2011 SENATE JUDICIARY

SB 2233

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2233
1/25/11
Job #13368

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to a requirement to report sexual conduct by a child discovered on a workplace computer

Minutes: There is attached written testimony

Senator Nething – Chairman

Senator Grindberg – District 41 – Introduces and supports this bill.

Senator Nething – Asks if he could do a linkage of the intent of this bill to the language of on 15, 16 and 17. He mentions there are two different provisions.

Senator Grindberg – Explains the two sections.

Johathan Byers – Assistant Attorney General – See written testimony in favor of.

Senator Nething – Asks why the Dept. of Human Services is singled out opposed to law enforcement.

Byers – Said he chose that department is that they are the entity that receives all reports of child abuse and neglect. In that section there is already a penalty for those that do not make the report, it already has a process in place for the assessment investigation of the case.

Senator Nething – Asks if they have an investigative department in Human Services.

Byers – Responds the statute allows the report to be made to a designee of Human Services. Most cases of abuse and neglect are reported to county social services. They have a manual that tells them in what kind of cases they need to involve local law enforcement.

Senator Nething – Asks what the problem is. Has there been a rash of cases that couldn't be prosecuted.

Byers – Said they don't have a handle on how extensive the problem is because the companies aren't required to report it.

Senator Sorvaag – Asks what the penalty is if they don't report it.

Byers – Replies, Class B misdemeanor which provides for a maximum of 30 days in jail and or $1000 fine.

Senator Sorvaag – Asks who is responsible for making the report.

Byers – States, the employee who discovers the porn or if they tell a supervisor then they would have to report.

Senator Nelson – Asks who determines what is lewd and what isn't.

Byers – Quotes a Supreme Court Justice, "I can't define it but I know it when I see it".

Close the hearing 2233

Senator Olafson motions for a do pass
Senator Lyson seconds

Roll call vote – 6 yes, 0 no

Senator Sitte will carry

Date: 1/25
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2233

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 Lyson

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 Sitte

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

REPORT OF STANDING COMMITTEE

SB 2233: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2233 was placed on the Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2233

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2233
March 15, 2011
15431

☐ Conference Committee

Committee Clerk Signature *DDelmore*

Minutes:

Chairman DeKrey: We will open the hearing on SB 2233.

Jonathan Byers, Asst. Attorney General: Support (see attached 1).

Rep. Delmore: In that second section – that means anybody with any department. We're not looking at supervisors. If I come across something at work that I think might relate to this, I am compelled to turn that information over.

Jonathan Byers: This kind of mimics the statutes we have in place that pertain to mandatory reporting of child abuse and neglect. In those circumstances, basically we do put the onus (responsibility) on the employee. They can tell their supervisor if they want to, but they have to make sure that at least the supervisor tells Human Services, or they are in trouble. It does put the responsibility on the person who finds it.

Rep. Koppelman: This relates to computers in the Dept of Human Services, or anywhere in a work place.

Jonathan Byers: It would relate to any work place, it's just that the Dept of Human Services is the receiving entity for reports of child abuse and neglect, and now would be for reports of child pornography found on computers.

Rep. Koppelman: Would most people in the general public think of that. It seems to me if someone were to run across this, they would call law enforcement rather than think gee, I need to call the Dept. of Human Services. How are they going to know that.

Jonathan Byers: Like the child abuse and neglect reports that people deal with now, if it is reported to the police department, they're mandated reporters, and the police department would inform Dept of Human Services. If a member of the public doesn't particularly know this process it will still get into the right hands.

Rep. Koppelman: So if the member of the public notifies law enforcement, they notify Human Services, that would satisfy this or is the member of the public in trouble because they didn't notify the right place that the law said they have to notify.

Jonathan Byers: Although it might not technically fit the map of what is provided here, I'm not aware of any person that's ever been prosecuted when they've made a report to law enforcement and then it went on to Human Services.

Rep. Klemin: What if they don't report it at all. What's the penalty.

Jonathan Byers: There is a class B misdemeanor penalty for those who fail to report child abuse and neglect. This falls within that statute so it would use that same criminal penalty of a class B misdemeanor.

Rep. Klemin: So if we have a situation where an employee discovers there is child porn on a workplace computer and reports that to his supervisor, and the supervisor says oh, we better delete that off the computer, and they don't report it at all. Then they could be guilty of a class B misdemeanor.

Jonathan Byers: That is true. If I look back to the child abuse and neglect mandated reporting requirements, the reason for that is because a lot of times that is exactly what would happen. In a school situation, a school counselor might tell the superintendent or school board member that a child came to them and reported that they were being sexually abused or physically abused and for whatever reason, although they told their supervisor within the school, it didn't get reported. They are trying to accomplish with the child abuse and neglect reporting, and what I'm trying to accomplish here by the drafting of this bill, is that people understand that the responsibility is on them and that they're not going to be able to get out from under that by simply passing the buck to someone else.

