the governing body, whether board, commission, school board, whatever to make their policy. We do require background checks for position x, y, and z and not for positions a, b and c.

Rep. Onstad: The point is that all these different groups are asking for the permission to be able to do it, to have access to BCI. It seems like there would be an easier way to do that that we could allow public entities or whatever to have access and that would be a lot simpler.

Rep. Koppelman: I think that is exactly what this does. I realize that it looks kind of cumbersome but remember that folks that put all this language together, the people in the AG's office and BCI. They went through to determine what would be necessary in our state law to make this work, and that is the language before us. I'm not going to second guess it.

Rep. Charging: If you want to do a federal background check, you can hire a private investigator firm to do that, correct. BCI isn't the only way to get a check.

Chairman DeKrey: I think to get an FBI check, you have to go through a government agency.

Jack McDonald: Federal law requires that you go through BCI and there has to be specific authorization for BCI to do it in state law. We had this situation a few years ago with the Firefighters Association. It turned out that they couldn't get the national check and there had to be a special piece of legislation to allow fire fighters to go to BCI.

Rep. Meyer: Does this bill just give those entities the vehicle to get the check, or does it mandate that once they have the vehicle they have to get the checks.

Chairman DeKrey: It does both, some of them wanted it to be mandatory and some didn't.

Julie Krenz, AG's office: It's mandated in some cases and not in others.

Rep. Delmore: Who is mandated and who isn't. I think that would be helpful to know who is and isn't.

Julie Krenz: If you look at page 3 of the bill, section 4, it says that the agencies, officials and entities named in subsection 2 shall require each applicant, employee, or petitioner for adoption or name change to consent to a statewide and nationwide criminal history record check for the purposes of determining suitability, etc.... That person has to give their information to agencies where required, to submit the fingerprints to BCI to be checked. Then if you look at subsection 2 on page 4, it says the Bureau shall provide to each agency, who

has requested a check the checked information. Then if you go down the subsection, it will tell you if it is mandatory or not. The governing body of a city or county, etc. can have discretion to decide who is going to be checked and who isn't. Once they designate for that position, it gives the entity a little discretion to decide which positions they want checked for. You kind of have to look at each subdivision and see whether it is exception or not. For sub b, each applicant to grow hemp, that is mandatory, everyone that applies has to be checked in order to get a license, etc.

Rep. Delmore: Are any of these a change from what they are currently. On page 7, the racing commission right now to have a license for the applicants. They have to have a criminal history record check now.

Julie Krenz: Right now, the racing commission, the law says that there is a difference between the state license and the nationwide check and you have to have specific authority in your statute to get a nationwide check. If it says the racing commission has to do a background check on an applicant, the only thing that they can get is the statewide check. So if you want the nationwide you have to be listed in statute. That is why this bill is so long because we had to go back to the racing commission chapter in that section, to authorize the nationwide check in that section, and do the process for each one. A lot of the boards and commissions wanted the discretion to be able to designate who needs the check.

Rep. Wolf: Do you why on section y on page 7, it deals with teachers and employees being required to pay the cost of the background check, yet on non-public school on the amendment, the people who are seeking employment in a non-public school, the school pays for it.

Julie Krenz: It requires either the school district or the non-public school to pay for it.

Rep. Wolf: So why do teachers pay for their own record.

Bev Nielson: The only answer that I've gotten, that this is not a teaching position, but it would be for janitors, etc. that are barely above minimum wage and probably asking them for \$50 seems like a burden.

Rep. Wolf: Why are dental examiners not going to be included.

Bev Nielson: I don't know, I think the thinking was along the lines that if it were for your own personal license that you carry with you for your whole life, that's it is a cost of paying that license, as opposed to just a cost of being in there.

Julie Krenz: If you look at section 6, licensing a dentist is in a different chapter, it says all costs associated with obtaining that license is the responsibility of the person.

Rep. Charging: Once you give that department or division the discretion to decide who gets the background check, then if they selectively choose out of there who gets the check, won't that be discrimination to legislate some but not all.

Julie Krenz: Right now, requests go through our office to do these checks, and they are only getting another 4-5 FTE's to do the checks. If they had to do everyone, it would create such a huge impact and that was part of the reason they gave discretion to the agencies, etc. I'm not sure how they are going to decide who they are going to have the checks.

Rep. Charging: Do you think that will put somebody at risk, since it is "may" do the checks. If they single out certain people, won't that open up discrimination.

Julie Krenz: I'm not sure.

Bev Nielson: I asked the same question and the answer was, if they are a protected class then they would be in trouble. If it is a racial issue, etc. but if they are doing it as job designation, then it wouldn't be a problem.

Rep. Delmore: I think that's a liability issue that certainly exists. If I'm allowed to do it and choose not to, and this person comes into contact with a child or someone vulnerable and I

chose not to do it, I think there is a real possibility of somebody coming after you. I don't know, but that's one of the problems.

Rep. Boehning: With this permissive language, we've put it into rule that they have to or do they have discretion and rules to do this. They can pick and choose, I think there are going to be some problems with that. I think we are putting way too many people in there.

Rep. Wolf: Do other states require background checks on their dentists and pharmacists, etc.

Tom Trenbeath, AG's office: The bill for the most part, SB 2260, is a bill that has blossomed from organizations wanting to come in under the umbrella. It's not something that has been generated from the top down, as a lot of legislation is. It's legislation, for the most part, that started out as a smaller snowball. Different professional organizations have said, in effect, look we'd like to be involved in this. We'd like to be included in that, because it is a matter of their not being able to get background checks unless BCI is instructed to give them by legislation. Even though they want to get in under the umbrella of the act, they don't want to be mandated by it. I think a lot of people can understand that in certain situations, a particular organization is going to say I want these people to have background checks before we hire them, or before we license as is the usual situation. Or they might say, from a practical economic standpoint, those that have been with us for more than five years, no, it's not practical to do a background check. It's not a situation where it's being mandated necessarily. The only mandate here, that I see, is that it mandates the BCI to do the searches if they are asked. Now, having said that, I immediately have to take that back, because for instance, with respect to education, there is a certain portion of that, the nonprofessional people that are in close proximity to students, it is up to the governing authority, whether it's the school board in public schools or the governing board through DPI for non-public schools. To choose which existing employees may need as background check, this would probably take place a lot in

smaller school issues, where you may have most of the existing employees that have been there for a long time and don't have background checks, and all of a sudden you hired a janitor or laborer, and he or she doesn't have a background check and so they may require a background check even though it's not required in the statute.

Rep. Delmore: When you pick and choose, are you open to liability there if someone grandfathers someone in, if someone turns out to be a perpetrator. The same way for agencies that can choose to do the BCI checks, if I decide not to and something happens, is there a liability issue there.

Tom Trenbeath: I think this is the sort of question that often comes up when you deal with legislation. The fact of the matter is that there is never any liability until the jury or judge says there is. You can only pass those things only so far. Yes, if the law allows you to do something and you don't do it, and it has adverse effects you are more than likely to get sued.

Rep. Boehning: Is there anything in here that says what violations you can't hire people out there for, like maybe one guy has a class A misdemeanors, another guy has a class B misdemeanors or a felony, are agencies and organizations going to be able to pick and choose who to hire and not hire.

Tom Trenbeath: The answer is first of all, the governing authority has the discretion to pick and choose for the most part. My opinion is this, for most of them, if not all of them, a wise course would be to adopt some rules; whether or not there is going to be a discrepancy among different types of hiring within an organization, I suppose that is possible too, but I would guess that an organization would adopt some criteria in order to meet it. There is some rulemaking authority in the bill to do just exactly that. We're already planning that. But it affects chapter 28-32 grant authority to any agency that it has to be defined in the statute, so they already have it.

Rep. Delmore: What if we made this into a comprehensive study.

Tom Trenbeath: I will give you the AG's opinion on this. We will do whatever this body instructs us to do given the fact that you give us the staff to do this. This is not necessarily that we are pushing necessarily and in a certain way it is. The reason that we allowed the other groups to come in and in some cases we asked some groups to come in, was because there were so many potential pieces of legislation that needed to be under this. The other point is, what does the public want us to do.

Rep. Delmore: There is an appropriation on this bill, correct.

Chairman DeKrey: \$50,000.

Rep. Delmore: What happens if this bill goes to appropriations and they decide not to fund it. Can your office carry out doing this, without.

Tom Trenbeath: No, we are not set up with the manpower to do these background checks. I wish I could say that you can take the fingerprints, put them on a machine and can type out the information to the FBI lab and get the results of that. In some cases that happens, more often it doesn't.

Rep. Meyer: Agencies that wanted to seek that access to the BCI checks, or did they want to mandate that the employees coming on had to get them, or did they just want to be able to do in case they needed it, what was the motive of the agencies.

Tom Trenbeath: I don't mean to speak for the agencies, but I will give you my interpretation of what generally speaking was being told to us, that they wanted in, because they wanted to be able to do it...

Rep. Meyer: But not mandated.

Tom Trenbeath: They certainly want to be able to make it a condition of employment.

Rep. Wolf: I worry about those who are left off the list, that are not under the umbrella.

Tom Trenbeath: The problem becomes then, how do you present it to appropriations, when you don't know how many that might entail. We've worked long and hard on these issues, including DPI to try and give the best estimates of what kind of numbers we are looking at.

Chairman DeKrey: If anything, appropriations are going to take people out of this bill, because the fiscal note on this is enough to choke a horse and we may end up going back to the original intent of the bill, which was for corrections and law enforcement officers. The rest of them might come out.

Rep. Wolf: I worry about the daycare providers.

Rep. Charging: Once this information is in their files, is it an open record.

Darlene Bartz, ND Health Department: One of the things that we're seeing is, if the federal government does mandate us to do background checks, one reason we were wanting to come forward is that we want to have the ability to do it. I checked with the Long Term Care Association when they started wanting background checks on people. When I talked with BCI, she indicated that we would, in no way, be able to give them a copy of that report. We would need to internally review that report and either they are fit for service or they are not. That would be all. So it would not be an open record.

Jack McDonald: I think the answer to the question is that when you get the FBI report, the FBI report says it is confidential and only for use of the agency that solicited it. There is a state law that says if a federal law makes it confidential, then it is confidential.

Rep. Koppelman: There was testimony on the bill initially that the records are confidential and can only be released to the entity, but the individual will have the record and he or she can release it to anyone.

Tom Trenbeath: In the bill on page 3, line 22, it sets out that it is confidential.

Chairman DeKrey: Voice vote on the amendments. Motion carried. We have the bill before us as amended. What are the committee's wishes.

Rep. Koppelman: I move a Do Pass as amended and rereferred to appropriations.

Rep. Heller: Second.

13 YES 1 NO 0 ABSENT

CARRIER: Rep. Koppelman

DO PASS AS AMENDED AND REREFERRED TO APPROPRIATIONS

(Reopened later in the same session)

Chairman DeKrey: We all thought we put on the right amendment from the Health Department, but we put on the wrong one.

Rep. Koppelman: I move that we reconsider our actions by which we passed the bill earlier.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote to reconsider our actions. Motion carried.

Rep. Koppelman: I move that we remove the old Health department amendment and put on the new health department amendment.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended and be rereferred to appropriations.

Rep. Koppelman: Second.

12 YES 0 NO 2 ABSENT

CARRIER: Rep. Koppelman

Do Pass as amended and rereferred to Appropriations

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2260

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4836, 4902

Committee Clerk Signature

N. Penrose

Minutes:

Chairman DeKrey: We need to reconsider our actions.

Rep. Klemin: I move that we reconsider our actions in regard to SB 2260.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried.

Rep. Klemin: I move that we adopt the proposed language which deletes the language on page 5, line 25-28.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Griffin: I move a Do Pass as amended and rereferred to Appropriations.

Rep. Heller: Second.

Chairman DeKrey: Further discussion on the bill.

Rep. Dahl: I had a question on page 11, lines 1-13, why are we removing that section.

Chairman DeKrey: I don't know. Maybe we should have someone from the AG's office up here to explain. We will hold this bill.

(Reopened later in the afternoon)

Chairman DeKrey: We will hear from the AG's office. We have a Do Pass as amended on the floor, but we're not quite sure what exactly the amendment does.

Tom Trenbeath: The reason is that HB 1313 was passed and signed by the Governor. It has language that is almost identical as the language in SB 2260. Therefore, rather than having identical language in two bills, we decided to amend the language out of SB2260.

Chairman DeKrey: So remove lines 1-13 on page 11, that's dentist too.

Tom Trenbeath: Yes, that's dentist language also. You can see on page 11, section 11 of SB 2260, I'll read part of HB 1313, "the board may investigate an applicants or a dentists fitness, qualifications, and previous professional record and performance. The Board can seek information sought under this section from recognized data sources including the national practitioner's data bank, data repository..", that is almost identical to SB 2260 so that is why it was taken out. SB 2260 makes it a separate new subsection under 42-28-06, and HB 1313 makes it a new section in chapter 43-28.

Chairman DeKrey: Thank you. Any further discussion on the bill. The clerk will call the roll.

10 YES 1 NO 3 ABSENT

CARRIER: Rep. Koppelman

DO PASS AS AMENDED WITH REREFERRED TO APPROPRIATIONS

Date: 3/7/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended & Refer to Approps.

Motion Made By Rep. Koppelman Seconded By Rep. Heller

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Koppelman

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

Date: 3/7/07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended + Refer to Approps.

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Koppelman

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

Date: 3/12/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended + Rereferred to Approp.

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin		
Rep. Boehning		✓	Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad		
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 No 1

Absent 3

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2260: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). SB 2260 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 1, line 8, after the semicolon insert "to provide an appropriation; to provide an effective date;"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "each applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, line 25, remove "The state board of dental examiners for initial and credential application for a"

Page 5, remove lines 26 through 28

Page 5, line 29, remove "p."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 22, replace "w." with "v."

Page 6, line 30, replace "x." with "w."

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the department of public instruction.", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the department of public instruction, for individuals seeking employment with the school, or individuals otherwise providing services to the school, if those individuals have unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Page 19, after line 4, insert:

"SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$158,138, or so much of the funds as may be necessary, to the attorney general for the purpose of conducting state and nationwide criminal history record checks on behalf of the state department of health pursuant to section 12-60-24. The attorney general may hire an additional full-time equivalent position under this section.

SECTION 22. EFFECTIVE DATE. Section 21 of this Act becomes effective on the date the state health officer certifies to the secretary of state, the attorney general,

and the legislative council that the federal government requires criminal history record checks on applicants for employment at long-term care facilities or providers who have access to patients."

Renumber accordingly

2007 HOUSE APPROPRIATIONS

SB 2260

2007 HOUSE STANDING COMMITTEE MINUTES

.Bill/Resolution No. 2260

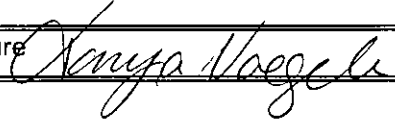
Government Operations Division

Check here for Conference Committee

Hearing Date: 3/19/07

Recorder Job Number: 5272

Committee Clerk Signature



Minutes:

Chairman Carlson opened discussion on Senate Bill 2260.

Representative DeKrey explained the bill.

Chairman Carlson: Do you think the list of agencies requesting record checks are too broad?

Representative DeKrey: The committee's opinion was that it was too broad.

Representative Skarphol: I see Mr. Kemmet from BCI here. The cost of a criminal history record check is \$37.00, correct?

Jerry Kemmet: Yes. (bad audio)

Representative Skarphol: I don't think we should not allow these agencies to get the record checks but I think they should pay for them out of their budget.

Chairman Carlson: Representative DeKrey, when you look at the bill, the way I am reading the fiscal note is that there is an appropriation of General Fund dollars of about \$459,000. Am I reading that right, Allen?

Allen Knudson: That is correct.

Chairman Carlson: There are revenues charged to people.

Representative Skarphol: Mr. Trenbeath, is there any reason that we cannot say that they will pay actual cost, that way what ever they request they will pay for?

Tom Trenbeath: I believe that is what we are intending to do.

Representative Skarphol: Why don't we just leave it at the discretion of the agency director to make that determination? Instead of naming each one why don't we allow all state agencies and political subdivisions to request the service and pay actual costs?

Tom Trenbeath: The reason not to do that is that it is too difficult with time constraints to get the numbers.

Jerry Kemmet: An open statement stating the bill about anybody can do this and gets authorization isn't going to settle well with the FBI. The agency has to be listed specifically by name before they are eligible for this. So if they are going to do it they have to be in this bill.

Chairman Carlson: I hate to drag us back to the money again but if our concern is here that we have a fiscal note that is running about a half a million dollars to do this that it is probably our responsibility as a committee to make sure that we figure out what our costs are and line some amount of a number in this bill and let you guys negotiate that out in a conference committee. I don't know that I want to read this entire list of who can access it and who can't because I am not sure that I would ever get it right just like your committee had trouble with it. What we want to do is make sure that if we are going to charge a fee for this, that it is a reasonable fee to cover our costs.

