

2011 HOUSE JUDICIARY

HB 1115

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1115  
January 12, 2011  
12839

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1115.

Dean Sturn, Foster Care Administrator, Dept of Human Services, Children & Family Services Division: Sponsor, support (see attached testimony and proposed amendments).

Rep. Klemin: To go back to the original intent, what's the reason you want to do this now. Why make the change now.

Dean Sturn: It was for added clarity. In the original bill, you can see that it was in NDCC 50-06. That chapter really talked about, in general, confidentiality of records for individuals applying for or receiving services. Upon further discussion, as noted in the 2<sup>nd</sup> paragraph, NDCC 50-11-05 is specific to foster care. It was just logical, for reasons of clarity, and ease in finding that actual verbiage, that it was put into NDCC 50-11-05.

Chairman DeKrey: Did something come up, or are you anticipating some kind of a problem, why the bill, it seems to me that hasn't been answered yet.

Dean Sturn: Essentially federal law says that foster care records are confidential. We've never been really clear. If you look at the amended legislation, it talks about in NDCC 50-11, what was in there before, that it was for facilities licensed under this chapter. For the purposes of this discussion, facilities could refer to family foster homes, residential child care facilities, group homes, that sort of establishment, that are licensed as foster care providers. But, as you can see by what's added, the records of the Department and its authorized agents. This is clarifying that, not just the facilities are licensed, but the actual Department, the regional human service center, and in some cases even the counties, were not mentioned in this. An example of this would be if a regional office had a foster parent's record, and somebody came and asked for copies of those records with that foster parent. This will give clarity that those records are indeed confidential.

Rep. Koppelman: I pulled out the section you are trying to move this to, and I think I understand the intent of the bill but, the definition of department, under NDCC 50-11, is the Dept of Human Services. So I think if you add what you are proposing, it says that the records of the Dept. and its authorized agents would be confidential. I think it could be argued in court that all of the records of the DHS and any of its authorized agents are confidential.

Dean Sturn: I believe it is specific to records pertaining to foster care.

Rep. Koppelman: That's not what it says in this chapter, as I read it. We'll look at that. I realize that part of the chapter does refer to foster care, but if you go back to the beginning of 50-11-05 in the definitions, beginning at the front of that chapter, it says "that department means the Dept of Human Services", so unless there is a different definition or different department referenced that I'm not seeing, and you're just using the word "department", I think that's what it reverts to.

Dean Sturn: I'm not exactly sure what you are referencing. I believe that the title of 50-11 is specific to foster care; perhaps I'm not getting what you are asking.

Chairman DeKrey: The intern will work on this and get back to us with more information.

Rep. Hogan: Is it your intent that foster care parenting records also be confidential or just the child's records.

Dean Sturn: Yes, it is the intent that all foster care records, whether that is the child or the foster parent.

Rep. Hogan: Is that a change in policy.

Dean Sturn: It is not, it is a clarification.

Chairman DeKrey: Thank you. Further testimony in support of HB 1115. Testimony in opposition. We will close the hearing.

Rep. Koppelman: I did ask the intern to get some information on that; basically clarifying what additional records would be included in the amendment. I don't have a problem with the bill as presented, it's the amendment that I have questions about.

Rep. Hogan: I also had concerns when he said that foster care records about foster parents, as well as individual foster children. I think there are a lot of ramifications for that. I have some real concerns about the change.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1115  
January 24, 2011  
13282

Conference Committee

Committee Clerk Signature

*R. Penrose*

## Minutes:

Chairman DeKrey: We will take a look at HB 1115. What are the committee's wishes regarding HB 1115.

Rep. Hogan: I am passing out some information about the history of confidentiality which was a question that Rep. Koppelman asked (see attached 1). There were questions raised by Ms. McMahon, in her memo that she was concerned about the issue and we interacted with the Dept of Human Services on that issue. There was also clarification that during the hearing testimony, Mr. Sturn reported that foster care licensing files on foster parents would be confidential, and that's not accurate. So the committee was given some misinformation. This only applies to the foster children, or the adults in foster care. The amendments were attached to the testimony. Based on that, I move the adoption of the Dept of Human Services and AG's Office amendments as proposed.

Rep. Delmore: Second.

Chairman DeKrey: We will take a voice vote, motion carried. We now have the bill before us as amended.

Rep. Hogan: I move a Do Pass as amended on HB 1115.

Rep. Guggisberg: Seconded.

**14 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER:**

January 25, 2011

Y/R  
1/25/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1115

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-11-05 of the North Dakota Century Code, relating to the confidentiality of foster care records.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-05. Contents of records not disclosed - Exception.**

The records of facilities licensed under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential ~~and may be made available~~ but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests."

Renumber accordingly

Date: 1/24/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1115

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11. 8080.01001 02000

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Hogan

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

**REPORT OF STANDING COMMITTEE**

**HB 1115: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1115 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-11-05 of the North Dakota Century Code, relating to the confidentiality of foster care records.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1115

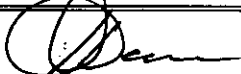


# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1115  
3/2/11  
Job #14839

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to the confidentiality of foster care records

## Minutes:

There is attached written testimony

## Senator Nething – Chairman

**Dean Sturn** – Foster Care Administrator for the Children and Family Services Division of the Department of Human Services – See written testimony.

**Senator Nething** – Asks what the problem was that brought up this need to disclose.

**Sturn** – Replies that the issue that came up is that it was unclear in the Century Code of the scope of the confidentiality of the records. It didn't cover the records of the department and its authorized agents. In order to make all foster care records confidential the addition to the Century Code is being proposed.

