

**2019 HOUSE JUDICIARY**

**HB 1082**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1082  
1/9/2019  
30606

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamman
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## Explanation or reason for introduction of bill/resolution:

A BILL relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

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**Chairman K. Koppelman:** Opened the hearing on HB 1082.

**Joe Kolosky, Deputy Director, ND Dept. of Public Instruction:** See Attachment #1) Read testimony

**Representative Jeffery Magrum:** A teacher may have acted inappropriately, problems arise and the teacher is encouraged to move on maybe to another district and the cycle continues. The inappropriate behavior exhibited, fails to be addressed and doesn't get put on the record. Hence the teacher avoids any charges. How would that apply to this?

**Joe Kolosky:** That is a good question. ESSA, Civil Rights Law, promotes equity and transparency. If there are more consequences for any administrative personnel who knowingly aided in covering such a crime, this may act as a safeguard in that it offers more accountability thru reporting. This may also prevent additional offenses by the school personnel.

**Representative Rick Becker:** I am concerned because what we are talking about is alleged behavior, not found guilty. For example, Teacher Mary has a great reputation and is well liked for years. Principal Sue hears a rumor that Teacher Mary has had a sexual relationship with Boy student. Principal Sue confronts Teacher Mary and she states this is completely false. Soon Teacher Mary has to relocate to a new school. Principal Sue gives New School a recommendation for Teacher Mary because she has been an excellent teacher. At what point is she guilty of a misdemeanor because of the "alleged behavior"? Can you clarify how this would work in the real world?

**Joe Kolosky:** This is a concern we have heard from the field. In the law it specifically outlines when this would not pertain; **1.)** The incident was reported to law **2.)** The case was closed OR if charges not filed after 4 years of incident. The main issue is that this is written in the Every Student Succeeds Act and accepted under pretense that we would abide by every subsection in the law. It is now up to ND Public Instruction to enforce this. We support this

because it does protect children, but we know the details may need to be worked out. We kept the language simple per the Federal Law.

**Representative Terry Jones:** After seeing what happened with Judge Cavanagh there is a cause for concern reading the bill. I'm trying to get a distinction as it reads, "If they know or have probable cause to believe that a school employee engaged in sexual misconduct". It appears that has to be adjudicated before they know. And my concern is the way our society is going if people are guilty because of an accusation, it will put the school employees in a bad position because they heard the rumor and was not adjudicated. I believe there needs to be a clear distinction between what's known and what's alleged. I'm interested in hearing about any discussion you've had on this because I don't want to see a teacher's life ruined because of a student making accusations.

**Joe Kolosky:** I agree. We don't want to make a false acquisition to ruin someone's life. There are issues with "alleged activity". We used the language as written Federally. We didn't add to it and we can't take away from it. We wanted to present it and start the discussion to see where it goes.

**Chairman K. Koppelman:** Limited Information can only be given by past employers when prospective employers inquire. What are the normal procedures that you follow on this? If this become the law would this become a red flag, in terms of possible future employment for the school employee? Section 1; If the intent is to say do not give a positive reference if sought by prospective employers. But if this employer never gives a positive impression, only providing facts, then the intent could be lost or it could be misinterpreted.

**Joe Kolosky:** That has become the norm where they just say when they started and when they stopped working. As with a lot of laws, there are some ways to get around them as stated in your mentioned example. We can't delegate how employers answer reference inquiries. The intention here is to have something in place to help avoid or reduce instances where school officials purposefully rid their school or district of personnel that may have participated in sexual misconduct with a student, alleged or accused, to another school or district without record or report of suspected illegal behavior. In hope of reducing the chances of further sexual misconduct going unreported throughout school systems only resulting in negative influence on students.

**Chairman K. Koppelman:** that is the point As Representative Magnum pointed out in his statement, we certainly do not want to push education personnel along that are negatively impacting students. In Subsection 2; if any of those things are the case it says Subsection 1 does not apply. So what is intended to happen?

**Joe Kolosky:** 1.) If the case is officially closed, you could give a positive recommendation. 2.) if the employee has been acquitted. 3.) Case or investigation remains open without charges filed for 4 years These are the only times in which a recommendation maybe given per every student succeeds act.

**Chairman K. Koppelman:** Ok.

**Representative Jones:** That is where my concern lies. If someone is accused of being inappropriate, if they decide to move on to another school, the only way they can get out of this cleanly is by having charges filed against them. If there is a rumor then the school is going to be limited to giving a perfunctory resume for that teacher or you go thru subsection 2; A, B, C and D. Basically, charges will clear their name or it hangs there for 4 years without charges. Ultimately, it will be on their record.

**Representative Gary Paur:** I don't like this bill. Line 13 after files we put a period and deleted the rest of the language, at least it would even the playing field. Wouldn't it?