Allen Knudson: Just for your information, on the fiscal note there is \$618,000 of General Fund revenue that will be raised from the Attorney General charging fees. The expenditures are \$460,000. So the revenue is already covering the expenditures.

Chairman Carlson: So then why are we appropriating the difference?

Allen Knudson: I believe that if you look at Senate Bill 2003, the Senate added about \$350,000 for four FTEs then the fiscal note has \$158,000 in this bill appropriated and another FTE to make five.

Chairman Carlson: These two bills will be going together. So we need to reconcile the FTEs because that is the difference in the cost. What you are telling me is that they already are generating more income than their hard costs but they are not covering basically personnel.

Vice Chairman Carlisle: We were told four FTEs, now you are saying five?

Tom Trenbeath: It is up to five now because with the amendments that we put on in the house we did some tinkering with the school districts because we found out that non public schools were not included and in order to include them we had to add a procedure by where DPI could do it because the non public schools can't do it themselves. That and the Dept of Health wanted a broader range of people that they can have tested. So those two entities provided us with information of what they felt would be the additional background checks that would have to be done.

Chairman Carlson: Allen, section 21 of the bill appropriates \$158,138 how does that tie back to the fiscal note?

Allen Knudson: We needed to have in what the Senate already put into Senate Bill 2003 which was \$354,000.

Chairman Carlson: So is section 21 of the bill wrong?

Allen Knudson: No, if we go with the addition to what the Senate added because of those changes that the house made it would require one more FTE position.

Chairman Carlson: So why would we call on an appropriation like that in section 21 and still have a fiscal note that was much different than that?

Allen Knudson: I am not sure why the expenses don't total exactly but I will check on that.

The fiscal note talks about the total impact of the bill as amended now.

Chairman Carlson: That is unusual to have a number then another number in the fiscal note besides. If it was me and I was reading this bill I would add the \$158,000 on top of the \$459,000 and say that is the cost.

Allen Knudson: I believe the \$158,000 is included in the \$459,000.

Chairman Carlson: We will get this sorted out. Let's get back to the basic mechanics.

Senator Robinson spoke in support of the bill.

Chairman Carlson: When you sent it out of the Senate what was the appropriation?

Senator Robinson: I don't have the exact figures, it was right around \$354,820. I have not studied the appropriation in detail with the changes that have been proposed here in the House side.

Representative Skarphol: The bill says that an agency can request a background check for all applicants for a job. You wonder about the process, lets say they get fifty applicants for a job are they going to check all fifty or are they going to wait until they narrow that field? Were you made aware of those practices?

Senator Robinson: I can't speak for all agencies, but I know how it happens in many. In our particular situation at Valley City State, we are a smaller institution with 150 employees, several part time individuals. When we have an opening on campus we have a lady that serves as our Human Resources Counselor. Typically if we get 12 applications for said opening, we would review those applications based on the criteria that we publicized we would screen the applications based on that criteria and how that applicant meets that criteria. Then we would narrow the list down to maybe two or three and we would conduct further review of those two or three. At some point when we are getting down to the nitty gritty where we are about ready to make an offer, prior to that point there would be a background check maybe on

the one or two individuals that are chosen. That would be at the hands of the Human Resource Department.

Representative Koppelman testified in support of the bill.

Chairman Carlson: The more I hear we are going to contain our information to number one the FTEs added the fiscal note and the fees charged. There is no way we could have full blown hearing to decide which group didn't get in that wanted in. The conference committee can surely work on the policy side of that but we are going to address and stick our conversation to the financing side and where this fits in to the Attorney General's budget.

Representative Koppelman On that note my understanding as this came through the processes was that the main requirement for FTEs was in the Attorney General's office to actually do these checks.

Bonnie Ranum testified in support of the bill. See testimony 2260. 3.19.07 A

Tom Trenbeath spoke in support of the bill 2260.03.19. 07 B and 2260.3.19.07 C

Chairman Carlson: On the fiscal note, the expenditures are the same as the appropriations but yet the revenue is \$618,000. There is an appropriation of \$158,000 in the bill. Maybe you could straighten that out for us. What is this thing really going to cost?

Tom Trenbeath: I will turn that over to someone who can answer that.

Chairman Carlson: I think what we will do in the effort of time, we are going to roll this in and tie the two together. Between what you already have in your budget and what affect this bill will have on the four people that you already had because we have heard mention of one more.

Tom Trenbeath: (bad audio)

Representative Glassheim: When I multiply 30 times 24,000 I get \$720,000. If it is not 30 maybe it is 37.

Chairman Carlson: But some of the numbers say \$15 for certain checks.

Tom Trenbeath: It is \$15 for a state reference check, it is an additional \$15 for the FBI to process the finger print and then it is \$22 for the federal record check. So it is \$52 total.

Representative Skarphol: Is there a mechanism to make sure that the correct people are paying for it?

Wayne Stenehjem: That is the way it is working now.

Opposition (bad audio)

A representative from the American Civil Liberties Union, spoke in opposition to the bill. He stated that they are not in total disagreement of the bill.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2260

House Appropriations Committee
Government Operations Division

Check here for Conference Committee

Hearing Date: 3/20/07

Recorder Job Number: 5352

Committee Clerk Signature *Amya Voegeli*

Minutes:

Chairman Carlson opened the discussion on Senate bill 2260.

A motion was made by Representative Skarphol, seconded by Vice Chairman Carlisle to create an amendment removing Section 21 to Senate Bill 2260 with House Amendments.

Motion carried.

The removed section from this bill will be amended into Senate Bill 2003.

Representative Glassheim: I think we are mandating checks for all of the applicants for certain positions. I would like that to be changed to read for each finalist of the position.

Tom Trenbeath: We thought about that while we are working this bill. As I said yesterday that there was a pretty strong understanding that not every applicant will get the check. When you are talking about applicants, it is at the discretion of the entity that is doing the hiring.

Representative Skarphol: If you read the new language on page six, for example the board of nursing, the language already says that the record check need not be made unless required by the board. So the language already exists.

A motion was made by Representative Kempenich, seconded by Representative Skarphol for a DO PASS AS AMENDED to the full committee. The committee vote was 8 Yeas, 0 Nays and 0 Absent and Not Voting. The bill will be carried to full committee by Representative Kempenich.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

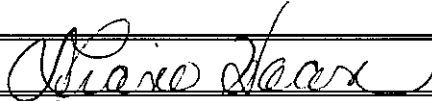
House Appropriations Committee

Check here for Conference Committee

Hearing Date: 3-21-07

Recorder Job Number: 5395

Committee Clerk Signature



Minutes:

Chairman Svedjan: We'll look at SB 2260...we'll have 2 sets of amendments...the amendments are being distributed...you should 1st be receiving amendment 0203.

Rep Kempenich: I'll move amendment 0203

Rep Krober: I'll second it

Rep Kempenich: The amendments to SB 2260, basically what it does is it basically removes the appropriation from the bill and it does change some of the language, clarifying who can ask for these background checks...it goes to a higher level. When the bill came to us it pretty much said...all applicants...and we felt that was pretty broad in nature, so what we did was kind of narrowed that focus down to the directors...we kind of made it at the director's discretion of the agencies that we're asking and so that's what these amendments do. I'll run through why we moved the appropriation...there was \$158T in this bill of appropriation...the Attorney General...I should say the Senate...when we got Attorney General's (*can't understand*) the Senate had stuck in \$354T to cover 4 FTE's in doing these background checks as was originally brought forward in this bill. As it got amended in the Senate, they added more people that could request this so they added another \$158T into this bill...it was our feeling that this should be addressed within the budget. There's a total of 5 FTEs...if you go to the FN it kind of explains...this will cover the cost plus about \$150T so when you read

through this is gets a little confusing but basically, the cost of doing this is going to be \$459T. It costs \$52 total...\$30 goes to the state and \$22 to the FBI...the FBI part of it is basically a pass through and that's why you see the other funds are the same number...that's a pass through cost going to the FBI. The feeling for the AG was that instead of having 2 checks and handling 2 different accounts, they just handle 1 check to them and they'd pay out of those funds to the FBI costs. When you bake this all down it would be a net into the general fund.

Chairman Svedjan: So the amendment removes the appropriation and then what you have done is amended this into the AG's budget?

Rep Kempenich: It's in his budget and the \$158 will go in there on top of that.

Chairman Svedjan: Allen, would you like to address the FN?

Allen: Basically, there's a \$52 fee for the background check, \$30 of the fee is for state costs and then \$22 is forwarded on to the FBI for their part of the background check. In the FN, the \$618T of additional fund revenue is from the state portion, the \$691T is the pass through to the federal government for the FBI check so the effect on the general fund is an additional \$618T of general fund revenue and the additional costs are projected at \$460T and that's what they'll be addressing in the Attorney General's budget.

Rep Bellew: If the state keeps \$30 and \$22 goes to the Feds, why do the Feds get more money than us?

Allen: The reason it's different is in the past there's been 2 billings where the person requesting the background check paid a separate fee to the Federal Government and then they paid the state...now the Attorney General's Office has said that they're just going to do a single billing so the person just has to make out 1 check so it's going to flow through here. In the past the individuals paid for it directly to the Federal Government, now it's going to flow through the Attorney General's Office, so there's some previous collections in there.

Chairman Svedjan: So that explains the difference.

Rep Skarphol: There's also a background check that doesn't require the FBI check, so there are various requested background checks that are funded at various levels.

Rep Gulleon: Who is all included in the required background check?

Rep Kempenich: If you go through the bill, it's listed and they do have to ask to be included in this and that's mostly what the bill is. It's easier to say who isn't included...just about everyone is included...you have the teachers, Human Services, Office of Management & Budget, cities and counties, real estate, etc. That's why it got so big.

Rep Carlson: We made a specific effort when we addressed this bill, because it was controversial as to who was going to apply and who could actually apply and who had to pay...so instead of us fighting that whole debate again, we went to the source of the money and said...are we generating enough money on the fees to cover the costs related to those who request to have the background checks and we addressed our comments strictly to the money side of the bill saying...it's in the budget...it's covered by the revenues...it's going to be a 1 stop shop where the AG sends the money out to the FBI as well as the fees they collect and that's all we dealt with. I think Rep Glassheim had some concerns about some of the language saying...every applicant...if there's 100 applicants for a job, you surely don't need a background check on every 100 until you get down to the finalists. I think he has an amendment that clarifies that, but we did try and stay away from the rest of that.

Rep Skarphol: Law enforcement is required to have a background check on applicants, whether it's Corrections or any aspect of Law Enforcement according to this bill...other entities...it's up to the director to decide who it is that's going to get tested or checked...in other words if he has applicants for a job and he narrows it down to a field of 3...he can ask for the tests on those 3...he doesn't have to ask for a test on every body that applies, so it's

optional in case of a lot of the entities and the Board of Nursing, the schools and that type of thing, but Law Enforcement is the only one (and ITD) that have to have them done.

Rep Wald: To clarify...on Page 2 of the amendments, Page 7, Line 9...the last sentence says...the governing board of the nonpublic schools is responsible for paying the costs associated with obtaining a background check...are we saying that if a public school wants a background check on a new teacher...that's not true with a nonpublic school, so they bear the cost themselves?

Rep Kempenich: Here's the interesting thing between private and public schools...the public, the agency can request and the FBI will honor that request. The problem with private is a privacy issue...they can go through the public school to request it, so a private school can't directly request these things...then you get into a privacy issue with the private school because they can request a background check but then the public school cannot forward that information to the private school because of privacy issues so this language is a way of working around that roadblock to get so the private school can view that information.

Chairman Svedjan: Any further discussion on the amendment? On the motion **to adopt 0203 to SB 2260 VOICE VOTE Amendments adopted**

We have another set of amendments.

Rep Glassheim: Amendment 0204 (SEE ATTACHMENT B) There are 2 essential kinds of amendments through this...in a number of the items on Pages 4 & 5, it says that each applicant, for a specified position, would be required to get a check and I thought that was excessive...you could have 50 applicants...I wanted to find language that would narrow it down to finalists so that before the selection was made those 2, 3, 4 or 5 finalists would have to receive the background check before being hired. So in about 8 or 9 places I put the word final before the word "applicant" just so it's clear...it doesn't mean that with your application

you have to send in this background check...that seems excessive to me. That would also increase the number of checks, dramatically, so they take place in a number of places. The 2nd kind of amendment happens on the top of Page 7. Right now the university system...for each final applicant, if we adopt the amendments, or employee in a specified position with the university system institution or it says for each student applying for or admitted to a specified program of study as designated by the chancellor. I thought this was pretty excessive...it's one thing if they're going to be hired for something, but that means the chancellor can designate any program of study and require all students taking social work or taking teaching preparation to get these background checks and they budgeted for 4000 student background checks or university system background checks a year...they meaning the Attorney General's office. The 2nd part of my amendment deletes the words "for each student applying for admitted to a specified program of study". Again, employees with the university system, if the chancellor wants those for whatever area they have them, that seems to one thing...but to take a class and be required to get a background check seems excessive to me....maybe I don't understand something that they had a reason for this. It's true the chancellor would mostly be reasonable about it, but on the whole, the chancellor could just say all teacher preps could need a background check and ½ the people who go through teacher prep don't end up teaching. **I'll move amendment 0204 on SB 2260**

Rep Carlson: I'll second it

Rep Monson: What is the difference in the appropriation now? If you're reducing the number of background checks, shouldn't the number of dollars go down?

Rep Glasheim: I think both the total income and the total expenses should come down. We chatted some with the AG about...is he going to run out & hire 5 people without having a real idea of how many of these are going to be paid for in advance. My sense is that they would wait

until we authorize 5 people out of the income out of the fees...he talked about incrementally ramping up as these come through...so it may be that we're giving him authority to spend more then he will need to spend...also to receive income more then he might receive.

Chairman Svedjan: But we're virtually doing that to with the approval of the FTEs

Rep Glasheim: We are approving the FTEs and theoretically, he could just hire them but I don't know where he'd pay for them.

Rep Ekstrom: Particularly with the University, the student background checks...did you consider the fact that they hire quite a number of work study students...would they be exempt from having to have background checks (*can't understand*) this sort of things that all universities do?

Rep Glasheim: The language that I take out only applies to students admitted to a specified course of study, as approved by the chancellor so I don't know what they do with work studies and neither my amendment nor the original bill effects the work studies...that would be employee, perhaps...it would be covered under the 1st part.

Chairman Svedjan: That would be my assumption, that it would be covered under the finalist part of the bill.

Rep Ekstrom: If those students that are employees, then they would be subject to background checks, correct?

Chairman Svedjan: Yes.

Rep Ekstrom: So then a \$30 fee on a student that's making not very much?

Chairman Svedjan: I can't explain that but my assumption was that in any hiring situation where a background check is necessary...if this would be one of them....the finalists would probably have to go through a background check.

Rep Carlson: There's no question why this bill is before us and it happens to do with the Valley City situation...whereas if you did deep enough in that situation you find that there was a background check requested and it sat on the desk and was never delivered to the right people. This bill is a reaction to what happened in the situation and it allowed anybody who wants to get in and get a background check can do it. This door is wide open...that's why Rep Guleson's question is good because I don't think anybody got left out that wanted to get in. We're going to address whether or not the right number of FTEs to handle this program are in his budget when do the final on that, but we need to know that we're approving the way this is going to be handled and the flow of the money and then we'll address how many people he needs to Rep Monson's question when we get into the final budget on the analysis of his people.

Rep Guleson: One of the ways we could approach the FTE, since it seems to be an area that they're just not certain what the level of activity will be and the need...you'll see it probably tomorrow or this afternoon when we work on the Ag Commission budget...we've added language that identifies a couple of potential FTEs that they would need in the meat inspector, but basically we say if the activity gets to the point where they need them, they need to come to the budget section for final authorization, so that may be 1 approach to this.

Rep Bellew: I still don't understand the general fund appropriation...did Rep Kemenich's amendment remove that or was that already in there.

Allen: If you approve these amendments, we'll need to do another set that will have the appropriation audited, because these are a separate set...2 amendments together.

Chairman Svedjan: These will be melded together.

Rep Skarphol: On the FN, #3, where it says...state fiscal effect detail and go to the paragraph that begins...Each criminal background check...and you read the last sentence that

says...Although the background check revenues do not cover the 2005-07 biennium cost, both the 2007-09 and 2009-11 are anticipated to exceed the costs...and I'm wondering why, if it's not covering the costs today, it's going to cover the costs in the future if there hasn't been change in the fee.

Allen: The Attorney General's office prepared the FN, but one possibility might be that they need to hire the individuals this biennium to prepare to receive them, but as I said earlier, they might not get all the requests for the background checks right away.

Chairman Svedjan: So the revenue won't match the start of expense?

Allen: Right, because they'll have to hire the people probably right away...or at least one of the individuals.