**Senator Nelson** – Questions confidential verses exempt.

**Mike Mullen** – Assistant Attorney General – Clarifies the difference between confidential and exempt. Confidential records are records that a state agency or political subdivision is not authorized to disclose except by situations defined by statute. Exempt records are records of a state agency that are not subject to automatic disclosure pursuant to the open records law. An agency at its own discretion can decide to disclose exempt records or part of exempt records.

**Senator Sitte** – Asks what the process was that led to all the various changes.

**Johathan Alm** – Attorney with the Department of Human Services – Explains the history of the foster care law.

Opposition – 0  
Neutral – 0

**Senator Olafson** moves a do pass  
**Senator Sorvaag** seconds

Roll call vote – 6 yes, 0 no  
Motion passes

**Senator Nelson** will carry

Date: 3/2  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1115

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Nelson

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

**REPORT OF STANDING COMMITTEE**

**HB 1115, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1115 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY


HB 1115

**Testimony**  
**House Bill 1115 – Department of Human Services**  
**House Judiciary Committee**  
**Representative Duane DeKrey, Chair**  
**January 12, 2011**

Chairman DeKrey, members of the House Judiciary Committee, my name is Dean Sturn, and I am the Foster Care Administrator for the Department of Human Services, Children and Family Services Division. I am here today to provide you an overview and explanation relating to the confidentiality of all foster care records as provided in House Bill 1115, as amended. The Department supports passage of this bill.

Since the introduction of HB 1115, conversations have taken place with the Attorney General's Office as to what part of North Dakota Century Code will most effectively encompass the confidentiality of all foster care records. Those conversations have resulted in the attached agreed upon amendment. The attached amendment maintains the spirit of the introduced legislation, but places the language in a different chapter of North Dakota Century Code.

House Bill 1115, as amended, clarifies that all North Dakota foster care records are confidential records. Section 50-11-05 of North Dakota Century Code already addresses the confidentiality of information contained in records of licensed facilities, but is not specific to foster care records of the Department and its authorized agents. By adding language specific to foster care records of the Department and its authorized agents, rules governing requests for the release of information contained within all foster care records will be clearly stated in law.



If passed, House Bill 1115, as amended, would ensure that information contained within all foster care records is treated as confidential.

This concludes my testimony, thank you for your support of this amended bill. I would be happy to answer any questions.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1115

Page 1, line 1, replace "50-06-15" with "50-11-05"

Page 1, line 4, replace "50-06-15" with "50-11-05"

Page 1, remove lines 6 through 24

Page 2, replace lines 1 through 12 with:

**"50-11-05. Contents of records not disclosed - Exception.** The records of facilities licensed under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential ~~and may be made available~~ but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests."

Renumber accordingly



## Additional Background information on HB 1115

### What is the legislative history of confidentiality of foster care records?

DHS Legal Advisory Unit has had discussion and reviewed legislative history surrounding the confidentiality of foster care records. It is noted that this bill was originally drafted to address conversations that occurred between DHS and the AG's office on whether DHS's reliance on 50-06-15 for the confidentiality of foster care records (non-Title IV-E) was misplaced. In reviewing the legislative history of the confidentiality of foster care records, it appears that this bill is needed to assure the confidentiality of foster care records. From the time North Dakota first enacted a law dealing with the confidentiality of foster care in 1923, records in the possession of foster care homes and social welfare boards (or other predecessors of DHS) were confidential. When the foster care laws were substantially amended in 1993, the attempted clarification to section 50-11-05 resulted in language that appears to fall short of ensuring that confidential nature of foster care records in the possession of DHS. The amendment to HB 1115 makes clear the continued confidentiality of foster care records in the possession of DHS.

The amendments to this bill have been proposed because DHS has an existing law dealing with the confidentiality of foster care records, NDCC 50-11-05. It is better to amend that section dealing specifically with foster care records rather than amending another more general section of the Century Code dealing with the confidentiality of all DHS records. Tara

### Question - What is DHS's response to Ms. McMahon's concerns?

We believe the amendment we offered does address Ms McMahon's concerns:

**"50-11-05. Contents of records not disclosed - Exception.** The records of facilities licensed under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential and may be made available but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests."

Also, I want to clarify that this amendment/section addresses foster care files containing information "pertaining to the children and adults receiving care", not to information contained

in foster care licensing files. Foster Care licensing files are not confidential files, except for information contained in those licensing files specific to children or adults receiving care. That specific information would have to be removed before allowing the file to be disclosed.

Tara

①

**Testimony**  
**Engrossed House Bill 1115 – Department of Human Services**  
**Senate Judiciary Committee**  
**Senator Dave Nething, Chair**  
**March 2, 2011**

Chairman Nething, members of the Senate Judiciary Committee, my name is Dean Sturn, and I am the Foster Care Administrator for the Children and Family Services Division of the Department of Human Services. I am here today to provide you an overview and explanation relating to the confidentiality of all foster care records as provided in Engrossed House Bill 1115. The Department supports passage of this bill.

Engrossed House Bill 1115 clarifies that all North Dakota foster care records are confidential records. Section 50-11-05 of North Dakota Century Code already addresses the confidentiality of information contained in records of licensed facilities, but is not specific to foster care records of the Department and its authorized agents. By adding language specific to foster care records of the Department and its authorized agents, rules governing requests for the release of information contained within all foster care records will be clearly stated in law.

If passed, engrossed House Bill 1115 would ensure that information contained within all foster care records is treated as confidential.

This concludes my testimony, thank you for your support of Engrossed House Bill 1115. I would be happy to answer any questions.