**Joe Kolosky:** It could work, but we would be deleting language from the Federal law, Every Child Succeeds Act which we will abide by.

**Chairman K. Koppelman:** The result would be that there would be no school district could ever give a positive recommendation to anyone for any reason. Then the question is, do you want to not be able to give someone a good recommendation

**Representative Rick Becker:** I am not in favor of this at all. It is desired because it is required by ESSA. If this would not pass what is the consequence, without fear mongering?

**Joe Kolosky:** We do not know. We would have a conversation with them. There could be litigation with ND and possible funding pulled.

**Representative Becker:** And what if we were to amend this?

**Joe Kolosky:** A waiver could be put in place as well. If we would show that we are working with the law. But honestly, I've no history down that road, so I don't know for certain.

**Representative Becker:** The amendment significantly to make it more palatable to the committee and potentially put you in the same situation as if we vote it down because it would differ from the Federal ESSA guideline?

**Joe Kolosky:** It would be more digestible that we are working with it the best we can than versus vote it down. We could explain that to them that we are different in ND and this doesn't fit for us. If we can create language that still upholds the safety of students that also works with the ND legislature and the US Dept. of Education.

**Representative Jones:** If the school knows or has probable cause to believe on line 14 maybe it is not as we think because if they don't know or have probable cause, then it shouldn't prevent them from moving forward. This hinges on the definitions of probable cause and know.

**Joe Kolosky:** I can go back and get a distinct definition for this.

**Representative Aaron McWilliams:** Do you have any information on how long cases like these remain open? I'm wondering if we can visit the listed 4-year reference and get that lessened.

**Joe Kolosky:** Teachers and administrators are mandated reporters and follow the process in place. Typically, not more than 6 months to gather evidence and charges filed if evidence supports. The 4 years mentioned, I'm uncertain where this number came from.

**Representative McWilliams:** If we amend this bill to say 6 months?

**Joe Kolosky:** I will present this and get that answer. I will also get the definitions asked for.

**Representative Paur:** The other 49 states have adopted this wording?

**Joe Kolosky:** I do not know. I can research that nationally and provide my findings.

**Chairman K. Koppelman:** Ok. What funds are we talking about losing? How much do you get from this program?

**Joe Kolosky:** 21<sup>st</sup> Century before and after school program, my program, receives \$6 million. We give the money out to the local school districts.

**Chairman K. Koppelman:** The program under ESSA?

**Joe Kolosky:** ESSA incorporates all the Federal Education Law, So my program is under ESSA too. I believe we get about 22 million in the state. It comes to us and we allocate it to the districts.

**Representative McWilliams:** Is there a precedent set in other states if don't completely comply with the Feds?

**Joe Kolosky:** I do not believe all federal funding has ever been withheld from any state, maybe they've only received partial funding. I do not know those amounts or to what state but I can check.

**Chairman K. Koppelman:** We recognize the intent of this bill. Further support?

**Alexis Baxley:** Discussed how the actions would be handled in the state when received.  
36:00-40:40

As soon as any accusations come up, they will be required to report. Administration has 30 -60 days to complete internal investigation, there may be variations per district. Once investigation is complete they will decide upon the findings if the law needs to be involved. If so, they are contacted immediately. Section 1-The only prohibition is preventing admin from getting the report. Once an accusation has been reported to school administration and has been handled whether without findings or handed over to law enforcement and they are in the midst of investigation, there is no reason to withhold any recommendation. This bill is preventing the passing of a teacher from district to district without properly investigating accusations.

**Chairman K. Koppelman:** Section 1 says they do not have pass the accusations on to a potential future employer

**Alexis Baxley:** Yes, if a teacher was exonerated of any internal or external investigation that would not be included in their file.

**Opposition:** None

**Chairman K Koppleman:** Closed the hearing

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# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1082  
1/14/2019  
30753

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamann
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## Explanation or reason for introduction of bill/resolution:

Relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

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**Chairman K. Koppelman:** Reopened the meeting on HB 1082.

**Representative Rick Becker:** Per my notes, probable cause was brought up as one of the points of consternation.

**Chairman K. Koppelman:** The whole point is that recommendations couldn't be made if accusations have not been properly looked into, internally or externally.

**Representative Steve Vetter:** I think the unintended consequence of this bill is that people will be considered guilty before they are proven so.

**Chairman K. Koppelman:** How do you feel that could be the result?

**Rep. Vetter:** You are just accused Discussed probably cause.

**Chairman K. Koppelman:** Definition of probably cause is a higher standard than just suspecting.

**Representative Karla Hanson:** Reiterated the information shared by Alexis Baxley's testimony given 1-9-2019, ND School Board Association.