Chairman Svedjan: You'll probably look at that too when you finalize the AG budget. If no further discussion we'll take a roll call vote on a **motion to adopt 0204 to SB 2260**

VOICE VOTE Amendments Adopted

Rep Kemenich: I move a DO PASS on SB 2260 as amended 0203/0204

Rep Skarphol: I second it

Yes 24 No 0 Absent 0 Motion Carries Carrier Rep Kemenich

Date: 3/20/07

Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

House _____ Appropriations- Government Operations _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number 78110.

Action Taken Adopt Amendment by Voice Vote

Motion Made By SKARPHOL Seconded By Carlisle

Representatives	Yes	No	Representatives	Yes	No
Chairman Al Carlson			Vice Chairman Ron Carlisle		
Rep Keith Kempenich			Rep Bob Skarphol		
Rep Blair Thoreson			Rep Eliot Glassheim		
Rep Joe Kroeber			Rep Clark Williams		

Passed

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
remove money from bill (section 21)

(money will be put in AG's Budget)

Date: _____
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2260

House _____ Appropriations- Government Operations _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number 78110.

Action Taken Do Pass As Amended

Motion Made By Kempenich Seconded By SKARPHOL

Representatives	Yes	No	Representatives	Yes	No
Chairman Al Carlson	✓		Vice Chairman Ron Carlisle	✓	
Rep Keith Kempenich	✓		Rep Bob Skarphol	✓	
Rep Blair Thoreson	✓		Rep Eliot Glassheim	✓	
Rep Joe Kroeber	✓		Rep Clark Williams	✓	

Total Yes 8 No 0

Absent _____

Floor Assignment Kempenich

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

March 21, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

In lieu of the amendments adopted by the House as printed on pages 985 and 986 of the House Journal, Senate Bill No. 2260 is amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove ", officials.", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, overstrike the first "to" and insert immediately thereafter "who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 18, after "the" insert "department of" and overstrike "department"

Page 4, line 26, after "the" insert "department of" and overstrike "department"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "each applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, line 25, remove "The state board of dental examiners for initial and credential application for a"

Page 5, remove lines 26 through 28

Page 5, line 29, remove "p."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 22, replace "w." with "v."

Page 6, line 30, replace "x." with "w."

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction,", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for individuals seeking employment with the school or otherwise providing services to the school, if those individuals have unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and

5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 125 - Attorney General

HOUSE - This amendment includes the amendments as approved by the House Judiciary Committee except for the appropriation section which has been removed. Provisions of the bill are anticipated to result in additional general fund revenues of \$33,240 for the remainder of the 2005-07 biennium and \$618,120 for the 2007-09 biennium.

Date: 3/21/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2260

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 78110. 0203

Action Taken Adopt amendment 0203

Motion Made By Kempenich Seconded By Kroeber

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voie Vote - carries

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

In lieu of the amendments adopted by the House as printed on pages 985 and 986 of the House Journal, Senate Bill No. 2260 is amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 1, line 8, after the semicolon insert "to provide an appropriation; to provide an effective date;"

Page 3, line 6, overstrike "The agencies", remove ", officials," and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, overstrike the first "to" and insert immediately thereafter "who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, after "each" insert "final"

Page 4, line 18, after "The" insert "department of" and overstrike "department"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, after "each" insert "final"

Page 5, line 17, after "each" insert "final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "each final applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, line 25, remove "The state board of dental examiners for initial and credential application for a"

Page 5, remove lines 26 through 28

Page 5, line 29, remove "p."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 18, after the first "and" insert "final"

Page 6, line 19, after "or" insert "final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, after "and" insert "final"

Page 6, line 26, after "or" insert "final"

Page 6, line 30, replace "x." with "w." and after "each" insert "final"

Page 6, line 31, remove the second "or"

Page 7, line 1, remove "for each student applying for or admitted to a specified program of study."

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction.", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for individuals seeking employment with the school or otherwise providing services to the school, if those individuals have unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; and
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Page 19, after line 4, insert:

"SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$158,138, or so much of the funds as may be necessary, to the attorney general for the purpose of conducting state and nationwide criminal history record checks on behalf of the state department of health pursuant to section 12-60-24. The attorney general may hire an additional full-time equivalent position under this section.

SECTION 22. EFFECTIVE DATE. Section 21 of this Act becomes effective on the date the state health officer certifies to the secretary of state, the attorney general, and the legislative council that the federal government requires criminal history record checks on applicants for employment at long-term care facilities or providers who have access to patients."

Renumber accordingly

Date: 3/21/07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2260

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 78110. 0204

Action Taken Adopt amendment 0204

Motion Made By Glassheim Seconded By Carlson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kemperich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote - Carries

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

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Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove ", officials," and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

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Page 4, line 6, after "each" insert "final"

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Page 6, line 22, replace "w." with "v."

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Page 6, line 26, after "or" insert "final"

Page 6, line 30, replace "x." with "w." and after "each" insert "final"

Page 6, line 31, remove the second "or"

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Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction.", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

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2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 125 - Attorney General

HOUSE - This amendment includes the amendments as approved by the House Judiciary Committee except that provisions are added specifying that only final applicants are subject to background checks and provisions allowing background checks on university students and the appropriation are removed.

Date: 3/21/07
 Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2260

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number TBD

Action Taken Do Pass as amended by 0203/0204

Motion Made By Kempenich Seconded By Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gullekson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 24 No 0

Absent 0

Floor Assignment Kempenich

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

REPORT OF STANDING COMMITTEE

SB 2260, as amended, Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (24 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2260, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on pages 985 and 986 of the House Journal, Senate Bill No. 2260 is amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove "officials," and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

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Page 5, line 17, after "each" insert "final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "each final applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, line 25, remove "The state board of dental examiners for initial and credential application for a"

Page 5, remove lines 26 through 28

Page 5, line 29, remove "p."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 18, after the first "and" insert "final"

Page 6, line 19, after "or" insert "final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, after "and" insert "final"

Page 6, line 26, after "or" insert "final"

Page 6, line 30, replace "x." with "w." and after "each" insert "final"

Page 6, line 31, remove the second "or"

Page 7, line 1, remove "for each student applying for or admitted to a specified program of study."

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction,", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for individuals seeking employment with the school or otherwise providing services to the school, if those individuals have unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students

must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 125 - Attorney General

HOUSE - This amendment includes the amendments as approved by the House Judiciary Committee except that provisions are added specifying that only final applicants are subject to background checks and provisions allowing background checks on university students and the appropriation are removed.

2007 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2260

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2260

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 2, 2007

Recorder Job Number: 6308

Committee Clerk Signature *Mona L. Solby*

Minutes: Relating to criminal history records checks.

Sen. Lyson	Rep. Klemin
Sen. Grindberg	Rep. Wieland
Sen. Fiebiéger	Rep. Kroeber

Senator Lyson, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen. Lyson called on **Sen. Grindberg**.

Sen. Grindberg requested that the conference committee remove the language incorporated into the amendments starting at Page 19 line 4- Department of Corrections and Rehabilitation Facilities. **Rep. Klemin** seconded the motion. Discussion was the reasoning behind the change is in response to the leaders meeting with the ND Governor.

All members were in favor and the motion passes.

Senator Lyson Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 9, 2007

Recorder Job Number: 5846

Committee Clerk Signature *Mona L. Salby*

Minutes: Relating to criminal history record checks.

Sen. Lyson, Chairman **Rep. Carlisle**

Sen. Olafson **Rep. Carlson**

Sen. Fiebiger **Rep. Kroeber**

Senator Lyson, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen Lyson requested Rep. Ron Carlisle to review the amendment that the House did. He referred to the Attorney Generals budget having 5 people working on background checks.

One employee can do 2000 checks a year. He spoke of there workload and the funding process.

Sen. Lyson stated that his concerns were not the FTE or funding in the bill. He is concerned with the language in the bill.

Rep. Carlisle stated that if 20 people were applying for a job they only want to do the background check on the final five. Sen. Lyson asked how they determine the final number?

Rep. Carlisle stated that it would be up to the hiring committee to decide.

Rep. Carlson state that this is like any bill and the policy dictates the details. The committee discussed in detail the quantities of background checks that could be done and appropriations did not want a facility to have to spend all this money on candidates for a \$55 background

check. **Sen. Lyson** questioned the word "final" and they discussed how it appears several times in the bill. Rep. Carlson stated that this amendment was done in the House Judiciary and they were not part of that process.

Sen. Lyson stated that ND last murder happened from a student who came here on a scholarship and perhaps the state needs to help the colleges with. The bill started out as a simple background check for a person in Valley City and has turned into a free for all, how do we sort it all out!.

Rep. Carlisle requested that the policy committee come in and become part of the process our part is the fiscal impact of the bill and as long as that does not change we are satisfied.

Senator Lyson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 11, 2007

Recorder Job Number: 5919

Committee Clerk Signature

Mona R. Polby

Minutes: Relating to the criminal history records checks.

Sen. Lyson, Chairman

Rep. DeKrey

Sen. Olafson

Rep. Koppelman

Sen. Fiebiger

Rep. Kroeber

Senator Lyson, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen Lyson asked for a reviewed the amendment of the changes to the bill. Once the committee was all together reviewing the same version they continued. (meter 7:22) Rep. Kroeber stated the background check would effect all of the final applicants no matter how many had applied. They discussed how many do you actually want to check. Sen. Fiebiger used the language that the Bank of ND uses.

Rep. Koppelman stated that neither way state what you want it to do nor thought that this bill was optional and the authorization to do it only. Sen. Lyson replied that you have to be careful not to open it up to too many

Mr. Trenbeath, Attorney General's office was requested by the committee to assist with questions. He stated the major mandate is the authority for the organizations to do this. The only major mandate in the bill is for BCI to do criminal background checks on those people who are listed. There are two categories; sub section A; requiring them to do all applicants

and the named organization and the type of position, leaving the background check to the commissioner/director/board. You do not need to concern yourself with this they decide it in the end. It is clearer without the amendment. The A.G.'s office is o.k. with this and sense that they can cover the workload.

Rep. Koppelman stated back to **Mr. Treanbeath** what he already stated.

Rep. Kroeber stated that the wording change was done in appropriation out of concern of the dollar amount generated with too many checks being done.

Sen. Lyson made the statement that it is difficult to work on a bill that appropriations changes out of concern for the dollar amount but causing the policy to change.

The committee discussed possibilities on how to do this with the correct language. **Sen.**

Lyson had great concerns of background checks be in an office for all to review.

Rep. Koppelman stated that we a dictating what political subdivisions are to do.

Judy from the department reviewed for the committee what the Federal Regulations were on the time it takes to do a check and the keeping of background checks on employees not hire.

The committee discussed who they only want to do the background check on and **Sen. Lyson** put **Rep. Koppelman** and **Sen. Fiebiger** together to wordsmith an amendment with the A.G.'s office that would say what they were trying to achieve and bring it to the next conference committee.

Senator Lyson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 13, 2007

Recorder Job Number: 6043

Committee Clerk Signature *Mona L. Solberg*

Minutes: Relating to criminal history records checks.

Senator Lyson, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen Fiebiger reviewed his proposed changes in the form of an amendment for the committee starting with page 4, line 9 at final replace "each" with "any" and referred to line F and the Dept of Human Services uses the language from 50-11.06-08 and he continued with a review of the amendments stating that they were more "language" than sustentative.

Rep. Koppelman stated that in ND law we speak in the "singular" and most of the changes were reflective of this. He reviewed the current college processes; they are to protect students from self. If they are in a field that requires a background check and they can not pass it, to find out before they graduate. A business may require it of an intern and to protect the student body. Federal law stated that in any situation you can ask the student to make the request and a Federal background check can be done. **Sen. Lyson** and **Rep. Koppelman** spoke of the States "carring" of who or what gets background checks.

Sen. Fiebiger brought the amendment forth in discussion before making an actual amendment if there were any changes. All seemed good with the amendment.

Senator Lyson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: April 17, 2007

Recorder Job Number: 6074

Committee Clerk Signature *Mona R. Solbey*

Minutes: Relating to the history records checks.

Senator Nething, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen Fiebiger handed out the prepared amendment – Att. #1 for a final review based on **Rep.**

Koppelman and his work. The committee reviewed it line for line.

Sen. Fiebiger made the motion that the House recesses for its amendment and adopt the

Amendment – Att. #1 and **Rep. DeKray** seconded the motion. All members were in favor and

the motion passes.

Senator Lyson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260 Conference Committee**


Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: **April 21, 2007 Saturday 9:30 am**

Recorder Job Number: **6248**

Committee Clerk Signature



2260 to order

Members present:

Chairman Lyson, Sen. Stenehjem (replaced Olafson), Sen Fiebiger

Rep Klemin (replaced DeKrey), Rep. Koppelman, Rep Kroeber

Chair Lyson: Judiciary, before we goes into discussion, Sen Fiebiger has amendments.

Sen Fiebiger handed out amendments

Sen Fiebiger: The difference, the version with .0212, on amendment, it adds back in the language that was in the senate version that allows the higher-ed people to do the necessary checks on students and reverts back to the original language, found on page 2, page 6, line 30, there is a slight change where we insert the word "a final", the last version had taken out the language that had done that, in light of what's happened in Virginia and emails I've been receiving, it seemed to me it might be fruitful to have that discussion and ask to put that language back in. Rather than go to the floor and say we're comfortable with the way it is, I think it would be good, I would move the amendment.

Chair Lyson: We have an amendment, .0212

Rep Kroeber: Second

Sen Fiebiger: What we're doing is making changes at the bottom of page 6, lines 30-31 and the top of page 7, lines 1&2.

Chair Lyson: We've gotten some emails from higher-ed, what this information does it gives the colleges the higher education the right to have a record check done through the BCI because we have to by law, give them the authority to do a criminal record checks. That's pretty much all it does.

Sen Fiebiger: Initially, we had the lengthy discussions with the AG office and Mr. Seaworth from the University system, at the end of the day, the language that the House had come up with probably is ok, and subsequent events, hearing about Virginia, led me to rethink this, this is the purpose of putting this in front of this group, people have asked us to reconsider that, I would be more comfortable going back to senate version.

Rep Koppelman: Our subcommittee did give it diligent discussion in our committee, we talked at length why this was unnecessary, everything is in place to give them what they need without giving them blanket approval for the chancellor to run a background check on any student in any institution of higher education any time he sees fit, I think there are problems with that kind of authority. The House's position is that I don't think it is necessary at that point. I agree with the tragic events Virginia, but I really don't see the connection, to be honest.

Rep Klemin: I was still trying to go over the amendments, I need to know which ones you're talking about.

Sen Fiebiger: If you have the Senate bill 2260, version 0200, change at bottom of 6 and top of page 7, where it says.... *continues with reading the section 6:50m.*

The House version took out the last portion started on last line 31, page 6 where it says, "or the student applying for....." *continues*

Rep Koppelman: That's also the language the conference committee unanimously approved.

Sen Fiebiger: Yes, as a conference committee, and unanimously approved. We're essentially putting it back to the original language before it went to the House and before it was unanimously agreed to by the conference committee removing the language.

Rep Klemin: So we're?

Sen Fiebiger: We are removing the language so it is as it was.

Some discussion on previous conference committees.

Rep Koppelman: We have some conferees that were not part of the conference committee, so to bring everyone up to date, the subject brought up by Fiebiger, whether the chancellor of higher-ed system can order a background check on any student in school in ND, we felt there were a lot of issues, the board of higher-ed, does have reasons, but as we talked with them, they are covered in various ways. Student teachers, need to have background checks, they can require a background check when they enter the school. The question was raised, should we protect the student from his or herself? To be a pharmacist, they need to have a background check, if you tell them if they will have a criminal check to they get in, they are aware of it.

Chair Lyson: Don't you think they'll scan the ones they are suspect, don't we trust them?

Rep Koppelman: It his authority to get a FBI background check, if you have the scenario on the background check.

Chair Lyson: This is where, if the chancellor at that college (*Virginia*) could have done a check, maybe we wouldn't have had this situation.

Rep. Koppelman: I don't think this student had a criminal background.

Rep Klemin: As I read this, section 2, it would allow the chancellor to request a final background check for employment position, it doesn't mandate they do it, or set standards on

who they request or don't request, they would have a standard to consider. They're not going to request a check on all students.

Sen Fiebiger: I don't necessarily disagree, with response to Rep. Klemin's concerns, what functions as a cabinet that reports to the chancellor, there is a fairly involved process for discrimination and determination. That was one of the original problems we had when this was heard, how do you have the balance of the two? That was the question. It seems to make more sense to make more discretion to put back to the original version.

Rep Klemin: So you're saying, let's try this and if abused, change it back.

Rep Koppleman: Trying to put this language back into this bill is being based on national events, it is a "feel good" effort to do something. I don't think this individual had a criminal background. If you grant the chancellor this power, they have other ways to. We want the chancellor, if there is someone they don't trust, if you do that, you are opening up for liability. If someone did have a check, and something happened, now is the state or college liable because you did do a background check?