Rep. Klemin: I understand that in the case of all of these other professionals who are trained to know that they have a duty to report these things. But somebody working as a clerk in a store, doesn't necessarily know these things. So we're putting this responsibility on the public at large, the same as we are doing for everybody who is trained to know these things. Is that going too far.

Jonathan Byers: The only reason that I think it does not go too far, because in each of these cases, although there may be the ability for a state's attorney to charge somebody, that doesn't mean that they always do and the state's attorney has discretion in every case, whether to file a charge or not. If they look at a circumstance, realize that they're dealing with a person who did not have a clear understanding of what their requirements were, they still have to prove that somebody willfully violated the statute. If the person didn't know what their responsibilities were, thought they were good by just telling their supervisor, a state's attorney would either decide that they can't prove willfully or I just don't think that it merits the charging and the use of the taxpayer resources.

Rep. Klemin: So what is your office going to do to let the public know that they have this responsibility.

Jonathan Byers: I would imagine that there will be a media campaign to try to get out the fact that there is this requirement to report child pornography found on a workplace computer. Again, it all gets down to the fact that if a state's attorney comes across a case where somebody has made a diligent effort to pass this information on to somebody they thought was going to be acting responsibly with it, I just don't see that we should have a fear that the person is going to be charged by the state's attorney, just because the state's attorney can do that.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. Let's take a look at SB 2233.

Rep. Delmore: I move a Do Pass on SB 2233.

Rep. Beadle: Second the motion.

Rep. Steiner: Is this for public workplace computers, or this is workplace computers all over ND, everybody.

Chairman DeKrey: Everybody in the state.

Rep. Koppelman: With regard to notification of the public. As attorneys, do you see this, how do people know. I think people know, but wouldn't they call the police or law enforcement vs. Dept of Human Services. I think you pursued that a little further and the response was, well if they call law enforcement it's okay, because they'll call DHS. I'm for the bill, but the reporting just seems strange to me.

Rep. Delmore: Like someone said, the definition of pornography, I'll recognize it when I see it. I think that's part of the reason for adding to that definition makes it a little more clear what it is. I think most of us opening up a computer, know the difference between your grandchild in the bathtub and something graphically shown on a child.

Rep. Koppelman: That's not the part of the bill that I'm talking about. I'm talking about the fact that the reporting is to the Dept of Human Services, which seems odd. If one of us in our workplace saw something like that, if I think of calling anybody, I'm going to pick up the phone and call the police. I'm not going to call the DHS and tell them, look what I found on this computer.

Rep. Klemin: I suppose if they did call the police, they would say that they have to report it to the Dept of Human Services. My concern was all the other places where we have this, the people are trained to know that they have to report, but some clerk

someplace in some store may not know that. This applies to them. Somebody is going to have to give a little education on the subject.

Chairman DeKrey: He did say the person would have to willfully disobey. You would have to know that you were not reporting it. The clerk will call the roll call vote.

13 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Delmore

Date: 3/15/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2233

House 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 Rep. Delmore Seconded By Rep. Beadle

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) _____ No _____

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2233: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2233 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2233

SENATE BILL 2233 TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 25TH, 2011
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

Chairman Nething, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. I wish to testify in favor of Senate Bill 2233.

Senate Bill 2233 accomplishes two things. First, it expands the definition of sexual conduct as it pertains to child pornography. In its current form, Chapter 12.1-27.2 prohibits promoting or possessing images of actual or simulated sexual conduct by a child, as well as lewd exhibition of the genitals. SB 2233 would criminalize promoting or possessing images which show the lewd exhibition of the **breasts or buttocks** of a child.

The second purpose served by SB 2233 is to require those who discover child pornography on a workplace computer to report that (as suspected child abuse and neglect) to the department of human services. The department then involves law enforcement in the investigation as to when the child porn was downloaded and who had access to the computer at that time.

The Attorney General asks for a due pass on Senate Bill 2233. I would be happy to answer any questions.

SENATE BILL 2233 TESTIMONY
HOUSE JUDICIARY COMMITTEE
MARCH 15TH, 2011
PRAIRIE ROOM

By Jonathan Byers, Assistant Attorney General

Chairman DeKrey, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. I wish to testify in favor of Senate Bill 2233.

Senate Bill 2233 accomplishes two things. First, it expands the definition of sexual conduct as it pertains to child pornography. In its current form, Chapter 12.1-27.2 prohibits promoting or possessing images of actual or simulated sexual conduct by a child, as well as lewd exhibition of the genitals. SB 2233 would criminalize promoting or possessing images which show the lewd exhibition of the **breasts or buttocks** of a child.

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