**Representative Gary Paur:** I question Probable cause. If you have suspicions and you turn it over to the police, they will determine if there is probable cause. I'm not certain school employees has a good enough handle to determine probable cause.

**Representative Aaron McWilliams:** One of the key things that stands out to me on this bill is number three. It says, "within 4 years of the date of which the information was reported. Testimony we received says it's more likely these things will be resolved within 6 months. So why would we put 4 years then?

**Chairman K. Koppelman:** My assumption is it's just laying out a timeframe saying if nothing has happened within this timeframe, it probably not going to.

**Rep. Becker:** Couple things I find interesting. First was brought up by Rep. Hanson or Paur. If you know something is going on you can make a glowing recommendation. They are required by law to report it, mandatory reporters. The second you've reported it to any authority you are no longer bound to this bill. Finally, in Ms. Baxley's testimony, she kept referencing things that rise to the level of being reported, but again once they rise to that level it's already addressed in statute. So it is, in fact, the little things we are dealing with in this bill.

**Chairman K. Koppelman:** It is not just the reporting it. Went over 1, 2 & 3.

**Rep. Becker:** Are there any options not included in those three things?

**Chairman K. Koppelman:** If someone is convicted then this would apply. If it has not been reported, could it be a case. I don't know that probable cause should be used as it's more investigative and handled and determined by law enforcement. I believe it should state, "know or have reason to believe".

Further Discussion

**Rep McWilliams:** Motion Do NOT PASS

**Rep Vetter** Seconded

**Representative Bernie Satrom:** We are doing a balancing act here. I like that intent of this bill. We have a responsibility to our children and our safety.

**Representative Bob Paulson:** I recall the standard response among the school state wide is not to give a recommendation but simply state employment dates.

**Chairman K. Koppelman:** The days of receiving helpful information regarding a prospective employee are over. Now for the fear of liability places are just stating they work there and when.

**Rep. Vetter:** Innocent before guilty, I think this is a legalized witch hunt. We are changing the law based on the crime furthermore a person is having to defend themselves over an accusation. I am voting no on this one.

**Chairman K. Koppelman:** Years ago there was a situation in the catholic church where this exact thing was happening. Accusations of sexual misconduct flew and then the church leader would be shuffled to a new location which only resulted more incidents of abuse.

**Representative Luke Simons:** This is an alarming bill from the start. By passing this bill we would then be assuming the suspected is guilty because of allegations. We are innocent until proven guilty. Hard no



**Rep. McWilliams:** If this would pass, I would hope that we could amend the bill back from four years.

**Chairman K. Koppelman:** The time to do that would be now if the committee desires

**Rep. Paur:** Rep. Hanson pointed out they are required to report probable cause to the police. So why do we need line 13, 14, and 15.

**Rep. Hanson:** My notes say all teachers and staff are mandatory reporters. If they are told something or see something they must report it.

**Rep. Paur:** No probable cause mentioned there?

**Rep. Hanson:** Probable cause in my notes

**Chairman K. Koppelman:** If you get rid of that language, basically what you are saying is that no school district can ever give a recommendation.

**Rep. Paur:** Discussed amendment options

**Chairman K. Koppelman:** The you would be saying in subsection 2, then you can't give a positive recommendation if exonerated.

**Rep. Jones:** We are not dealing with guilty or innocent. The process will go though. I see this as stating if any of these things are going on, you cannot provide a glowing recommendation. I am concerned there is a bit of undertone saying they are guilty before they have a chance to defend themselves. This is just to assist in the process.

**Rep. Becker:** Why do we really need this if they are required to report anyway. ESSA is the driving force behind this and why it's necessary. We want the best bill possible with a couple adjustments. I think we should withdraw the motion and try to amend this.

**Chairman K. Koppelman:** I agree; I believe this bill has a noble purpose we just may need to define a few things. I would ask the maker and seconder of the motion if they wish to withdraw for the time being and if so I would ask Rep. Rick Becker work on this bill with Rep. Hanson.

**Rep. McWilliams:** Withdrew motion

**Rep. Vetter:** Second

**Chairman K. Koppelman:** Closed meeting

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1082  
1/15/2019  
30840

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamane
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## Explanation or reason for introduction of bill/resolution:

Relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

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**Chairman K. Koppelman:** Reopened the meeting on HB 1082.

**Representative Rick Becker:** See Attachment #1, proposed amendment. Went over the language in the bill.

**Chairman K. Koppelman:** Replacing 4 years with 1 year. Is there a concern that 1 year may be too brief of timeframe when considering any possible investigation?