Sen Fiebiger: If we leave the language as it is without putting it back in, if we don't do it, then we face greater liability.

Rep Klemin: Are there other issues that the conference committee are concerned about besides this one? The amendments are there other issues?

Roll taken on Amendments provided by Sen. Fiebiger. 5-1 (nay R Koppleman) Passes

Chair Lyson: Any other amendments to 2260?

Sen Stenehjem: There may be more amendments by the end of the day, I don't know.

Chair Lyson: So we're saying we're not closing the hearing on 2260, we're holding it up?

Sen Stenehjem: That would be my vote.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260 Conference Committee**

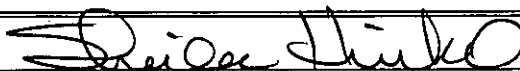
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: **April 21, 2007 Saturday, 1:30pm**

Recorder Job Number: **6250**

Committee Clerk Signature



Brought together to close out the session for the weekend. :

Members present:

Chairman Lyson, Sen Olafson, Sen. Fiebiger

Rep. Klemine, Rep. Wieland, Rep. Kroeber

Chair Lyson: If there is no other discussion, we would ask for a motion to

Rep Koppleman: I would make a motion to approve the conference report and adjourn, subject to the call of the chair.

Sen Fiebiger: Second the motion.

Rep Kroeber: So it's the way we last heard it, nothing new, nothing changed.

Rep Koppleman: All we're saying is, we don't have to hang around.

Chair Lyson: All in favor, say "aye" –

Vote unanimous "aye".

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 23, 2007

Recorder Job Number: 6276

Committee Clerk Signature *Maria Solbey*

Minutes: Relating to criminal history record checks.

Senator Lyson, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

Sen. Lyson	Rep. Klemin
Sen. Grindberg	Rep. Wieland
Sen. Fiebiger	Rep. Kroeber

Sen Lyson requested that **Sen. Grindberg** reviewed his amendments to the bill, stating that this ties together the prison budget bill to move forward to the next step. Wither it be the renovation of the structure and or the building of a structure. He reviewed the amendment (meter 1:00) and made the motion to move amendment .0213 and the motion was seconded by **Rep. Wieland**.

Sen. Fiebiger stated that the point of order according to joint rule 3015. That rule provides Conference Committee Section and he read the ruling. He stated that this amendments has nothing to do in this bill and it is a good bill as it is. This amendment is not in order and should be rejected.

Rep. Wieland stated that on page 19, line 5. they discussed this and he attached an emergency clause be added to the amend and this was seconded by **Sen. Grindberg**.

Sen. Fiebiger asked the chairman if as a point of order he would like a ruling as the appropriateness of the amendment. **Sen. Lyson** stated upon consultation the amendment was germane. He accepted the motion and the committee went into discussion.

Sen. Fiebiger stated (meter 7:06) he had great concerns with the constitutionality of delegating to the legislative council duties of the legislature. This coming in at the last minute is an end run to try to put something in the legislative council's hands that belongs in front of the entire legislature.

Rep. Kroeber reiterated what **Sen. Fiebiger's** statements and spoke of his concerns of doing more studies stating the 2002 SRT study, the 2004 Audit Report, SJI Criminal Justice Report, Last Interim Study. He spoke of Pam Sharps Building Study and the age of the buildings. He requested a recorded roll call vote.

Sen. Fiebiger questioned (meter 9:53) how the architectural survey will be funded.

Sen. Grindberg stated that there is \$250 thousand set up in the budget bill for this along with \$41 million for what other options chosen.

Rep. Wieland spoke of the interim committee and the lack of information or options the committee had access to. He spoke to (meter 10:20) his views of different buildings on the property. He was not in favor of remodeling an old facility and the delay being no longer than two years at that time things can be further addressed by the entire body.

Sen. Gindberg spoke (meter 12:00) of the tour process being the appropriation process in the budget bill and the projections from the warden in the next seven years having 1400 inmates are projected to be in the facility in the next seven years. This goes in line with the Midwest Prison expected population growth. Fundamentally if you believe that our prison population will grow, spending \$42 million of the tax payers money is not the long term answer. We need an all conclusive plan that involves staffing, efficiencies that equate with savings and costs and

construction of a new facility. The facility may stretch over 3-6 biennium's, to me the location is not important. I would like to see the MRCC coordinated with the entire activity. I look at this from a financial aspect. Spoke to a continuous issue if not done correctly with the long term in mind.

Rep. Kroeber referred to his earlier conversation, work opportunities, transitions centers and rehabilitation systems. He did not think that the growth would be larger then making the changes gradually. Spoke to an email sent to him about potential disrepair and safety issues.

Re. Klemin reviewed with the committee the process of the amendment (meter 18:41) including the master plan, staffing plan and cost benefit analysis in the three level concepts in a multi level process. **Sen. Grindberg** spoke of the time line with the emergency clause would allow a timeline to start in 07 and finalize in with a recommendation to the Governor 2008 for the process to start. They spoke of the many safety valves in place before action.

Rep. Wieland spoke of (meter 24:00) spoke to his concerns of the current facilities and currently the changes that need to be done and will not be. Spoke of MRCC and its functional change over time.

Sen. Fiebiger reiterated why this amendment is on this bill. **Sen. Grindberg** answered what he did before and referred to HB 1015>

The committee discussed the available dollars to do what, referred to the State Penitentiary Land Fund and how the potential of the other fund growths being able to cover a majority of the future changes.

The committee continued with the motion. All members except for **Sen. Fiebiger** and **Rep. Kroeber** and the motion still passé.

Sen. Fiebiger mad the motion to reject the amendment for his earlier reasons and **Rep. Kroeber** seconds the motion

Rep. Klemin objects, calling the motion mute and the chair rule the motion be out of order

Sen. Lyson allowed the motion to be called and the motion fails 2-4. **Sen. Fiebiger** and **Rep. Kroeber** in favor, rest of the committee against and the motion fails.

Rep. Klemin made the motion that the House recedes from the house amendment and adopts the amendments from April 21 (0212) and the additional amendments provided today. **Rep. Wieland** seconds the motion. All but **Sen. Fiebiger** and **Rep. Kroeber** were in favor of the motion and the motion passes.

Senator Lyson, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 24, 2007

Recorder Job Number: 6308

Committee Clerk Signature

Maria R. Salby

Minutes: Relating to criminal history records checks.

Sen. Lyson

Rep. Klemin

Sen. Grindberg

Rep. Wieland

Sen. Fiebieger

Rep. Kroeber

Senator Lyson, Chairman of the conference committee called the members to order. All

Senators and Representatives were present. The hearing opened with the following work:

Sen. Lyson called on **Sen. Grindberg**.

Sen. Grindberg requested that the conference committee remove the language incorporated into the amendments starting at Page 19 line 4- Department of Corrections and Rehabilitation Facilities. **Rep. Klemin** seconded the motion. Discussion was the reasoning behind the change is in response to the leaders meeting with the ND Governor.

All members were in favor and the motion passes.

Senator Lyson Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2260**

~~Senate~~ **Judiciary Committee**

Check here for Conference Committee

Hearing Date: April 24, 2007

Recorder Job Number: 6318

Committee Clerk Signature

Minutes: Relating to criminal history records checks.

Senator Lyson, Chairman called the Judiciary committee to order. All Senators and Representatives were present. The hearing opened with the following conference committee work:

Sen. Grindberg presented the committee with a proposed amendment – Att. #1 **Rep. Klemin**

Seconded the motion. Discussion followed: This will insure the integrity of the Legislative process. **Rep. Klemin** referred to another bill. **Rep. Kroeber** questioned why this language was not in the bill the money was in

Sen. Fiebiger stated again that this was not an appropriate amendment for the bill and **Sen. Lyson** ruled it germane. **Sen. Gindberg** stated that he will provide **Sen. Fiebiger** a copy of the ruling stating the process correct.

All members except for **Sen. Fiebiger** and **Rep. Kroeber** were in favor of the motion and the motion passes.

Senator Lyson, Chairman closed the hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove "officials", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, overstrike "each" and insert immediately thereafter "a final"

Page 4, line 18, after "The" insert "department of", overstrike "department", and overstrike "section"

Page 4, line 19, overstrike "50-11-06.8" and insert immediately thereafter "chapter 50-11" and overstrike "section 50-11.3-01" and insert immediately thereafter "chapter 50-11.3"

Page 4, line 20, overstrike "section 50-12-03.2" and insert immediately thereafter "chapter 50-12"

Page 4, line 22, replace "section" with "chapter"

Page 4, line 23, replace "50-11-06.8" with "50-11", replace "50-11.3-01" with "50-11.3", and replace "50-12-03.2" with "50-12"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 17, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "a final applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, remove lines 25 through 28

Page 5, line 29, replace "p." with "o."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 18, replace "applicants" with "a final applicant"

Page 6, line 19, after "or" insert "a final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, replace "applicants" with "a final applicant"

Page 6, line 26, after "or" insert "a final"

Page 6, line 30, replace "x." with "w." and replace "each" with "a final"

Page 6, line 31, remove the second "or"

Page 7, line 1, remove "for each student applying for or admitted to a specified program of study."

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction.", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant for ~~seeking~~ employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students.

For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Re-number accordingly

Date: 4-17-07
Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2260

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken House recede from its Amend + Adopt Amend
Att #1

Motion Made By Sen. Fiebiger Seconded By Rep. DeKrey

Senators	Yes	No	Representative	Yes	No
Sen. Lyson	✓		Rep. Carlisle DeKrey	✓	
Sen. Olafson	✓		Rep. Carlson Koppelman	✓	
Sen. Fiebiger	✓		Rep. Kroeber	✓	

Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. Fiebiger

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove "officials", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, overstrike "each" and insert immediately thereafter "a final"

Page 4, line 18, after "The" insert "department of", overstrike "department", and overstrike "section"

Page 4, line 19, overstrike "50-11-06.8" and insert immediately thereafter "chapter 50-11" and overstrike "section 50-11.3-01" and insert immediately thereafter "chapter 50-11.3"

Page 4, line 20, overstrike "section 50-12-03.2" and insert immediately thereafter "chapter 50-12"

Page 4, line 22, replace "section" with "chapter"

Page 4, line 23, replace "50-11-06.8" with "50-11", replace "50-11.3-01" with "50-11.3", and replace "50-12-03.2" with "50-12"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 17, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "a final applicant for or employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, remove lines 25 through 28

Page 5, line 29, replace "p." with "o."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 18, replace "applicants" with "a final applicant"

Page 6, line 19, after "or" insert "a final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, replace "applicants" with "a final applicant"

Page 6, line 26, after "or" insert "a final"

Page 6, line 30, replace "x." with "w." and replace "each" with "a final"

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction,", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant for seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or

the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Renumber accordingly

Date: SAT. 4-21-07 10:30 AM

Roll Call Vote: #1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2260

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken VOTE ON AMENDMENT.

Motion Made By _____ Seconded By _____

Senators	Att.	Yes	No	Senators	Att.	Yes	No
Sen Lyson	P	✓		Rep. Kleming (clemean)	P	✓	
Sen. Stenjehm replaced Olafson	P	✓		Senator Koppelman WIELAND	P		✓
Senator Fiebiger	P	✓		Senator Kroeber (krayber)	P	✓	

ALL PRESENT


Total Yes 5 No 1 (Koppelman)

Absent _____

Floor Assignment _____

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

April 23, 2007


4-23-07
lofs

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 1, line 8, after "checks" insert "; to provide for a correctional facility review committee"

Page 3, line 6, overstrike "The agencies", remove "officials", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, overstrike "each" and insert immediately thereafter "a final"

Page 4, line 18, after "The" insert "department of", overstrike "department", and overstrike "section"

Page 4, line 19, overstrike "50-11-06.8" and insert immediately thereafter "chapter 50-11" and overstrike "section 50-11.3-01" and insert immediately thereafter "chapter 50-11.3"

Page 4, line 20, overstrike "section 50-12-03.2" and insert immediately thereafter "chapter 50-12"

Page 4, line 22, overstrike "sections" and insert immediately thereafter "chapters" and replace "section" with "chapter"

Page 4, line 23, replace "50-11-06.8" with "50-11", replace "50-11.3-01" with "50-11.3", and replace "50-12-03.2" with "50-12"

Page 4, line 25, replace "sections" with "chapters"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 17, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "a final applicant for or an employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, remove lines 25 through 28

Page 5, line 29, replace "p." with "o."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u.", replace the first underscored comma with "and", and remove the second underscored comma

Page 6, line 18, replace "applicants" with "a final applicant"

Page 6, line 19, after "or" insert "a final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, replace "all agents, employees." with "each agent and employee" and replace "applicants" with "a final applicant"

Page 6, line 24, replace "have" with "has"

Page 6, line 25, replace "exercise" with "exercises"

Page 6, line 26, after "or" insert "a final"

Page 6, line 30, replace "x." with "w." and replace "each" with "a final"

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction.", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant for seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Page 19, after line 4, insert:

"SECTION 21. CORRECTIONAL FACILITY REVIEW COMMITTEE - MEMBERSHIP - DUTIES - RECOMMENDATIONS.

1. During the 2007-08 interim, the legislative council shall appoint a correctional facility review committee. The membership of the committee must include six members of the legislative assembly selected by the legislative council. The membership of the committee must include:
 - a. Three members of the house of representatives, two of whom must represent the majority faction of the house of representatives and one

4045

of whom must represent the minority faction of the house of representatives; and

- b. Three members of the senate, two of whom must represent the majority faction of the senate and one of whom must represent the minority faction of the senate.
2. The legislative council chairman shall designate the committee chairman and vice chairman.
3. The committee shall operate according to the statutes and procedures governing the operation of other legislative council interim committees.
4. The committee shall engage consultant and architectural services, subject to legislative council approval, for the development of the following three correctional facility concepts:
 - a. The construction of a new correctional facility on the existing state penitentiary site;
 - b. The construction of a new correctional facility at a site other than the state penitentiary site; and
 - c. The remodeling of the existing state penitentiary facility.
5. Each of the three correctional facility concepts developed by the consultant and architect must:
 - a. Include a master plan, staffing plan, and a cost-benefit analysis;
 - b. Be based upon housing a population of between nine hundred and one thousand inmates;
 - c. Include options for expansion;
 - d. Take into consideration the transfer of the inmates at the Missouri River correctional center to the new or remodeled facility; and
 - e. Take into consideration the facility and staffing needs of the James River correctional center.
6. In developing the concepts, the committee shall seek the input of the department of corrections and rehabilitation.
7. Before June 1, 2008, the committee shall select one of the three concepts and recommend the selected concept to the legislative council.
8. The legislative council shall consider the recommendation and approve or reject the recommendation. If approved, the legislative council shall forward the recommendation to the governor. The governor may:
 - a. Accept the recommendation and submit the recommendation to the emergency commission and the budget section of the legislative council for approval;
 - b. Call a special session of the legislative assembly to address the correctional facility issue; or
 - c. Defer any further action on the issue to the sixty-first legislative assembly.

SofS

9. Notwithstanding North Dakota Century Code section 54-23.3-04, the director of the department of corrections and rehabilitation may not advertise for bids or issue a request for qualifications for a construction manager for construction of a new correctional facility or remodeling of the existing state penitentiary until the recommendation is accepted by the governor and approved by the emergency commission and the budget section."

Page 19, line 5, remove "and" and after "18" insert ", and 21"

Renumber accordingly

April 23, 2007

93
4-24-07
1043

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 3, line 6, overstrike "The agencies", remove ", officials," and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, overstrike "each" and insert immediately thereafter "a final"

Page 4, line 18, after "The" insert "department of", overstrike "department", and overstrike "section"

Page 4, line 19, overstrike "50-11-06.8" and insert immediately thereafter "chapter 50-11" and overstrike "section 50-11.3-01" and insert immediately thereafter "chapter 50-11.3"

Page 4, line 20, overstrike "section 50-12-03.2" and insert immediately thereafter "chapter 50-12"

Page 4, line 22, overstrike "sections" and insert immediately thereafter "chapters" and replace "section" with "chapter"

Page 4, line 23, replace "50-11-06.8" with "50-11", replace "50-11.3-01" with "50-11.3", and replace "50-12-03.2" with "50-12"

Page 4, line 25, replace "sections" with "chapters"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 17, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "a final applicant for or an employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, remove lines 25 through 28

Page 5, line 29, replace "p." with "o."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u.", replace the first underscored comma with "and", and remove the second underscored comma

Page 6, line 18, replace "applicants" with "a final applicant"

Page 6, line 19, after "or" insert "a final"

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Page 6, line 23, replace "all agents, employees," with "each agent and employee" and replace "applicants" with "a final applicant"

Page 6, line 24, replace "have" with "has"

Page 6, line 25, replace "exercise" with "exercises"

Page 6, line 26, after "or" insert "a final"

Page 6, line 30, replace "x." with "w." and replace "each" with "a final"

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction,", and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

3 of 3

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

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1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Renumber accordingly

Date: MON. 4-23-07

Roll Call Vote : 9:30AM

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2260

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By _____ Seconded By _____

Chair	Senators	Yes	No	Senators	Yes	No
Sen Lyson		✓		Rep. Klemine (clemean)	✓	✓
Sen. Stenjehm replaced Olafson		✓		Senator Koppelman	✓	✓
<u>SEN Grindberg</u>		✓		<u>REP WIELAND</u>	✓	✓
Senator Fiebiger		✓	✓	Senator Kroeber (krayber)	✓	✓
				<u>REP</u>		

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

JS
4-24-07
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 1, line 8, after "checks" insert "; to provide for limitations on correctional facility construction or remodeling; to provide an expiration date"

Page 3, line 6, overstrike "The agencies", remove ", officials,", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

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Page 11, remove lines 1 through 13

Page 19, after line 4, insert:

"SECTION 21. DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES. Notwithstanding North Dakota Century Code section 54-23.3-04, the director of the department of corrections and rehabilitation may not advertise for bids or issue a request for qualifications for a construction manager for construction of a new correctional facility or remodeling of the existing state penitentiary until the concept is authorized by the emergency commission and approved by the budget section.

