15.8182.01000

FISCAL NOTE
Requested by Legislative Council
01/15/2015

Bill/Resolution No.: SB 2215

1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **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 substitutes biometric data for fingerprints, which, in addition to fingerprints, includes palm prints, voice prints, retinal or iris images, facial recognition, and DNA profiles.

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.*

There is no significant fiscal impact anticipated as a result of this bill.

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.*

N/A

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.*

N/A

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Kathy Roll
Agency: Office of Attorney General
Telephone: 701-328-3622
Date Prepared: 01/21/2015

2015 SENATE JUDICIARY

SB 2215

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2215
1/26/2015
22513

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature DRenose

Minutes: 1,2

Ch. Hogue: We will open the hearing on SB 2215.

Sen. Jon Casper: Sponsor, support (see attached #1).

Sen. C. Nelson: Your definition of biometric data, are we looking into the future or which of these do we do now.

Sen. Casper: My understanding is that we are taking into account what's happening in other states and with what the FBI is doing.

Sen. Grabinger: Are you saying that fingerprints are included in biometric data, or should this be fingerprints and/or biometric data.

Sen. Casper: I believe we are on top of the fingerprint data. We're expanding this.

Ch. Hogue: Thank you. Further testimony in support.

Judy Volk, Information Services Manager, BCI: Support (see attached #2).

Sen. Luick: How many states right now have this type of legislation and acted on it.

Judy Volk: The last portion....

Sen. Luick: The entire bill, more of the "intrusive" type of biometric information gathering.

Judy Volk: Every state is different about what they've implemented. We, in ND, are gathering fingerprints and palm prints at this point. Some other states already have their rapback systems in place. The FBI has a rapback system that they have just recently implemented and some states are participating in that. We are not to that point yet. As far as some of the modes, the retinal scans and iris, those are typically used for different types of purposes, like letting people in and out of jail facilities, where taking a set of fingerprints is very cumbersome and slow. It's a different type of identification that they are using that might be quicker. This would be for a specific population; they have a database of just those people. Those kinds of tests work well in those situations. Our hope is just to clarify that if we do move forward with that type of identification in the future, we don't have to come back and ask you specifically again to update our criminal history records and what type of identification processes are involved.

Sen. Luick: With the record checks that you get from a Dept. of Transportation, driver's licenses - are those records kept forever in their systems. The records that you maintain, are they kept forever.

Judy Volk: You're asking if we keep these fingerprints forever. There's a requirement that the entity that submitted them would have a continued interest. We would have to periodically ask those agencies to verify their enrolled people list. At the point where they are no longer of interest to them, we would need to remove them from the database. So the database doesn't continue to grow. We need to remove folks because we would get rapback on people that are no longer a foster parent, perhaps no longer a teacher, no longer a cop. Our responsibility for their privacy issue is to make sure that the individual is still of interest, remove them if they are not, and then at the point where a rapback hit would happen, we again would need to verify with that entity, they would affirmatively say, yes, we are still interested in this person, before they would receive the rap sheet back. Privacy is of primary concern.

Sen. C. Nelson: When you're talking about "of interest to" - if somebody is a cop in Fargo and they move to Dickinson, they are still a cop, but they are in a different place. Are we talking about the overall reach of the profession? The same thing would happen with teachers, they go from this town to the next, and so do they have to have fingerprints in all locations. Is it still just one file or a file for each location?

Judy Volk: That part has not been determined at this point. In preparation for planning for our database, making sure that we are allowed to store these

prints, we would have a lot of policy decisions to make. There are different ways that you can plan for the rapback system to be implemented. For example, the Nursing Board would do a record check for a new hire and then they would enroll those prints at a later date, saying this person was hired and enroll them. We would respond back to the Nursing Board because they would be the entity that enrolled them.

Sen. Armstrong: In the criminal context, currently fingerprints and palm prints are taken from anybody charged with a felony.

Judy Volk: Fingerprints for criminal justice purposes, we do gather fingerprints for every felony arrest. There's a requirement that fingerprints be taken. There are also quite a number of misdemeanor offenses, for which fingerprints are required to be taken. Statute establishes that.

Sen. Armstrong: So this would expand that portion too as well to everything.

Judy Volk: This is specifically about non-criminal justice purposes. This is for the record check.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2215
2/3/2015
23060

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes:

Ch. Hogue: We will take action on SB 2215. What are the committee's wishes.