**Rep. Becker:** The sense that most investigations may take up to 6 months. We figured if we doubled that it would provide adequate time, this has been confirmed by DPI

**Representative Karla Hanson:** Confirmed with DPI and confirmed timeframe and School board has ok'd the amendment.

**Chairman K. Koppelman:** Page 1, line 14 after has, insert substantial. Was the intent also to remove probable cause?

**Representative Aaron McWilliams:** What is the technical difference substantial VS. Probable

**Rep. Becker:** Probable cause is a known legal term, applies to the state level and is investigative. The intent is to steer away from the legal terminology and replace it with lay person terminology.

**Chairman K. Koppelman:** Probable cause is for law enforcement; it is what gives them authority to act. "Knew" or "should have known" would be more concise to lay person verbiage as it doesn't have the legal measure.

**Rep. McWilliams:** Is there a definition for "substantial cause"?

**Chairman K. Koppelman:** No, that is a layman's term.

**Representative Terry Magrum:** Definition of "Substantial"- of considerable importance, size or worth.

**Chairman K. Koppelman:** So we are saying, "We have a considerable amount of reason to believe".

**Chairman K. Koppelman:** In a legal proceeding what is called the preponderance of the evidence is 50%+1. This is on the front end and it is not a court case, it's more like circumstantial information surrounding something may have happened; a strong suspicion.

**Intern Beau:** (08:37) Per Legislative Counsel, the amendment was drafted as requested.

**Chairman K. Koppelman:** So how does "substantial probable cause" differ from "probable cause"?

**Rep. McWilliams:** Probable cause is 51% surety; Substantial cause is 30%.

**Rep. Becker:** This is the direction we want to go and should amend, as recommended.

**Motion Made:** Representative Becker to add Proposed Amendment, See Attachment 2  
**Seconded:** Representative Hanson

**Representative Gary Paur:** I'm getting confused. I thought the intent was to take it out of the legal realm by removing probable cause.

**Rep. Becker:** When you look at standard of proof, probable cause is standard use and the lowest measure of "reason to believe" a crime may have taken place. Typically, the step greater is "clear and convincing" evidence. If we use "substantial probable cause", it has a definition by law but it's not a commonly used legal standard of proof. But for interpretation, it's higher than the lowest of the low.

**Rep. Paur:** Why are we using "probable cause" if it's a legal term? Who is qualified to determine this? I think it should be law enforcement, not school admin or faculty.

**Rep. Hanson:** Probable cause is a reasonable basis for believing that a crime may have occurred.

**Rep. Becker:** I do not think this amendment makes the bill acceptable. I think this makes it less egregious. I will vote for the amendment. No on the bill.

**Chairman K. Koppelman:** We have a motion to move forward with the amendment.

**Voice Vote:** Motion carries to add **Amendment 19.8042.01001 Title 02000**

**Chairman K. Koppelman:** We now have the amended bill before us, wishes of the committee?

**Motion made:** Do Pass as Amended by **Representative Hanson**; **Seconded** by **Representative Magrum**

**Chairman K. Koppelman:** Further discussion?

**Rep. Magrum-** This situation has happened in my area. So I do know there is a place for it and it will serve a purpose. It comes down to do we look out for the children or the teacher. If people are talking about something like this, there just maybe something going on and it needs further investigation. This is where this comes in.

**Chairman K. Koppelman:** Pretty good synopsis.

**Representative Steve Vetter:** I understand we are talking about a recommendation. But why are we throwing out due process law, for what? Because we are afraid something could happen. I am a firm no.

**Rep. Magrum:** They would still get due process and have their day in court. This bill means the school has to report it.

**Rep. Vetter:** When?

**Chairman K. Koppelman:** This is a job recommendation bill for employment. The exceptions deal with the exceptions. The bill states; School faculty/admin must report information about teacher/student sexual misconduct before the teacher can pursue other teaching opportunities byway of a good recommendation. To summarize the current school district cannot "pass" the teacher to the next district in hopes of quieting or ridding the problem.

**Representative Bob Paulson:** As I understand it, relating to this bill - No one is accusing, charging or reporting. They are simply using this as a decision making matrix to give a recommendation.

**Chairman K. Koppelman:** Correct. Well stated.  
We have Do Pass as amended before us. Clerk, please call the roll.

**Clerk:** **Roll Call Vote:** Yes 9 No 5 Absent 0

**Chairman K. Koppelman:** Bill passes. Rep. Magrum, will you carry the bill?

**Representative Magrum** is the bill carrier

**Chairman K. Koppelman:** Closed meeting

19.8042.01001  
Title.02000

Prepared by the Legislative Council staff for  
Representative Becker  
January 15, 2019

CM  
1/15/19  
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

Page 1, line 14, after "has" insert "substantial"

Page 1, line 17, remove "giving rise to probable cause"

Page 2, line 5, replace "four years" with "one year"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1082**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.8042.01001 Title 02000