SECTION 22. EXPIRATION DATE. Section 21 of this Act is effective through June 30, 2009, and after that date is ineffective."

Renumber accordingly

Date: 4-24-07
Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2260

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken House recede from House Amend + Amend-Att #1

Motion Made By Sen. Grindberg Seconded By Rep. Klemin

Senators	Yes	No	Representative	Yes	No
Sen. Lyson	✓		Rep. Klemin	✓	
Sen. Grindberg	✓		Rep. Wieland	✓	
Sen. Fiebiger		✓	Sen. Kroeber		✓

Total (Yes) 4 No 2

Absent _____

Floor Assignment _____

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

REPORT OF CONFERENCE COMMITTEE

SB 2260: Your conference committee (Sens. Lyson, Grindberg, Fiebiger and Reps. Klemin, Wieland, Kroeber) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1226-1228, adopt amendments as follows, and place SB 2260 on the Seventh order:

That the House recede from its amendments as printed on pages 1078-1080 of the Senate Journal and pages 1226-1228 of the House Journal and that Senate Bill No. 2260 be amended as follows:

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 1, line 5, after the third comma insert "15.1-06-06,"

Page 1, line 8, after "checks" insert "; to provide for limitations on correctional facility construction or remodeling; to provide an expiration date"

Page 3, line 6, overstrike "The agencies", remove "officials", and overstrike "and entities named in subsection 2 shall require each" and insert immediately thereafter "Each"

Page 3, line 7, remove "or name change" and overstrike the first "to" and insert immediately thereafter "or name change who is subject to a criminal history record check under subsection 2 shall"

Page 4, line 6, overstrike "each" and insert immediately thereafter "a final"

Page 4, line 18, after "The" insert "department of", overstrike "department", and overstrike "section"

Page 4, line 19, overstrike "50-11-06.8" and insert immediately thereafter "chapter 50-11" and overstrike "section 50-11.3-01" and insert immediately thereafter "chapter 50-11.3"

Page 4, line 20, overstrike "section 50-12-03.2" and insert immediately thereafter "chapter 50-12"

Page 4, line 22, overstrike "sections" and insert immediately thereafter "chapters" and replace "section" with "chapter"

Page 4, line 23, replace "50-11-06.8" with "50-11", replace "50-11.3-01" with "50-11.3", and replace "50-12-03.2" with "50-12"

Page 4, line 25, replace "sections" with "chapters"

Page 4, line 26, after "The" insert "department of" and overstrike "department"

Page 5, line 15, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 17, overstrike "each" and insert immediately thereafter "a final"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "a final applicant for or an employee in a specified occupation with the department"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or" and overstrike "state"

Page 5, line 23, overstrike "of health who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "; or, when requested by the department, an applicant for registration, certification, or licensure by the department"

Page 5, remove lines 25 through 28

Page 5, line 29, replace "p." with "o."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 12, after "or" insert "final"

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u.", replace the first underscored comma with "and", and remove the second underscored comma

Page 6, line 18, replace "applicants" with "a final applicant"

Page 6, line 19, after "or" insert "a final"

Page 6, line 22, replace "w." with "v."

Page 6, line 23, replace "all agents, employees," with "each agent and employee" and replace "applicants" with "a final applicant"

Page 6, line 24, replace "have" with "has"

Page 6, line 25, replace "exercise" with "exercises"

Page 6, line 26, after "or" insert "a final"

Page 6, line 30, replace "x." with "w." and replace "each" with "a final"

Page 7, line 3, replace "y." with "x.", after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the superintendent of public instruction," and replace "or individuals seeking" with "designated by the governing board or nonpublic school. The governing board or the nonpublic school is"

Page 7, remove lines 4 through 7

Page 7, line 8, remove "individuals must be" and remove the second "for"

Page 7, after line 9, insert:

"y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check."

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Page 11, remove lines 1 through 13

Page 19, after line 4, insert:

"SECTION 21. DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES. Notwithstanding North Dakota Century Code section 54-23.3-04, the director of the department of corrections and rehabilitation may not advertise for bids or issue a request for qualifications for a construction manager for construction of a new correctional facility or remodeling of the existing state penitentiary until the concept is authorized by the emergency commission and approved by the budget section.

SECTION 22. EXPIRATION DATE. Section 21 of this Act is effective through June 30, 2009, and after that date is ineffective."

Renumber accordingly

SB 2260 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2260

AA: #1

1-23-07

January 23, 2007

Senator David Nething, Chairperson
Senate Judiciary Committee
Senate Bill 2260
Testimony - Senator Larry Robinson

Mr. Chairperson and member of the committee. I appear before you today on behalf of Senate Bill 2260. This bill is a result of a tragic incident in my community involving the death of Mindy Morgenstern this past September.

Mr. Chairperson and members of the committee. I knew Mindy Morgenstern. She lived in our community and was a student at our university. She was a very special young lady. Following her tragic and untimely death, we found that there is considerable confusion regarding the issue of background checks across our state.

Mr. Chairperson and members of the committee, the bill before you deals with the important issues of background checks and name changes. The bill broadens the scope of background checks for a host of professions in our state. This is an issue of public safety. North Dakota cannot and will not tolerate another hideous incident like the one we recently witnessed in Valley City. This bill is long overdue. The bill will not only provide better security for law enforcement officials and the citizens of North Dakota, but it will also provide the peace of mind that comes with increased security.

There are other sponsors of the bill with us to testify in support of 2260. Additionally, we have with us representatives of the Attorney General's Office who will walk you through the bill and explain how this bill will work. I would like to take this opportunity to thank the Attorney General and his staff for all of their work and cooperation in the drafting of this important piece of legislation.

Thank you Mr. Chairperson and members of the committee. I urge your support of Senate Bill 2260.

AH #Za

1-23-07

Same given to Senate Approps and to N. Dak. Approps

Testimony on SB 2260
Judy Volk
Information Services Manager, BCI
January 23, 2007

Mr. Chairman and members of the committee, for the record my name is Judy Volk and I am the Information Services Manager at the Bureau of Criminal Investigation. One of my responsibilities is to supervise the criminal history records section. I have been asked by Attorney General Stenehjem to briefly discuss the criminal history record check process as it relates to Senate Bill 2260.

There are two different record checks required for entities covered in SB 2260. A criminal history record check for the state of North Dakota and a fingerprint based record check submitted to the FBI.

We have prepared a flow chart for your use to summarize the information and I will briefly summarize each type of record check:

North Dakota record check:

A state of North Dakota check is a name based record check. The law currently requires that we match the name and two other identifiers before we may release a record to the general public. Those two other identifiers are most often the date of birth and social security number, but fingerprints may be submitted as well.

If the person is not in our criminal history record database, we send a letter indicating that no information is available because no information exists or dissemination is prohibited. Dissemination may be prohibited because existing records relate to dismissed charges that are more than three years old.

If we get a "possible match" - where some of the identifiers match and others do not - we do follow-up. We check the source documents for the information in our criminal history record system, we phone the person who filled out the request form to see if they made a mistake, and we will phone the agency that submitted the arrest card and verify whether they may have made an error.

If we get a "match," we run the criminal history rap sheet and then review the rap sheet. Information that cannot be released to the public is redacted. We also do follow-up on any missing disposition information by phoning the state's attorney's office or the court to get information. Oftentimes, that information is not readily available.

The necessary follow-up is the part of this process that takes a great deal of time.

National (FBI) record check:

The other record check that is conducted is a fingerprint based record check submitted to the FBI. State or federal law must be in place to allow access to the FBI database for a particular purpose. SB 2260 would allow access to the FBI database for many new entities.

First we must enter demographic information from the fingerprint card and then scan the fingerprints for submission. The information and fingerprints are submitted electronically

to the FBI. The FBI turnaround time is generally 24 hours or less. An FBI search is based on the fingerprints rather than the name.

The electronic responses, which are similar to an e-mail, come back from the FBI and are of three types, each requiring a different amount of time to process.

1. **An identification** – meaning a fingerprint match was made - will result in a rap sheet from the FBI. If any information from North Dakota is on that rap sheet we review to ensure accuracy and follow-up with the FBI, if necessary. This rap sheet will be forwarded to the requesting agency along with the state of North Dakota record check results. If the response from the FBI indicates that there is a warrant entered into the National Crime Information Center (NCIC) for the individual, we follow up with the originating law enforcement agency (often in another state) to find out whether the warrant is still active and to notify them regarding the warrant hit.
2. **A non-identification** results in a document indicating that no match was made. This document will be forwarded to the requesting agency along with the state of North Dakota record check results.
3. **Rejection** - sometimes, the fingerprints are rejected because they were not of sufficient quality to determine whether a record exists for the individual. If the prints are rejected, we notify the requesting agency and ask for another set of fingerprints. The second record check is processed by the FBI at no cost.

Other time involved in each of these processes includes the documentation of financials – recording check numbers and receipt numbers, dealing with the monthly FBI billing process, and filing, etc.

Att # 26
1-23-07

CRIMINAL HISTORY RECORD CHECK REQUESTS

Compile arrest, prosecution, and disposition information from local law enforcement and state's attorneys. Enter records into criminal history system.

Receive record request paperwork; stamp received date. Financials – checks or IDB – record check numbers and amounts on each request. Forward information to Information Processing Section for deposit.

Make sure all required information is available – NAME, DOB, SSN, ensure fingerprint quality – proper payment, all checks made payable to the proper agency (not all available – send back or phone).

NORTH DAKOTA CHECKS

Check demographics
No match – non-criminal letter

Possible match - i.e., one demographic does not match but others do – check card, call to verify with submitting agency, call arresting agency to ensure that data was correct. Results in no match or match.

If no match, run non-criminal letter

Known match – If match, run rap, review rap to ensure all information is releasable to the public, follow up on missing dispositions, possible duplicate arrest cards, data entry errors. Edit any text as necessary.

Receive receipt number information from Information Processing regarding the daily deposit. Record receipt number on each request form. Enter receipt number information into criminal history record system.

FBI – FINGERPRINT BASED RECORD CHECKS

Choose the better quality of the 2 sets of fingerprints submitted. Scan fingerprint card and enter demographic information into FITS. Submit to FBI. Record FBI tracking number. Stamp date submitted on each card. Wait for response (response from FBI generally takes 24 hours or less).

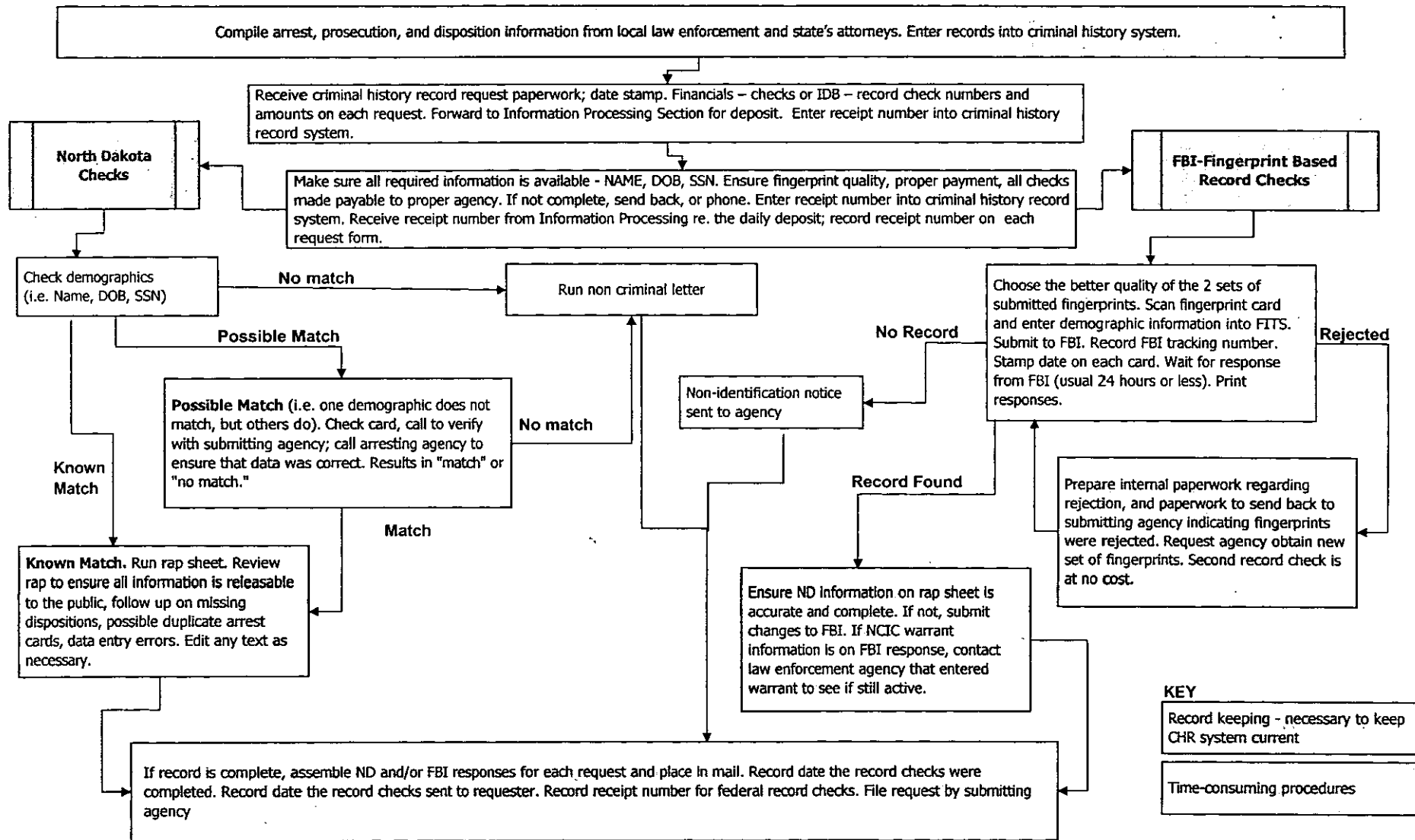
Response received from FBI. Print responses. If rejected, prepare internal paperwork regarding rejection and paperwork to send back to submitting agency indicating that fingerprints were rejected. Request a new set of prints. Second record check is at no cost.

If response is received indicating that a record was found ensure that ND information on rap sheet is accurate and complete. If incomplete or inaccurate, submit changes to FBI.

If NCIC warrant information is on FBI response, contact law enforcement agency that entered warrant to see if still active.

If record is complete, assemble ND and FBI responses for each request and place in mail. Record date record checks were completed. Record date record checks were sent to the requestor. Record receipt number for federal record checks. File requests by submitting agency.

Criminal History Record Check Requests



SB 2260
Senate Judiciary
January 23, 2007

Att # 3
1-23-07

Some
Given to
House
Judiciary

Mr. Chairman, members of the committee. My name is Ryan Bernstein, and I am Legal Counsel for the Governor.

I am here to testify in support of Senate Bill 2260. The Governor would like to thank Attorney General Stenehjem and Senators Robinson, Christmann, and Fischer and Representatives Koppelman, Kreidt, and Mueller for their work in helping bring this important piece of legislation to you today.

As a State, we tragically learned of the necessity and importance of this legislation. This bill requires more extensive background checks for government employees in security positions as well as for those who have access to sensitive personal information.

The State must ensure those that have keys to the lives of others, whether it is our citizens' personal or financial security, are trustworthy and are who they claim.

This includes, among others, dentists, nurses, pharmacists, social workers, and foster care givers, along with correctional facility and information technology employees.

This bill not only helps protect the most vulnerable persons, but it helps build upon our commitment to make this state a safe place to live, work, and to raise a family.

On behalf of the Governor, I urge the committee vote due pass on this bill.

Mr. Chairman, members of the committee, thank you for your time.