Sen. Casper: I move a Do Pass.

Sen. Armstrong: Second the motion.

6 YES 0 NO 0 ABSENT DO PASS CARRIER: Sen. Casper

Date: 2/3/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2215

Senate **JUDICIARY** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Casper Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Casper

REPORT OF STANDING COMMITTEE

SB 2215: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2215 was placed on the Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2215

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2215
3/17/2015
24984

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to criminal history record information and registration for offenders against children and sex offenders.

Minutes: Testimony #1

Vice Chairman Karls: Opened the hearing on SB 2215.

Senator Kasper: Introduced this bill. This bill provides a new definition to reflect the changing nature of identification work done by the ND BCI. The current statue only references fingerprints. This legislation will modify the code to include a definition for biometric's. This is an issue with technology. In ND we already collect palm prints. This legislation would allow BCI to be more inclusive moving forward by including biometric data. Went through the bill.

Judy Volk, Information Service Manager with BCI: (See Testimony #1)(347- 7:13)

Rep. L. Klemin: I have a question on Section 6. When I read bills with adoption or name changes. I am confused about retraining the fingerprint part. Recently I went through TSA for the TSA pre-check program so I don't have to wait in line so long at some of the airports. My fingerprints were taken electronically on a machine and sent off to the FBI. What happens to them? What did you do with them previously?

Judy Volk: We do not retain the fingerprints in the data base. We process the fingerprints for review and after they are reviewed; once that process is completed they are deleted. This would allow us to store them in a data base.

Rep. L. Klemin: This is only dealing with adoption and name change here.

Judy Volk: We don't process TSA pre-check.

Rep. L. Klemin: You don't have the authority to retain the fingerprints now?

Judy Volk: We don't have clear authority to be able to keep them.

Rep. L. Klemin: On the name change part of the statue is used when an individual does apply for a name change with the court; they take fingerprints and check them through a data base. Your fingerprints provide positive

Opposition: None

Neutral: None

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2215
3/17/2015
25029

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman K. Koppelman: Reopened the hearing on SB 2215.

Do Pass Motion Made by Rep. K. Wallman: Seconded by Rep. Brabandt:

Discussion:

Chairman K. Koppelman: the biometric's are the collected from anyone that is arrested?

Rep. L. Klemin: this expands the terminology here and brings it up to date in the first respect. Secondly there is a section in here; section 6, dealing with adoption or name changes where there is new language that primary witness on tis subject said that it is not clear whether they are entitled to retain that data now so they don't. some of it is now electronic data.

Rep. K. Wallman: The example given was that if somebody wants to adopt for foster a child in SD they will be able to retain those records and they can run it through BCI and make sure that there isn't a known pedophiles that is trying to adopt children.

Roll Call Vote: 12 Yes 0 No 1 Absent. Carrier: Rep. P. Anderson:

Date: 3-17-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES SB 2215
BILL/RESOLUTION NO.

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Wallman Seconded By Rep Brabandt

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	—				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. P. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2215: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2215 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2215

Sen. Casper

#1-1

Sen. Casper

Introductory Comments for Senate Bill 2215

Senate Judiciary Committee

January 26, 2015

Good morning Members of the Senate Judiciary Committee, I am here to introduce Senate Bill 2215. This bill makes three changes to the statute for criminal history records:

(1) This bill provides a new definition to reflect the changing nature of identification work. The current statute only references fingerprints. The statute has been modified to include a definition for "biometrics" similar to what is used by other states and the FBI. We already collect palmprints as a part of our work and would like the statute to be more inclusive moving forward. There are many changes to sections of 12-60 to reference "biometrics" rather than fingerprints.

(2) Fingerprints are submitted as a part of the record check process under NDCC 12-60-24(2). Section 6 of this bill clarifies that the BCI has the authority to retain fingerprints submitted through this process with the knowledge of the record subject and at the request of the submitting entity. This allows us to plan for a rapback system that will notify us if any incoming arrest card matches an individual in the database. This would allow constant monitoring of subjects of interest rather than needing to recheck every five years, for example.

(3) Section 6 of this bill also clarifies that states that laws similar to those in NDCC 12-60-24(2) will receive the same information from our database that our state agencies would receive. For example, if an individual has a North Dakota record and Foster Care in South Dakota does a

record check, will see the very same information that we would provide if Foster Care in North Dakota inquired.