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☒ **VOICE VOTE**

Motion Made By Representative Becker Seconded By Representative Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**Motion Carried**

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
HB1082**

House 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 Representative Hanson Seconded By Representative Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams		X			
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter		X			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Representative Magrum

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

Motion Carries



**REPORT OF STANDING COMMITTEE**

**HB 1082: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1082 was placed on the Sixth order on the calendar.

Page 1, line 14, after "has" insert "substantial"

Page 1, line 17, remove "giving rise to probable cause"

Page 2, line 5, replace "four years" with "one year"

Renumber accordingly

**2019 SENATE JUDICIARY COMMITTEE**

**HB 1082**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Fort Lincoln Room, State Capitol

HB 1082  
2/4/2019  
Job #32121 (51:11)

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

### Minutes:

3 Attachments
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**Chair Larson** opens the hearing on HB 1082. Senator Osland is absent today.

**Joe Kolosky, Deputy Director of the Office of School Approval & Opportunity with DPI, testifies in favor (see attachment #1)**

**(4:05) Senator Luick:** Do we have evidence that this is happening today in North Dakota?  
**Kolosky:** We have no evidence. This bill has risen from other states having these issues. It's been brought to the attention of the US Department of Education. It happened several times and that teacher was found guilty of such a crime. In this state, there are issues all the time that happen, but usually taken care of in a prompt manner.

**Senator Myrdal:** The second page of your testimony states "if the individual or agency knows, or has probable cause to believe". Isn't that incredibly vague language as in he said she said? Perhaps you have a good looking 25-year-old teacher and a 16-year-old girl has a crush on said teacher. He does not respond but she accuses him.

**Kolosky:** This question came up on the House side and that's why the amendment to the bill was "knows or has substantial probable cause to believe". Knowing was the cause of debate especially on the floor for that same reasoning. If it's a rumor, I could be accused of this and it could cause some fatal harm to your career.

**Senator Myrdal:** I'm a former school board member. Is there anything in statute today that says that they can be held in suspension until there is a court case or conviction? What if you are innocent but they think there is probable cause? It's a little open to me.

**Kolosky:** You are correct. The intent of the law is to protect kids and if you know something is happening and you protect that teacher to get rid of them and it comes back to you that

you were protecting, that's where the consequence comes in for the aiding. This is the same conversation I had on the House side. I was an administrator to and I've encountered that. I had teachers come to me and I felt their interview was great but wished their letter of recommendation reflected their actual teaching ability. That does happen. Sometimes you do it to get rid of that people because if you give them a poor recommendation, you're stuck with them.

**Chair Larson:** I like the idea that a bad teacher cannot just be passed onto another school district to become their problem. However, the mechanics of it is difficult for me to embrace because of some of the questions already asked. A lot of us watched a lot of the Kavanaugh hearings and without evidence, it's difficult to defame somebody that way, but you're almost afraid not to if the allegations sound so plausible. Has this law been passed in other states?

**Kolosky:** Yes, and other states have amended it. I can email you that information (**see attachment #3**). It is our job at the department to follow the federal law. We tend to think we trust people and there are always instances where you are accused of something you didn't do, but then there are those instances where you're never accused of something you have done. I think the point of this law was to try to stop that.

**Senator Bakke:** I understand what you're saying here. As president of the teacher's union in my capacity, I found that there was a teacher who needed to be removed for cause but administration failed to document it properly and therefore they just passed the person around. I couldn't do anything about talking the person out of the profession because again there was no evidence. What are your thoughts about doing some language that says that school districts are required to document in-personnel files when there's an issue of abuse or aiding and abetting and then that's part of the public record? Is that how other states are doing it? Then it's there and nobody can deny that it's there.

**Kolosky:** Each state is doing it uniquely different and that could be a possibility. Our stance in the department is follow the law but keep kids as safe as we can in any mechanism possible. It's up to the committee and the chamber to debate and add amendments you see fit. I see there are some educators in the room today and I feel there will be some robust conversation about this and the changing of the amendments. We would not be opposed to that amendment.

**(11:45) Senator Luick:** Isn't that in law already? Isn't that already being documented today?

**Kolosky:** Yes, but part of this law is the punishment goes onto the person who's covering it up. That's the essential part of the law.

**Senator Luick:** Then the administration could be held accountable as well.

**Kolosky:** Correct.

**Senator Myrdal:** Wouldn't they be covering or aiding an allegation? There's nobody on this committee who doesn't want to protect children, but I greatly fear that we're in a society where accusations have become true. I'm afraid this is too open. How do we amend this to not only protect children but also the accused in a he said she said? I'm surprised to see the national language be this way too.

**Vice Chairman Dwyer:** Since we're on the subject, could it be revised to say "if the individual or agency knows or it has been confirmed"?