AA # 4
1-23-07

NORTH DAKOTA BOARD OF NURSING

919 S 7th St., Suite 504, Bismarck, ND 58504-5881
Telephone: (701) 328-9777 Fax: (701) 328-9785
Web Site Address: <http://www.ndbon.org>

Workplace Impairment Program: (701) 328-9783

Senate Judiciary Committee

Constance B. Kalanek PhD., RN
Executive Director
North Dakota Board of Nursing

*Same
given
to
Howe*

Chairman Nething and members of the Committee, thank you for the opportunity to provide information regarding the SB 2260 related to granting the authority to implement a Criminal Background Check as a licensure requirement. The Board currently licenses approximately: RNs 9000; LPN 3500; APRN 700; UAPs 2300; Medication Assistants 1400.

The Board of Nursing supports SB 2260. This bill grants authority for the North Dakota Board of Nursing to conduct criminal background checks as a condition for licensure, registration and during the course of a disciplinary investigation.

The reasons for conducting criminal background checks on nurses are twofold. First of all, nurses work with patients throughout the whole spectrum of health settings. Nursing care is often of an intimate physical nature and allows nurses to have access to patient's personal property and loved ones in a way that is not available in any business or social relationship or to the public. The nursing profession has earned the public's trust and the Board of Nursing has a responsibility to exclude individuals from licensure who pose a risk to the public's health and safety. One means of protecting the public is to look at the past behavior of individuals with criminal histories, to examine the nature of that history and to make informed decisions about who should be granted the privilege to practice nursing in this state.

One means of predicting future behavior is to look at past behavior. The current system utilized by the Board is a system of self disclosure by new applicants. Applicants are asked a series of questions regarding past criminal behavior on their applications and sign an affidavit that the responses provided are true and correct. Currently there is not a process to verify the truthfulness of the responses. The Board of Nursing believes that we could offer better public protection if a criminal background check was conducted in addition to the current system of self disclosure. The Board anticipates conducting approximately 1300 Criminal Background Checks for nurses licensed by examination, endorsement and reactivation each year and 1100 checks for initial unlicensed assistive persons and medication assistants per year.

The second reason for the necessity of criminal background checks has to do with the Nurse Licensure Compact that ND has enacted along with 23 other states in the country. When the Board of Nursing entered into the Nurse licensure Compact, it was with the understanding that criminal background checks were a uniform core requirement for all states participating in the compact. In order for our continued participation in the Nurse Licensure Compact, we will need to require criminal background checks as a condition for licensure as all other compact states are required to do.

The Board of Nursing supports SB 2260. The Criminal Background Check legislation will help us to maintain the excellent reputation of nursing by assisting us in determining that those who are licensed or registered are worthy of the public's trust.

Thank you for the opportunity to testify. I am open to questions.

AH #5
1-23-07

TESTIMONY ON SB 2260
SENATE Judiciary COMMITTEE
Tuesday, January 23, 2007
By Dale Patrick, Assistant Director
328-1644
Department of Public Instruction

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to address your committee.

My name is Dale Patrick representing the Department of Public Instruction in support of Senate Bill 2260. I manage several US Department of Education grants that serve children and families from birth through high school and beyond. These programs support services to individuals in a school setting and can involve persons who are not licensed Professional Educators, but persons who serve in the capacity of Tutors in the After School program, Cooks, Janitors, Administrative Assistants, and others who supervise children in numerous activities. It is vitally important to be assured that individuals that have access to our children do not have a criminal background history.

Almost 2 years ago, I became aware that there was a person working in one of the programs that I oversee who had just such a background history. I made several attempts to have the background of this person checked, but

was told that the Department did not have Statutory Authority to secure that information. Upon several attempts and with significant difficulty, I was finally able to determine that indeed the person in question did have a history of sexual abuse and molestation on the Federal level. It was only at that time that the person in question was removed from the program.

The Department of Public Instruction has a number of Assurances that Grantees must sign and adhere to for compliance with their grants. One of those assurances is that they "Will conduct background checks including fingerprinting of all personnel (paid or volunteer) who will have direct contact/interaction with students involved in the program. NOTE: Certified teachers who hold a valid North Dakota Educators License and have completed the background check and fingerprinting as a requirement at licensure are exempt." Many of these Grantees have completed fingerprint cards on file, but are unable to submit them for analysis because there is no Statutory Authority for them to be conducting these checks. There is a huge liability involved for all involved if we continue to not do those things necessary to protect our young people.

I respectfully request your favorable consideration of Senate Bill 2260.

ATT #6
1-23-07

TESTIMONY BY JO ZSCHOMLER, DIRECTOR

OMB Risk Management Division

Senate Judiciary

Senate Bill 2260

January 23, 2006

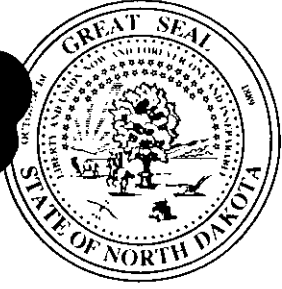
same given to House

Mr. Chairman, and members of Senate Judiciary, my name is Jo Zschomler. I am the Director of the Risk Management Division of OMB. I appear today in support of Senate Bill 2260.

Liability coverage for the state of North Dakota, its agencies and employees is provided by the Risk Management Fund. The State Tort Claims Act, N.D.C.C. ch. 32-12.2, enacted by the 1995 Legislature, governs the administration of the Fund. The day-to-day activities of the Risk Management Division include administering tort claims and lawsuits filed against the State and state employees, providing for the defense of the State or an employee of the State, and providing loss control services.

Identity theft has been identified as one of the fastest growing crimes of our time and, as there may not be an opportunity to recover from the perpetrator, victims look to the perpetrator's employer for recovery based on a failure to protect personal information. Some experts report that employment records are the primary source of stolen personal information. To assist the State to deal with this issue, Section 4 of this bill, on page 6, line 15, authorizes the director of the Office of Management and Budget to request a criminal history record check for individuals who have access to personal information in the State system. It is intended criminal background checks will be conducted on all new hires with this type of access.

Att #7
1-23-07



North Dakota Real Estate Commission

200 E Main Ave., Suite 204 • PO Box 727 • Bismarck, ND 58502-0727
Phone 701-328-9749 • Fax 701-328-9750

Senate Bill 2260

Members

Testimony before the Senate Judiciary Committee
January 23, 2007

Chair
Jerry Schlosser
Bismarck

Vice Chair
Diane R. Louser
Minot

Roger M. Cymbaluk
Williston

Kris Sheridan
Fargo

Jerome C. Youngberg
Grand Forks

Patricia M. Jergenson
Secretary Treasurer

By: Pat Jergenson, Secretary Treasurer
North Dakota Real Estate Commission

Same given to Human Judiciary

Mr. Chairman and members of the Senate Judiciary Committee;

My name is Pat Jergenson and I am the Secretary Treasurer for the North Dakota Real Estate Commission.

Page 6 lines 5-7 and page 10 Section 10, lines 24 – 30 include the real estate commission in this bill. One of the Commission's responsibilities is to ensure that the interests of the public who use the services of real estate licensees are adequately protected. One of the reasons we asked to be included in this bill is because we have seen an increase in the number of applicants who answer on the application that they have had a misdemeanor, felony, judgment, or bankruptcy. An affirmative answer triggers a state background check. However our concern is those who may not answer honestly and with our mobile society national background checks would be more effective. Real estate licensees have access not only to an enormous amount of personal information regarding their clients but to any property that is on the market. Passage of this bill would allow us to take that extra step to do our part to protect the citizens of North Dakota.

We ask your favorable consideration of Senate Bill 2260.
Thank you.

AH #8
1-23-07

1-23-2007

TESTIMONY FOR SENATE BILL NO. 2260

Senate Judiciary Committee

Testimony of Robert J. Entringer, Assistant Commissioner, Department of Financial Institutions in support of Senate Bill No. 2260

Chairman Nething and members of the Senate Judiciary Committee, my name is Bob Entringer, Assistant Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify in support of the Department of Financial Institutions inclusion in Sections 3 and 21 of Senate Bill No. 2260.

Mr. Chairman and members of the Committee, the Department of Financial Institutions requested to be included in Senate Bill No. 2260 and requested an emergency clause because presently we are required to do criminal background checks on some of the principal shareholders and managers included in an application for a license with the department. Currently the only way the department has to check the criminal background is to contact the Bureau of Criminal Investigation or its counterpart for out-of-state applicants. What this information gives us is ONLY state convictions so if an applicant is convicted of a federal crime we currently will not know. This bill will allow us to find out about federal convictions as well as enable the department to act more timely on applications of out-

of-state entities. In addition we are asking that the Commissioner be allowed to designate the employees of the agency which must submit to criminal background checks. Currently we do get authorization from the individual job applicants to conduct statewide criminal background checks but again, this only informs us about state convictions, not federal. The department's bank, credit union and consumer examiners have access to very sensitive information and it is our job to ensure these individuals have not been previously convicted of a crime involving breach of trust or fiduciary duty.

Mr. Chairman and members of the Committee, I would be happy to answer any questions that you may have.

Thank you.

Att #9
1-23-07

SB 2260 TESTIMONY
ND BOARD OF SOCIAL WORK EXAMINERS
1-23-07

same given to House

Mr. Chairman and members of the Committee, my name is Tom Tupa, I am representing the ND BSWE and speaking in favor of SB 2260.

Professional regulatory boards have increasingly been looking at requiring license applicants to go through the background check process as part of the licensing requirements. The ND BSWE, in recent months, considered proposing its own bill to cover the profession of Social Work.

Since the AG proposed a more inclusive bill, the ND BSWE decided to be included in the more encompassing bill rather than introduce its own bill.

In Section 12, page 11, of the bill, you will see in sub-section 1 the criminal background check authority. But, in sub-section 2 the BSWE goes on to include a "child abuse information index check". The Board felt it was important that the applicant's background be checked for child abuse and/or complaint charges as well. You will see also the information gathered from that index check is confidential and closed to the public.

Mr. Chairman and members of the Committee, the Board is strongly in favor of the bill and encourages a "do pass" on SB 2260.

I will try to answer any questions.

Att # 10

1-23-07

Testimony
Senate Bill 2260 – Judiciary
Senator D. Nething, Chairman
January 23, 2007

Chairman Nething, members of the Judiciary Committee, I am Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners (NDSBDE). I appear before you to speak in favor of SB 2260.

The NDSBDE has adopted policy and supports legislation that improves the board's oversight process and promotes more effective regulation of licensed dentists and dental hygienists. Many boards conduct professional records search for initial licensure and ask candidates about their mental and physical fitness to safely practice the profession. Many states have drafted regulations to extend this authority initiative to address an increasingly more critical component of licensure: the criminal background check. The issue here is not whether someone with a criminal past should be disqualified from all employment. Those who have been punished for breaking our laws should have every reasonable opportunity to progress toward a normal, law-abiding life. But when there is a relationship between the employee's criminal history and licensure, boards should be allowed to make informed decisions.

The NDSBDE is permitted by law to inquire if an applicant has ever been convicted of a crime, permitted to require a formal statement on a written application to this effect, permitted to deny license if the board determines the listed criminal conviction has a direct bearing upon an individual's ability to serve the public as a dentist, or that following

conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. But with selected exceptions, the NDSBDE has limited opportunity to determining whether the statement the applicant has given is the truth, or is partial truth, or is a lie.

I ask for your support for SB 2260 which would provide a process that allows broader access to maintained criminal history information, with it's definitive goal, being that of protecting the public.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

Page 1, line 3, remove "a new subsection to section 43-28-06,"

Page 5, line 25, remove "The state board of dental examiners for initial and credential application for a"

Page 5, remove lines 26 through 28

Page 5, line 29, remove "p."

Page 6, line 1, replace "q." with "p."

Page 6, line 5, replace "r." with "q."

Page 6, line 8, replace "s." with "r."

Page 6, line 11, replace "t." with "s."

Page 6, line 15, replace "u." with "t."

Page 6, line 17, replace "v." with "u."

Page 6, line 22, replace "w." with "v."

Page 6, line 30, replace "x." with "w."

Page 7, line 3, replace "y." with "x."

Page 7, line 10, replace "z." with "y."

Page 7, line 13, replace "aa." with "z."

Page 11, remove lines 1 through 13

Page 19, line 5, after "3," insert "12," after "16," insert "and", and remove ", and 18"

Re-number accordingly

Att #11
1-23-07

Testimony
Senate Bill 2260 – Department of Human Services
Senate Judiciary Committee
Senator Dave Nething, Chairman
January 23, 2007

*Same
given to
House
Judiciary*

Chairman Nething, members of the Senate Judiciary Committee, I am Tara Lea Muhlhauser, Deputy Director of the Children and Family Services Division and Program Administrator for Child Protective Services, of the Department of Human Services. I am here today to provide you with an overview of Senate Bill 2260 as it relates to the Department of Human Services. The Department worked collaboratively with the Office of the Attorney General on this bill, and we offer our support.

Each year, the Children and Family Services Division, through our working relationship with the North Dakota Bureau of Criminal Investigation, conducts approximately 1800 background checks for foster parents, proposed guardians for children, residential facility staff, adoptive parents, and more recently, kinship or relative care providers for children. The Children and Family Services Division provides funding for these checks so as not to pass the cost to providers of care. Background checks are meant to provide a measure of security and protection for children when they are placed outside their homes.

The language of this bill brings us into compliance with a recently-enacted federal law, the Adam Walsh Act, and provides us with an efficiency in regard to use of background checks between programs serving children placed outside their homes. Currently, when background checks are completed for one program, the Federal

Bureau of Investigation will not allow us to share background check information with another program. For example, if a foster parent who has already successfully completed a background check seeks to become a guardian or adoptive parent for the foster child in their home, those foster parents have to complete another background check prior to becoming guardians or adoptive parents. Not only does this not make sense, it is not a good use of public dollars, doesn't provide any additional protections for a child, and can present a time barrier to permanency for a child.

The language in Section 4, (2)(f) provides statutory language to address this concern. The FBI has indicated that authorizing language such as this will satisfy their concerns, thus allowing the Department to share background check information between programs.

In Amendments 13, 14, 15, 16, 17 and 18 we are proposing changes to assure that fingerprint background checks are completed for residential facility staff, relative care providers, foster parents, proposed guardians, and adoptive parents. In addition, any other adult living in the home or facility where the child is residing must also have a background check including a fingerprint check.

These sections, in the respective program areas, also remove the current exemptions to the background check, which are based on residency or military service. The new federal law no longer permits a state to have exemptions to its background check requirements. Finally, these amendments also repeat the language that allows information to be shared between child welfare programs.

Thank you for your time and attention this morning. I would be willing to answer any questions you have.

AH #12

1-23-07

Senate Bill 2260

Submitted on behalf of the North Dakota Department of Corrections and
Rehabilitation

January 23, 2007

Before the Senate Judiciary Committee
Senator Nething, Chairman

Mr. Chairman, Members of the Senate Judiciary Committee:

My name is Leann Bertsch, Director of the North Dakota Department of Corrections and Rehabilitation, and I am submitting this written testimony on behalf of the Department.

Section 4 of SB 2260 amends North Dakota Century Code Section 12-60-24 and includes requirements for the Department to have fingerprint background checks conducted for applicants for employment, employees, and agents designated by the Director of the Department. Agents include contract personnel who provide services for the Department. This section also requires the Department to have fingerprint background checks conducted for agents, employees, and applicants for employment of private entities that provide contract correctional services for the Department, entities such as the Bismarck Transition Center in Bismarck.

Section 4 of SB 2260 also requires county correctional facilities and regional correctional centers to have fingerprint background checks conducted for applicants for employment, employees, and agents who will have direct contact or exercise direct authority over individuals in those facilities.

These provisions of SB 2260 are important and necessary to ensure that those persons who will be supervising and exercising authority over individuals in custody do not have criminal backgrounds that involve aggressive, violent, and sexually predatory conduct. This is necessary for both the safety of the staff and for the individuals that are in custody.

The Department requests that this committee approve SB 2260.

(4)

Thursday, February 8, 2007

RE: SB 2260

Testimony given by:

Bonnie Ranum
11726 29th ST. S.E.
Valley City, ND 58072
701.840.1302 Cell
branum@daktel.com

*Same
given to
House
judiciary*

Mr. Chairman, Committee Members:

I'm here this morning to urge funding and passage of SB 2260 concerning more thorough background checks. My experience regarding this issue is an extremely personal one. We lost a very precious friend of our family the day Mindy Morgenstern was murdered. The man who stands accused of her murder was a jailer in the Barnes County jail, a position of community trust and one that put him in control over vulnerable people. How does a man who served 5 years in Leavenworth prison for attempted murder get such a position? How does a man with such a background get hired as campus security at Valley City State University? How does a man with such a record get hired to coach the young children at our City's Recreation Department?