Members of the staff of the Bureau of Criminal Investigation are available to answer any questions about this bill that you may have.

SB 2215
1/26/15

#2-1

Senate Bill 2215

Senate Judiciary Committee

January 26, 2015

Judy Volk, Information Services Manager

Bureau of Criminal Investigation

Good morning Chairman Hogue and members of the Senate Judiciary Committee, my name is Judy Volk and I am the Information Services Manager at the Bureau of Criminal Investigation. A part of my responsibility includes the supervision of the criminal history records unit.

Senate Bill 2215 addresses several concerns regarding criminal history records.

1) It may be beneficial for our state statute to reflect "biometric" identification rather than use of only language involving "fingerprints." We currently collect palmprints and that is not reflected in our statute. There are other modes of identification: retinal scan, iris, and facial recognition that may come into play in the future. This bill provides a new definition that is similar to what other states and the FBI use. This would be a broad term that could encompass any of those types of identification. There are many references throughout the bill that are simply changes to reflect "biometrics" rather than fingerprints.

2) We seek clarification that we have the authority to store applicant prints for future use. Fingerprints are submitted as a part of the record check process under NDCC 12-60-24(2). Section 6 of this bill clarifies that the BCI has the authority to retain fingerprints submitted through this process with the knowledge of the record subject and at the request of the submitting entity. This allows us to plan for a rapback system that will notify us if any incoming arrest card matches an individual in the database. This would allow constant monitoring of

subjects of interest rather than needing to recheck every five years, for example. There is interest among our NDCC 12-60-24 customers for a service of this type. The planning for such a service is included in our project to replace criminal history. Implementation of a system would require additional resources in the future.

3) Section 6 of this bill also clarifies that states that have laws similar to those in NDCC 12-60-24(2) will receive the same information from our database that our state agencies would receive. For example, if an individual has a North Dakota record and Foster Care in South Dakota does a record check, South Dakota Foster Care will see the very same information that we would provide if Foster Care in North Dakota inquired. This ensures that best information is available to protect vulnerable populations.

We hope that you will support the changes we've requested regarding the criminal history statute and I'm happy to answer any questions you may have.

SB 2215
1/26/2015

#1

SB2215

3-17-15

Senate Bill 2215

House Judiciary Committee

Date: March 17, 2015

Judy Volk, Information Services Manager

Bureau of Criminal Investigation

Good morning Chairman Koppelman and members of the House Judiciary Committee, my name is Judy Volk. I am the Information Services Manager at the Bureau of Criminal Investigation. Part of my responsibility is management of the criminal history record system.

Senate Bill 2215 addresses several concerns regarding the data collected for criminal history records and for criminal history record requests. This bill does three things:

1) This bill provides a new definition for "biometric data." Our current statute language involves only the use of the word "fingerprints." We collect palmprints for some of our processes and that is not reflected in our statute. There are other modes of identification: retinal scan, iris, and facial recognition that may come into play in the future. This bill provides a new definition that is similar to what other states and the FBI use. "Biometric data" is a broad term that could encompass any of those types of identification. The definition is provided in Section 2. Sections 1, 3, 4, 5, and 7 include amendments related to the use of "biometric data" rather than simply using the word "fingerprints."

2) In section 6 of the bill, we seek clarification with item "d" on page 6 that we have the authority to store the applicant fingerprints gathered in the process of conducting record checks under NDCC 12-60-24. Fingerprints would only be electronically stored with the knowledge of the record subject and at the request of the submitting entity. This allows us to plan for a rapback

system that will notify us if any incoming arrest card matches an individual in the database. This would allow constant monitoring of subjects of interest rather than needing to recheck every five years, for example. There is interest among our NDCC 12-60-24 customers for a service of this type. The planning for such a service is included in our project to replace our criminal history record database. Implementation of a system would require additional resources in the future.

3) Section 6 of this bill also clarifies in item "e" on page 7 of the bill that states that have laws similar to those in NDCC 12-60-24 will receive the same information from our database that our state agencies would receive. For example, if an individual has a North Dakota record and Foster Care in South Dakota does a record check, South Dakota Foster Care will see the very same information that we would provide if Foster Care in North Dakota inquired. This ensures that best information is available to protect vulnerable populations.

We hope that you will support the changes we've requested regarding the criminal history statute and I'm happy to answer any questions you may have.