**Kolosky:** That is up to the committee. Each state has a variation on the law. Some have gone through the exact verbiage of the law and some have amended it. It is our job to follow the law and provide this testimony and information to the state so we can make our own decision on how we would proceed by abiding by this.

**Vice Chairman Dwyer:** is there any limitation on the funding if states amended as they see fit?

**Kolosky:** I received the same question on the House. I don't believe they will take money away from us especially with the current administration. The United States department of Education is bare bones there and I don't believe they follow up on states and hold them accountable for amending this. I think if we threw it out totally, we'd get a phone call, have meetings and explain our case because they have to understand it's not the DPI not abiding by the federal law. If the state legislature disagrees with this, it's the state's decision. No state has even been withheld money for not abiding by the federal law. It came close in Michigan with No Child Left Behind with the funded mandates, but it never went without funding.

**Senator Bakke:** Page 1 line 16 says this "does not apply if it's been reported to law enforcement, if the matter has been closed by law enforcement after an investigation" and so on. So what this is basically saying is if there was an accusation made, true or not, you are required to tell the new place they're going.

**Kolosky:** This is saying that when they hear an accusation and do an investigation and get law enforcement involved, this wouldn't apply because they've done their due diligence and now they carry it on to that next level. I enjoy the debate and I understand the knows part, but if I'm an administrator and I get wind of this, I will do an investigation. The bill itself is when I do get wind of that and I do nothing, there is a consequence.

**Senator Bakke:** As a school teacher and administrator you're a mandatory reporter, so there's no way you can get around this. You have to report this. Is this just a penalty for administrators? If they fail to follow through and don't report it, then there is a consequence for them, right or wrong and whether there was something done or not done. Correct?

**Kolosky:** Correct. It is a tough situation to be in. I am a mandated reporter as well. I had an issue where someone called me at this building and said they had a strong suspicion that this child was being abused. They gave me the names, now I had to report it. The meaning of the bill is if that information is reported to me and I don't report it, that's the issue we're addressing. It's tough and that's why the bill was amended on the House side with "substantial probable cause" and another amendment was on page 2 line 5. They decreased it from four years to one year.

**Senator Luick:** My question was to define "substantial probable cause" that you just mentioned. Who will decide that?

**Kolosky:** Probable cause is open for interpretation. That is an item to be talked about. I would assume we use what's already law; there is a definition out there.

**Senator Myrdal:** If you were a school employee or administrator, you are under those mandatory law, but this relates to assisting in obtaining a new job. It doesn't address what you are mentioning about reporting it. This is about the passing on of a potential bad actor to a different school where there's children. Who do you report it to?

**Kolosky:** It is a different process. You would file your 960 report to social services. I believe there is a penalty for a mandating reporter not to report as well. Circling back to the point of this, I'm a mandated reporter and if I don't do it, I will get a consequence for that but also a consequence with this proposed bill. It's essentially the "good ol' boys club"- getting friends jobs who probably shouldn't have that job. We're trying to eliminate that.

**Senator Bakke:** Basically if everybody is doing their job and there has been some sexual abuse and the administrator files the paperwork, which takes us right into section 2, everything is fine because that will then be in their file. We're saying they're obligating to tell the next employer if it's in their file.

**Kolosky:** Correct.

**Senator Bakke:** This is only covering the times that they have just said "well, I will just pass this person to another school and let them figure it out" whether there's evidence or not. As a mandatory reporter, we have to report. This is just to cover the times when they just pass the problem along because they don't want to report it because it's not pleasant when you do.

**Kolosky:** or it may be a relative or friend

**Senator Bakke:** Then they would say you are aiding and abetting because even if there is no proof of it, you knew there was an allegation.

**Kolosky:** Correct.

**Senator Bakke:** This is fairer to the person who is being accused because if you're reporting it, an investigation is done, and it's found that it's not true, then you have alleviated that suspicion from the person who was being accused. This is a way to not only protect the school and child, but also the person being accused if they are not guilty.

**Kolosky:** Correct. You can see it that way.

**Joseph Jensen, UND Law Intern, neutral party**

**Jensen:** "Probable cause" is not defined in the Century Code. It's a legal term of art that is generally done through case law.

**(26:33) Alexis Baxley, ND School Boards Association, testifies in favor**

**Baxley:** We support this bill because as part of the approved ESSA plan of North Dakota, districts are already federally required to comply with this. It's probably unlikely that federal funding would be removed from a district, but there is always a chance and most districts don't like to take a chance of losing any dollars. I'll point out that there is no requirement for an administrator or a staff member to share the accusation with any party other than law enforcement. If they have reported that to law enforcement and an investigation is done, the requirements of this bill go away. The only prohibition is in providing a positive job reference which employers are not required to do anyway. You are not required to share with another school district what the accusation was. If you have documented that in your personnel file, you are not mandated to share that personnel file until the next district requests it as an open record. There has been a lot of talk about an accusation that was proven untrue hurting someone's career- this does not mandate that that accusation be shared with the next

employers. It is just, to Mr. Kolosky's point, you cannot provide a job reference without having done some due diligence in order to avoid the controversy.