In the first instance, he was hired because the Sheriff's Department who hired him didn't conduct a full, finger print background check. In the second case, the college asked the local authorities for a thorough background check and unknown to them, got only a city police blotter check and background for 3 states of previous employment, no finger print check was done. The third situation happened simply because we do not background check people who want to coach our children. There is something very wrong with this picture. No consistency. No thorough checking of someone who has authority over some of our most vulnerable citizens.

We are all aware that we cannot legislate morality and if depraved people are bent to commit crimes, they will find ways to do so. But, we need not make it that easy for them. How ironic that I spent Tuesday morning of this week sitting in the Barnes County Courthouse listening to the charges against a man who had such authority within our jail system that allowed him to allegedly molest 5 women. This same man is also charged with the rape of a Fargo woman. He is also the man accused of murdering Mindy Morgenstern. One man accused of so many crimes. How many of these could have been prevented had a full background check been conducted by ONE of his employers? Or better yet, by the Judge who allowed him to change his name without any checking on him at all. To our family and our community, this is unbelievable.

There are many bills that will cross your desks this term. Many are good, worthwhile causes that will make life better, create jobs, and expand our education systems. But how many of them can actually save a life?

There is a scripture in Matthew in which Christ says, "Render unto Caesar what is Caesar's and unto God what is God's." As a tax-paying citizen of North Dakota, I've rendered unto Caesar, and I'm asking you to use some of that revenue to make this bill successful to implement. As for the second part of that scripture, we rendered unto God what was His, the life and soul of Mindy Morgenstern. If it can be helped, I'd rather not do that again.

Thank you.

3A

TESTIMONY ON SB 2260
SENATE Appropriations COMMITTEE
Thursday, February 8, 2007
By Dale Patrick, Assistant Director
328-1644
Department of Public Instruction

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to address your committee.

My name is Dale Patrick representing the Department of Public Instruction in support of Senate Bill 2260. I manage several US Department of Education grants that serve children and families from birth through high school and beyond. These programs support services to individuals in a school setting and can involve persons who are not licensed Professional Educators, but persons who serve in the capacity of Tutors in the After School program, Cooks, Janitors, Administrative Assistants, and others who supervise children in numerous activities. It is vitally important to be assured that individuals that have access to our children do not have a criminal background history.

Prior to this legislative session, I visited with several school administrators to try to determine the financial impact upon school districts should this bill pass. In Bismarck Public Schools, it was thought that the impact to the

district would be approximately 80 personnel per year at the most. These 80 background checks would cost the district approximately \$2,500.00. This is certainly a small price to pay for the safety and security of our children.

Discussion with those administrators contacted seemed to point to approximately 500 additional background checks per year from the schools in North Dakota and would primarily include cooks, janitors, clerical and administration help as well as others who may have unsupervised contact with children in those schools. This obviously would impact the Bureau of Criminal Investigation (BCI) in a negative fashion and require the need for additional staff to be able to conduct those background checks in a timely fashion.

The Department of Public Instruction respectfully requests favorable consideration of Senate Bill 2260

Testimony of Chief Deputy Attorney General Thomas Trenbeath
SB 2260 – House Judiciary
March 5, 2007

Criminal History Record (CHR) Checks

EXISTING LAW

1. Record checks are **permitted** for doctors; and
2. **Required** for: certain city and county employees (as determined by political subdivision); industrial hemp growers (still being implemented), new teachers, PISB licensees, foster care license applicants, DHS care checks, ITD employees; applicants for peace officer training school; PERS Board employees; RIO employees; certain BND, Job Service and Health dept. staff;
3. Number of record checks completed in:
 - a. 2005 = **6918**. 4352 state and 2566 federal
 - b. 2006 = **6982**. 3815 state plus 2586 federal (total has been prorated for 1 month of state and 1 month of federal).
4. **SB 2260 will require record checks for:** certain DFI employees, petitioners for name change, re-entering teachers, ITD individuals (inc. private subcontractors not just ITD employees), university system security employees, OMB staff, DOCR employees (inc. P&P), correctional officers of city/county/combined facilities; employees or applicants for employment of state agencies, dept. boards, etc, who will be providing security; appointees for legal guardians and adults in the household (all in addition to existing entities & individuals) **AND**
5. **Permit** record checks for: dentists, nurses, pharmacists, realtors, social workers - all if required by the licensing Boards; Racing licensees if required by the commission; students and employees of the university systems for certain programs as designated by the Chancellor, certain school district employees (other than teachers), as designated by the school board. Federal law requires a state law be in place before these entities can have access to the federal database - this Bill gives all these entities that authorization but the onus is on the Board or entity to determine whether or not a record check is required.
 - a. State agencies and boards listed in SB 2260 were included at the request of the entity. Several entities (including DPI, Racing, DHS) have representatives here to offer written or oral testimony in support of the bill. These entities have indicated an intention to require criminal history record checks.
6. Number of additional record checks estimated under proposed legislation: **8,350**
7. **CURRENT** staff processing record checks at BCI: **3**. We estimate 1 FTE per additional 2,000 checks – or an additional **4 FTEs to effect the requirements of**

SB 2260. For every additional 2,000 record checks, we require an additional FTE position.

8. **COST** of record checks. (\$15 for state PLUS \$15 for FBI to process FP card PLUS \$22 for federal record check. Certain non profits get state for \$5 but the federal check is still \$15 for fingerprints and \$22 for federal record check)

Other bills with CHR requirements:

- 2062 (PISB)
- 2099 (Industrial hemp-rules)
- 1490 (w. 2099 – industrial hemp licensing)
- 1313 (dental examiners – also inc. in SB 2260)
- 2037 (CJIS)
- 1455 (wholesale distributors of drugs)

The fiscal note attached to SB 2260 includes 4 positions to process the workload associated with these additional entities. Since we began work on the fiscal note, we have become aware of other issues that will result in substantial workload increases for our staff. One issue is the Adam Walsh Act, which affects federal record check requirements for Foster Care and Adoption. We're already seeing a major increase in record checks as a result of that act.

Another recent increase in workload is that the medical examiners board now has chosen to implement its legislation, which it had not previously done. The Board estimates approximately 400 record checks per year.

House Bill 1455 has been proposed which adds a requirement that all wholesale drug distributors have a record check for licensure. The Board of Pharmacy estimates approximately 700 initially and approximately 50 each year thereafter.

The current turn around time for a criminal history record check is approximately two days. In view of the increased number of requests that are being generated as a result of existing – but now implemented – legislation, it may be necessary to request a 5th FTE to ensure we can continue to provide time completion of criminal history record checks.

SB 2260 in its current form has been reviewed by the FBI's Access Integrity Unit to ensure that it meets the federal requirements under Public Law 92-544. We received our formal letter of clearance from the FBI. Any modifications made to SB 2260 will require subsequent review by the FBI's Access Integrity Unit to ensure that it continues to meet the federal requirements.

CRIMINAL HISTORY RECORD CHECKS

The term "background check" can mean many different things. To the Bureau of Criminal Investigation (BCI), it means a check of **criminal history records**. The BCI is the state's central repository for criminal history information, a system that compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public.

Detailed information on what is a criminal history record, who may request one, what costs are involved, how to request one, what information will be received, and other information about criminal history records can be viewed from the links below.

What is a criminal history record?

When an adult is arrested for a "reportable" crime, the individual is fingerprinted by the arresting law enforcement agency. Fingerprints are used to establish the identity of an individual when the individual gave a false name at the time of arrest. Even if an individual is arrested on two separate occasions and uses different names each time, the fingerprints will link the individual to both arrests.

The arrest fingerprint card is the beginning of the criminal history record. It includes information about the arrest charge and demographic information of the person who was arrested. If, for some reason, the arresting agency does not fingerprint the arrestee, the crime will not show up on the individual's criminal history record.

What is a "reportable" crime?

State law requires local law enforcement agencies to report arrest information about certain offenses to the BCI. These offenses are contained in N.D.C.C. §12-60-16.4, and include: all felony offenses, many misdemeanor offenses, some violations of city ordinances, as well as charges of "NSF" (over \$50) and "no account" checks.

Reportable information becomes part of an individual's criminal history.

Criminal History Record Information

By law, North Dakota criminal history record information can be obtained only from BCI. There are two types of requests for a criminal history record check – "criminal justice" and "non criminal justice."

A criminal justice agency (i.e. law enforcement, state's attorney) receives all information on the criminal history record. All other requests for criminal history information, including requests from private investigators, are considered "non criminal justice" requests. State law limits the criminal history record information available for release for non criminal justice (public) purposes. For example, dismissed charges may only be released for non criminal justice purposes for 3 years.

A criminal history record check may be name-based or fingerprint based. A name-based search will NOT identify records if the individual was arrested under a different name from the name(s) listed on the record request form. A fingerprint-based search will identify arrest records EVEN if the individual used an unknown alias.

- **Criminal Justice Agency Requests**

Local law enforcement agencies have direct electronic access, for criminal justice purposes, to state and federal criminal records. Local law enforcement agencies can run a name/date of birth (DOB) search but not a fingerprint based search. All fingerprint based searches must be submitted to the BCI. By law, a criminal justice agency may not release criminal history record information to the public.

- **Non Criminal Justice Agency (Public) Requests**

A non-criminal justice record check will provide **North Dakota** records of:

- Convictions (regardless of how old).
- Charges that were dismissed, or did not result in conviction, or do not have a court disposition, and are **less than three years old**.
- Jail or prison custody records **less than three years old**.
- Other reportable events **less than three years old**.

Before a record may be released, the subject's name and **at least two additional items of information on the request form must match** the data in the criminal history record system. When the record check is completed, the criminal history records will be released to the requester.

If no criminal record is found or the information is not releasable, the requester receives a notice which states "No information is available because either no information exists or dissemination is prohibited."

- Some information may not be releasable if it is more than three years old. Dismissed charges are one example.
- A request for records based on a name (rather than fingerprint) search may result in a notice that information is not available - even if North Dakota criminal records exist. State law requires the identifying information on the request form to match exactly with the identifying information on the criminal record in order for the criminal history information to be released.

The record check does **NOT** include:

- Charges that were dismissed, or did not result in conviction, or do not have a court disposition that are **more than three years old**.
- Jail or prison custody records **more than three years old**.
- Other reportable events **more than three years old**.
- Juvenile records
- Federal records

- Records from other states (BCI can provide contact information to request records from other states. Each state has different fees and requirements for release of records.)
- Most traffic offenses (Contact the ND Department of Transportation for traffic records.)
- Civil judgments (Contact the clerk of court)

Requesting a Criminal History Record Check

A criminal history record costs **\$15.00** (or \$5.00 for non-profit charitable organizations exclusively for the benefit of children or vulnerable elderly). Eligible non-profit charitable organizations must submit an Application for Reduction in Fee and be approved before receiving the reduction in fee.

The request form must contain:

- The name of the requester;
- The name of the individual for whom the record is requested (the "subject");
- The subject's current address (unless the subject has signed an authorization);

AND at least two additional items of information from the following list:

- the subject's fingerprints;
- the subject's social security number;
- the subject's date of birth;
- a specific "reportable event" (i.e. arrest or conviction), identified by date and either agency or court;
- the state identification number assigned to the record subject by the BCI.

Most criminal history record checks are conducted using the subject's name, date of birth, and social security number. To be sure the criminal history information includes all releasable information, it is important to include any maiden name, former name, or known aliases of the subject.

- Unless a signed authorization form accompanies the request, the BCI will mail a notice to the subject that the criminal history record has been released. The authorization form is available online for download and printing.

Requesting a national (FBI) record search.

The BCI is responsible for submitting national criminal history record searches to the Federal Bureau of Investigation (FBI) for criminal justice agencies and those entities allowed by state or federal law to receive federal record check information, including: applicants for teaching licenses, foster care providers, potential adoptive parents, ITD employees, and others (see: N.D.C.C. § 12-60-24).

All FBI record searches are fingerprint based, which means that a set of fingerprints is required in order for the record check to be processed. Fingerprints must be taken by

trained staff at local law enforcement agencies. The law enforcement agency may charge a separate fee for fingerprinting services.

- Fees include a \$15.00 fee for the BCI to process the fingerprint card to the FBI and the FBI charges \$22.00 to process the request. The fee to BCI must be paid at the time of the request. The BCI processes a monthly billing from the FBI for amounts payable to the FBI.
- The FBI record may not include all state criminal history information because the FBI does not collect information about certain crimes that are reportable under state law. In North Dakota, for example, arrests for some NSF check offenses are reportable on a card that only includes one fingerprint. That information cannot be submitted to the FBI because they require a 10 print arrest card.

TESTIMONY OF THOMAS L. TRENBEATH, CHIEF DEPUTY
ATTORNEY GENERAL, ON SENATE BILL 2260
MARCH 5, 2007

In discussion with the department of public instruction and the Governor's office certain amendments were found to be necessary with respect to this bill's effect on schools. As 2260 reads, now, it would not be applicable to non public schools. Our statutes, however, mandate that nonpublic schools be approved by the North Dakota Dept. of Public Instruction. Therefore it was necessary to craft the amendment I have presented to you with respect to Section 4 (page 7 of the bill). The amendment allows the background check obligation to encompass nonpublic schools. In drafting the amendment language we met with a challenge. It seems that the FBI will not release information on background checks to private persons or entities. In short, if our office requested information regarding personnel employed by a nonpublic school and gave that information to the school authorities, the FBI would disqualify the state of North Dakota from receiving any further criminal background checks on any person, whatsoever. The amendment would allow DPI to request the background check for individuals associated with nonpublic schools and make a recommendation to the nonpublic school regarding the suitability of the employee or candidate for employment, without divulging the information provided by the background check.

The second part of the amendment would incorporate the background check requirement into the criteria for approval of a school by DPI.

That completes my testimony and I would be happy to stand for questions.

AG

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

Page 1, line 5, after "12-60-24," insert "15.1-06-06"

Page 7, line 3, after "The" insert "governing", after "a" insert "public", replace "district" with "or, for a nonpublic school, the department of public instruction," and replace "or individuals seeking" with "designated by the governing board or nonpublic school"

Page 7, remove lines 4 through 7

Page 7, line 8, replace "individuals must be" with "The governing board or the nonpublic school is", and remove the second "for"

Page 7, line 10, after "z." insert:

"The governing board of a public school or, for a nonpublic school, the department of public instruction for individuals seeking employment with the school, or individuals otherwise providing services to the school, if those individuals have unsupervised contact with students. For purposes of this subdivision, unsupervised contact with students means being in proximity to one or more students, on school grounds or at school functions, outside of the presence of a person who has been subject to a criminal background checks. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.

aa."

Page 7, line 13, replace "aa" with "bb"

Page 7, after line 13, insert:

"SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;

3. The students are offered all subjects required by law; and
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

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Page 7, line 3, after "The" insert "governing", after "a" insert "public", and replace "district" with "or, for a nonpublic school, the department of public instruction,"

Page 7, line 4, replace "district" with "school"

Page 7, line 5, replace "district" with "school"

Page 7, line 6, remove ", as designated by the board", and after the period insert "For purposes of this subdivision, unsupervised contact with students means being in proximity to one or more students, on school grounds or at school functions, outside of the presence of an individual that has been subject to a criminal background check."

Page 7, remove line 7

Page 7, line 8, replace "individuals must be" with "governing board or the nonpublic school is", and remove the second "for"

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3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24."

Renumber accordingly

CRIMINAL HISTORY RECORD CHECKS

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The arrest fingerprint card is the beginning of the criminal history record. It includes information about the arrest charge and demographic information of the person who was arrested. If, for some reason, the arresting agency does not fingerprint the arrestee, the crime will not show up on the individual's criminal history record.

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- The name of the requester;
- The name of the individual for whom the record is requested (the "subject");
- The subject's current address (unless the subject has signed an authorization);

AND at least two additional items of information from the following list:

- the subject's fingerprints;
- the subject's social security number;
- the subject's date of birth;
- a specific "reportable event" (i.e. arrest or conviction), identified by date and either agency or court;
- the state identification number assigned to the record subject by the BCI.

Most criminal history record checks are conducted using the subject's name, date of birth, and social security number. To be sure the criminal history information includes all releasable information, it is important to include any maiden name, former name, or known aliases of the subject.

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All FBI record searches are fingerprint based, which means that a set of fingerprints is required in order for the record check to be processed. Fingerprints must be taken by trained staff at local law enforcement agencies. The law enforcement agency may charge a separate fee for fingerprinting services.

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- The FBI record may not include all state criminal history information because the FBI does not collect information about certain crimes that are reportable under state law. In North Dakota, for example, arrests for some NSF check offenses are reportable on a card that only includes one fingerprint. That information cannot be submitted to the FBI because they require a 10 print arrest card.

Background Checking Services/Online Background Checking Services

A criminal history record check can be obtained without using a background checking service. A background checking service cannot obtain different information than what is available to a member of the public. No one can legally get North Dakota state criminal history for non-law enforcement purposes for less than \$15.00 (or \$5 for an eligible charitable organization), AND they must access the information through the BCI. Disreputable background checking services often use deceptive wording to describe what they offer. For example, "federal record checks" (which many would think is a check of the national criminal history database) may be only a check of federal court cases, NOT a consolidation of criminal records from the states.