**Senator Myrdal:** Today if a teacher applies for a job somewhere else, does that school district have to do an open record request to get their file? Wouldn't that be automatic on that new school district?

**Baxley:** It is not a full open records request, but a district does not automatically forward personnel files to the next district. That district would need to call the previous district or their current district and request those files. The business managers aren't just going to continually forward them, but you don't have to go through the full process of a request.

**Senator Myrdal:** Isn't that common practice?

**Baxley:** I would never speculate on a percentage other than to say it does not happen 100% of the time.

**(30:45) Erin Claussen, Junior at the University of Mary, testifies in favor (see attachment #2)**

**Chair Larson:** When I worked at the police youth bureau, I supervised social work students from the University of Mary. Well done.

**Senator Bakke:** If you're a mandatory reporter and you don't report, what's the punishment?

**Kolosky:** It's a class B misdemeanor.

**Senator Bakke:** That's what you have on here- a class B misdemeanor. It's 30 days or a fine of \$1,500 or both. Isn't that already covered under that section of the law?

**Kolosky:** Yes, but the verbiage of this law would comply with ESSA. I'm not sure if they could receive two misdemeanors now from this and then the mandated reporter requirement.

**Jensen:** You can be charged with both but not necessarily convicted with both.

**Kolosky:** It strengthens the case for someone to follow through and report when you have these consequences otherwise. The chances of getting at least one are higher than none.

**(35:25) Steve Vetter, District 18 Representative, testifies in opposition**

**Representative Vetter:** I felt the need to come here and explain what happened in the House and ultimately why I think this is a bad bill. It says this bill passed with only 16 nays, but I believe that it would not have if the rules had been followed. It was on the floor and I was not given a chance to speak. This was early on and some of the people are just learning the rules. I talked on the floor to reconsider the motion. There were 44 votes to reconsider and 20 people did not vote which is against House rules- everybody needs to vote. Therefore, if it was 2-1 on those, I'm assuming there would have been 4 more votes and this wouldn't have been in front of you today.

This is called the "pass the trash" bill but I would rather call this the "Judge Kavanaugh law for teachers". I believe this bill will certainly catch more offenders but punish the innocent as well. I understand the situation and why this bill was brought forth. We have all heard and know the stories. There's the young teacher and student who mess around but there's no proof. Because authorities can't find evidence, an accusation is good enough just as long as

we hate the crime and we cannot catch the offenders, correct? Some might say, "What's the big deal, most of them are guilty". I know this because this happened in my community. What about a teacher who has been falsely accused by a student? Or a colleague accusing another colleague? Do we throw away the innocent along with the guilty? Do due process rights matter or not?

To add to the discomfort of this bill in looking at the aiding and abetting section, there is a high probability more school officials will accuse other school officials with a class B misdemeanor. Aiding and abetting is described as "assisting a school employee, a contractor or an agent if the individual or agency knows or has substantial probable cause to believe that the school employee, contractor or agent engaged in sexual misconduct regarding a minor or student in violation of law". With this bill we are expecting school officials and contractors working at the school, not law enforcement, to know what substantial probable cause is. If they assist an accused person in obtaining a job under this bill, the penalty is a class B misdemeanor. We all know probable cause is, but do you know what substantial probable cause is? If you work in a school, you better find out what that is.

The House amended it thinking probable cause was too low of a standard. They wanted to make it higher to substantial probable cause which is an actual, legal term but I don't think it's found pretty much anywhere. The supporters of the bill say this isn't criminal law, it's just a job reference. However, that reference affects the livelihood of that person. If that person or school doesn't report it, it's criminal, so a school official cannot get a job reference if they are accused of a crime. If accused, then one must prove their innocence in a lengthy process and investigation as proposed in this bill.

**(40:40) Chair Larson:** As you've been listening to the testimony, did it give you any level of comfort to hear that if there is reason to believe that they've done that and they work in that school system, they have to report it anyway. If they did, that would alleviate them of any kind of problem once reported. If they believe that this person has had sexual contact with a student, then they are required to report that.

**Representative Vetter:** That's two things. There's the official reporting it, then there's the actual person that's being accused. What I'm talking about is the person being accused. If you're accused, how do you clear your name? You have those three things on there in basically a year's time. That's a punishment just being accused. If accused, then one must prove their innocence. This is the opposite of how our justice system is supposed to work. It is the burden of the government to find a person guilty before they are punished. If we continue down this path, where does this lead us? What type of precedent does this set? I would ask for a do not pass.