March 5, 2007

Rep. Duane Dekrey, Chairperson
House Judiciary Committee
Senate Bill 2260
Testimony - Senator Larry Robinson

Mr. Chairperson and member of the committee. I appear before you today on behalf of Senate Bill 2260. This bill is a result of a tragic incident in my community involving the death of Mindy Morgenstern this past September.

Mr. Chairperson and members of the committee. I knew Mindy Morgenstern. She lived in our community and was a student at our university. She was a very special young lady. Following her tragic and untimely death, we found that there is considerable confusion regarding the issue of background checks across our state. Senate Bill 2260 attempts to clarify some of that confusion.

Mr. Chairperson and members of the committee, the bill before you deals with the important issues of background checks and name changes. The bill broadens the scope of background checks for a host of professions in our state. This is an issue of public safety. North Dakota cannot and will not tolerate another hideous incident like the one we witnessed in Valley City. This bill is long overdue. The bill will not only provide better security for law enforcement officials and the citizens of North Dakota, but it will also provide the peace of mind that comes with increased security.

There are other sponsors of the bill with us to testify in support of 2260. Additionally, we have with us representatives of the Attorney Generals Office who will walk you through the bill and explain how this bill will work. I would like to take this opportunity to thank the other sponsors of this legislation and the Attorney General and his staff for all of their work and cooperation in the drafting of this important piece of legislation.

Thank you Mr. Chairperson and members of the committee. I urge your support of Senate Bill 2260.

House Judiciary Committee Testimony on SB 2260

Pat Seaworth, ND University System General Counsel

March 5, 2007

Chairman DeKrey and members of the House Judiciary Committee:

I am here representing the North Dakota University System in support of SB 2260. Section 4 of the bill includes an amendment to NDCC section 12-60-24 giving the chancellor authority to specify positions for which FBI criminal history checks of job applicants or employees may be requested and programs of study for which similar checks may be completed on students.

NDUS institutions are already arranging for criminal history checks on numerous job applicants and hundreds of students each year. For job applicants, checks are completed on custodial and security staff, childcare workers, professional and administrative staff and others. Criminal history checks are completed on hundreds of students in dozens of different programs. A significant number of the checks are completed on students who are required to complete an internship or clinical experience as part of a medical or health-related program (pharmacy, nursing, physician's assistant, lab technician, speech pathology, physical or occupational therapy, etc.). NDUS institutions have hundreds of affiliation agreements with hospitals and clinics around the country and in Canada establishing terms governing these placements. Most of the facilities insist on criminal history records checks before they accept students.

Under current law, NDUS institutions are able to get a nationwide FBI check only for positions in campus police departments (at NDSCS, NDSU and UND). For other positions and for students, they can get a state records check from BCI or, if they need something beyond that, they can contract with a private firm to check records in other states. This option can be expensive and unreliable, since public criminal history information available to these firms is not necessarily complete.

There are an increasing number of medical facilities around the country that are requiring nationwide checks. NDUS officials don't always know at the beginning of a term whether they will need a nationwide check for a particular program and they don't know until students decide where they want to do their clinical training which students might need a nationwide check. Some facilities might accept a check of records in only the students' states of residence within the last 5 or 10 years and other facilities require a nationwide records check.

A number of NDUS institutions also get criminal records checks on students when they apply to a professional or other program where there are licensing or employment restrictions related to criminal convictions. In these cases, criminal convictions might be

grounds to deny admission to a program. For example, students with records of convictions for selling or distributing drugs are not going to be admitted to pharmacy or nursing programs because they probably can't get a license upon graduation (and probably won't be accepted for clinical placement either).

SB 2260 will give NDUS officials the ability to obtain reliable and thorough criminal history information in order to provide greater security that selected job applicants or employees and students in certain programs do not pose a threat to campus communities and the public. The NDUS requests your favorable action on this important legislation.

Pat Seaworth contact information: 328-4169 or pat.seaworth@ndus.nodak.edu



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State of North Dakota

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SENATE BILL No. 2260
CRIMINAL HISTORY RECORD CHECKS
HOUSE JUDICIARY COMMITTEE - PRAIRIE ROOM
Monday - MARCH 5th , 2007 - 8:00 AM

Chairman DeKrey, Members of the House Judiciary Committee, thank you for the opportunity to provide written comments on this bill.

The State Board of Pharmacy began thinking about the necessity for us to have nation wide background check authority in May 2006. Upon communicating our draft to the Attorney General's Office, he indicated that he wanted to write the bill so our authority to do background checks on people we license is included in this bill.

It should help us protect the citizens of North Dakota from those who might get licensed without us knowing they have a criminal history or other issues in their background.

It will also help us when we have disciplinary issues with individuals to follow up with them, to be sure they are in compliance before reinstating a license or registration.

We are in support of this bill and would ask that you please support it as well.

①

PROPOSED AMENDMENTS TO SENATE BILL 2260
By Senator Robinson

Page 1, line 5 insert after third comma "15.1-06-06,"

Page 7, line 6 replace "as designated by the board" with "as designated in the rules promulgated by the department of public instruction under section 28-32".

Page 7, after line 13 insert:

SECTION 5. AMENDMENT. Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24.

Page 19, line 5 remove "13" and "and" replace with ", and 19" after 18.

Testimony

Senate Bill 2260

House Judiciary Committee

March 5, 2007; 8 a.m.

North Dakota Department of Health

Good morning, Chairman DeKrey and members of the House Judiciary Committee. My name is Darleen Bartz, Ph.D., and I am section chief of the Health Resources Section for the North Dakota Department of Health. I am here to provide information about Senate Bill 2260.

The Department of Health has identified the potential need for background checks on the following:

- Nurse aides and other employees working in health-care facilities
- Some residents of long-term care facilities, upon request of the facility
- Individuals employed by the Department of Health

Currently, a pilot project is underway in five states by the federal Centers for Medicare & Medicaid Services to conduct background checks on employees in long-term care facilities. Once the pilot project is completed and analyzed later this year, background checks may be required for the licensure, certification or registration of nurse aides and other employees working in long-term care facilities. The Department of Health maintains the federal certified nurse aide registry. If such background checks are required by CMS, the current language in Senate Bill 2260 would not allow the Department of Health to comply.

In addition, with the increased concern related to sexual offenders placed in long-term care facilities, providers have identified a need to conduct background checks on some residents so that facilities can identify potential concerns prior to admission. Discussions with the North Dakota Long Term Care Association and the Bureau of Criminal Investigation have indicated that there would be a benefit in having the Department of Health coordinate these background checks to reduce the training that would be needed to interpret the reports, decrease duplication of requests, and increase consistency of interpretation.

Finally, the Department of Health has a significant role in responding to acts of terrorism and other emergencies. In addition, many of our employees work with and maintain confidential and sensitive personal and medical information. As a result, it

would benefit the department's security efforts to have the ability to request background checks on certain employees, if needed.

The Department of Health would not duplicate criminal background or history checks completed on individuals by other boards and entities.

In conclusion, the Department of Health believes it is critical to be able to request background checks as needed beyond the scope currently in statute. If the committee is interested, we would be willing to offer some amendments to address this need.

This concludes my testimony. I am happy to answer any questions you may have.

Health
Dept.

Amendments to SB 2260

Page 5, line 19, remove "employees assigned duties related to"

Page 5, line 20, remove "bioterrorism and homeland security issues as designated by the state health"

Page 5, line 21, remove "officer" and insert "an applicant for employment or an employee of the department" and after "aide" remove "seeking to have a finding of neglect removed from the"

Page 5, line 22, remove "nurse aide registry" and remove "or"

page 5, line 24, after "field" insert a semicolon and insert "or an applicant for employment, employee, or resident of a health care facility not subject to a background check by another agency or board, except that, in any case, criminal history record checks need not be made unless requested by the department"

Renumber accordingly

*This what the
code would look
like.*

- y. The governing board of a public school or, for a nonpublic school, the department of public instruction for employees designated by the governing body or nonpublic school
The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.

- z. The governing board of a public school or, for a nonpublic school, the department of public instruction for individuals seeking employment with the school, or individuals otherwise providing services to the school, if those individuals have unsupervised contact with students. For purposes of this subdivision, unsupervised contact with students means being in proximity to one or more students, on school grounds or at school functions, outside of the presence of an individual that has been subject to a criminal background checks. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.

Health Dept.
3/12/07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260

Page 1, line 8, after the semicolon insert "to provide an appropriation; to provide an effective date;"

Page 5, line 19, overstrike "employees assigned duties related to"

Page 5, line 20, overstrike "bioterrorism and homeland security issues" and insert immediately thereafter "each applicant for or employee in a specified occupation with the department of health"

Page 5, line 21, overstrike "a nurse aide seeking to have a finding of neglect removed from the"

Page 5, line 22, overstrike "nurse aide registry; or"

Page 5, line 23, overstrike "who holds a license, certificate, or registration in a"

Page 5, line 24, overstrike "health-related field" and insert immediately thereafter "or an applicant for registration, certification, or licensure by the department of health, except in any case, criminal background checks need not be made unless requested by the department"

Page 19, after line 4, insert:

"SECTION 21. APPROPRIATION. There is hereby appropriated \$158,138, or so much of the funds as may be necessary, out of moneys in the general fund in the state treasury, not otherwise appropriated, to the attorney general for the purpose of conducting state and nationwide criminal history checks on behalf of the department of health pursuant to section 12-60-24. The attorney general may hire an additional full-time equivalent position under this section.

SECTION 22. EFFECTIVE DATE. Section 21 of this Act becomes effective on the date the state health officer certifies to the secretary of state, the attorney general, and the legislative council that the federal government requires criminal history record checks on applicants for employment at long term care facilities or providers who have access to patients."

Renumber accordingly

Monday, March 19, 2007

RE: SB 2260

Testimony given by:

Bonnie Ranum
11726 29th ST. S.E.
Valley City, ND 58072
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branum@daktel.com

Chairman Carlson, Vice Chairman Carlisle, Committee Members:

I'm here this morning to urge passage and funding of Senate Bill 2260 concerning more thorough background checks. My experience regarding this issue is an extremely personal one. We lost a very precious friend of our family the day Mindy Morgenstern was murdered. The man who stands accused of her murder was a jailer in the Barnes County jail, a position of community trust and one that put him in control over vulnerable people. How does a man who served 5 years in Leavenworth prison for attempted murder get such a position? How does a man with such a background get hired as campus security at Valley City State University? How does a man with such a record get hired to coach the young children at our city's recreation department?

In the first instance, he was hired because the Sheriff's Department that hired him didn't conduct a full, finger print background check. In the second case, the college asked the local authorities for a thorough background check and unknown to them, got only a city police blotter check and background for 3 states of previous employment. No finger print check was done. The third situation happened simply because we do not do background checks on people who want to work with our children. There is something very wrong with this picture. There is no consistency or thorough checking of someone who has authority over some of our most vulnerable citizens and in whom our community places its trust.

We are all aware that we cannot legislate morality and if depraved people are intent on committing crimes, they will find ways to do so. But, we need not make it that easy for them. Let's at least give the law-abiding citizens in our communities a fighting chance. How ironic that I spent the morning of February 6th sitting in the Barnes County Courthouse listening to the charges against a man who had such authority within our jail system that allowed him to allegedly sexually molest 5 female inmates who were under his watchful care. This same man is also charged with the brutal rape of a Fargo woman. He is also the man accused of murdering Mindy Morgenstern. One man accused of so many violent crimes. How many of these could have been prevented had a full background check been conducted by **ONE** of his employers? Or better yet, by the Judge who allowed him to change his name without any checking of his background at all. To our family and our community, this is unbelievable and unacceptable.

There are many bills that have crossed your desks this term. Many are good, worthwhile causes that will make life better, create jobs, give aid to our education systems or enhance our environment. But how many of them can actually save a life? You have the opportunity and duty to do just that with the passage of this bill.

There is a scripture in Matthew in which Christ says, "Render unto Caesar what is Caesar's and unto God what is God's." As a tax-paying resident of North Dakota, I've rendered unto Caesar, and I'm asking you to use some of that revenue to make this bill successful to implement. As for the second part of that scripture, we rendered unto God what are His, the life and soul of Mindy Morgenstern. If it can be helped, I'd rather not have to do anything like that again.

Thank you,
Bonnie Ranum

2260.3.19.07 A

March 2007

SENATE BILL NO. 2260 - COST ESTIMATES

The following schedule compares the appropriations provided and the fiscal note amounts related to Senate Bill No. 2260 relating to criminal background checks:

	Appropriations - Sections			Fiscal Note - SB 2260		
	SB 2003	SB 2260	Total	2005-07	2007-09	Total
Salaries and wages	\$279,672	\$87,936	\$367,608	\$16,515	\$347,808	\$364,323
Operating expenses	75,148		75,148	36,083	112,069	148,152
FBI fees	572,000	70,202	642,202	59,400	691,400	750,800
Total	\$926,820	\$158,138	\$1,084,958	\$111,998	\$1,151,277	\$1,263,275
Less estimated income	572,000	0	572,000	59,400	691,400	750,800
General fund	\$354,820	\$158,138	\$512,958	\$52,598	\$459,877	\$512,475
FTE	4	1	5		5	5
General fund revenue				\$33,240	\$618,120	\$651,360

Testimony of Attorney General Wayne Stenehjem
SB 2260 – House Appropriations
March 19, 2007

Criminal History Record (CHR) Checks

Under existing law, record checks are **permitted** for doctors; and **required** for: certain city and county employees (as determined by political subdivision); industrial hemp growers (still being implemented), new teachers, PISB licensees, foster care license applicants, DHS care checks, ITD employees; applicants for peace officer training school; PERS Board employees; RIO employees; certain BND, Job Service and Health dept. staff;

Number of record checks completed in:

2005 = **6918**. 4352 state and 2566 federal

2006 = **6982**. 3815 state plus 2586 federal

SB 2260 adds a requirement for record checks for: certain DFI employees, petitioners for name change, re-entering teachers, and school employees having unsupervised contact with students, ITD individuals (inc. private subcontractors not just ITD employees), university system security employees, OMB staff, DOCR employees (including Parole & Probation), correctional officers of city/county/combined facilities; employees or applicants for employment of state agencies, dept. boards, etc, who will be providing security; appointees for legal guardians and adults in the household (all in addition to existing entities & individuals) **AND**

Permits record checks for: nurses, pharmacists, realtors, social workers - all if required by the licensing Boards; Racing licensees if required by the commission; students and employees of the university systems for certain programs as designated by the Chancellor, certain school district employees (other than teachers), as designated by the school board, and employees of the department of health or designated by the state health officer. Federal law requires a state law be in place before these entities can have access to the federal database - this Bill gives all these entities that authorization but the onus is on the Board or entity to determine whether or not a record check is required.

The state agencies and boards listed in SB 2260 were included at the request of the entity. These entities have indicated an intention to require criminal history record checks for applicants/registrants/licensees.

- Number of additional record checks estimated under SB 2260 as amended: approximately **10,350**.

CURRENT staff processing record checks at BCI: **3**. We estimate 1 FTE per additional 2,000 checks – or an additional **5 FTEs to effect the requirements of SB 2260** as amended. For every additional 2,000 record checks, we require an additional FTE position.

COST of record checks. (\$15 for state PLUS \$15 for FBI to process FP card PLUS \$22 for federal record check. Certain non profits get state for \$5 but the federal check is still \$15 for fingerprints and \$22 for federal record check).

Other bills with CHR requirements:

- 2099 (Industrial hemp licenses) (Enrolled)
- 1490 (w. 2099 – industrial hemp distributors) (Enrolled)
- 1313 (dental examiners) (Enrolled)
- 2037 (CJIS) (DP-House IBL; amendment adopted & bill laid over)
- 1455 (wholesale distributors of drugs) (DP-Senate Human Services)

The fiscal note attached to SB 2260 includes 5 positions to process the workload associated with these additional entities. Since we began work on the fiscal note, we have become aware of other issues that will result in substantial workload increases for our staff. One issue is the Adam Walsh Act, which affects federal record check requirements for Foster Care and Adoption. We're already seeing a major increase in record checks as a result of that act.

Another recent increase in workload is that the Board of Medical Examiners now has chosen to implement its legislation, which it had not previously done. The Board estimates approximately 400 record checks on doctors per year.

The current turn around time for a criminal history record check is approximately two days. In view of the increased number of requests that are being generated as a result of existing – but now implemented – legislation, it may be necessary to add a 6th FTE to ensure we can continue to provide time completion of criminal history record checks.

SB 2260 in its current form has been reviewed by the FBI's Access Integrity Unit to ensure that it meets the federal requirements under Public Law 92-544. We received our formal letter of clearance from the FBI. Any further modifications made to SB 2260 will require subsequent review by the FBI's Access Integrity Unit to ensure that it continues to meet the federal requirements.