**Senator Myrdal:** "The good ol boys club" was mentioned earlier. Do you think there's potential for the opposite to happen and accuse somebody innocent under this bill?

**Representative Vetter:** Certainly and I don't see anything in there as far as a false accusation. What happens then?

**Senator Myrdal:** Let's say you're a superintendent or official principal and have heard a rumor but you have a gut feeling that it's probably not true and elect as a leader not to report it. Now you may have committed a misdemeanor under this proposal.

**Representative Vetter:** That is correct.



**Vice Chairman Dwyer:** What if we change the language to say “if the agency knows, or it has been confirmed or there’s an investigation underway”. Let’s say someone applies for a job, but there’s an investigation underway. The school A should tell school B about this, shouldn’t they?

**Representative Vetter:** It’s a tough call. Unless you’re actually found guilty of something, I don’t believe that you should be punished for that. In this case, he or she is only being accused.

**Vice Chairman Dwyer:** School B is obviously not going to hire him if there’s an investigation underway, so that will be a mark on that applicant.

**Representative Vetter:** From what I understand, right now they just do one recommendation whereas ultimately if this were to pass, you would get a different type of recommendation. So of course, if you got the different type of recommendation, everyone would know you’re being accused of some type of crime with a student.

**Kolosky:** As a school administrator, you must take at least three hours of school law. This covers probable cause and reasonable suspicion. They will have some kind of idea of what needs to be reported. There’s a heavy dose of school law in our programs in the state. Each class I took talked about school law as well.

**Senator Myrdal:** This is very convoluted to me. Say you have an administrator taking that training. Can you then as an administrator say “well I took this training and my gut feeling said it didn’t fill that measurement”. Is that a legal excuse for you not to get a misdemeanor?

**Kolosky:** You are correct. It goes back to if I have a suspicion, I have to do an investigation. We are taught that in school. Also if you are a teacher applying for a new job, they ask you on the application if you are under investigation, so there is a safety net there.

**Senator Myrdal:** but as a matter of law, which this is, that particular provision doesn’t necessarily play into whether you use your training as an affirmative defense. It becomes a grey area.

**Kolosky:** I would agree.

**Vice Chairman Dwyer:** The mandated reporting- if you know, you’re required to report but if you hear a rumor, to what extent are you required to investigate?

**Kolosky:** If I hear a rumor, I personally will do a formal investigation. I will get my social worker and counselor in the room and we will make a determination as a team of how to proceed through this issue. I was also a Head Start director working with poor children. I dealt with this probably every day. It’s a difficult situation to be in, but you have to do it. Your job is to keep kids safe.

**Baxley:** There is also a class b misdemeanor penalty for a false report. If you are a mandated reporter, and you file a false report, there is a criminal penalty for that as well.

**Chair Larson closes the hearing on HB 1082.**

**Chair Larson:** I want to wait until Senator Osland is back to take action.

**Senator Bakke:** I want to see what other states have done and how we can rework this. I will talk to Legislative Council.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1082  
2/5/2019  
Job #32148 (5:36)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

No Attachments
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**Chair Larson** opens discussion on HB 1082.

**Senator Bakke:** I looked through Mr. Kolosky's testimony from the Education Commission of the States, and it looks like this bill is almost word for word with federal law. However, in talking with other senators, we have an amendment we would like to prepare. On line 14, we would remove "has substantial probable cause to believe" and in place of that add "has been confirmed or an investigation is underway". Does that tighten it up a bit?

**Senator Myrdal:** "has been confirmed"- How does that translate in legal language in Century Code? I think it's better with this amendment, but I need to know what that legal word means.

**Vice Chairman Dwyer:** It's not a legal term, but it would encompass things like a confession or a conviction, which are both legal terms, or evidence that hasn't led to a prosecution yet but there is a photo or some other evidence.

**Senator Myrdal:** Confirmed by who? There is a lot of ambiguity there. We need to protect those falsely accused, so how do we address that?

**Chair Larson:** we all agree that we want to protect kids from any employee that might be putting them at risk but at the same time we don't want to have rumors ruin someone's reputation and job opportunities if that's unfounded. Let's wait on Legislative Council to draft this amendment and get a Christmas tree version of this.

**Chair Larson ends discussion on HB 1082.**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1082  
2/6/2019  
Job #32272 (14:13)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

1 Attachment
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**Chair Larson** opens discussion on HB 1082.

### (see attachment #1)

**Senator Bakke:** There was concern that you could get into a “he said she said” situation and people could be accused of something they were innocent of that would then destroy their opportunities for future employment. This amendment will help that.

**Senator Bakke: Moves to Adopt Amendment 19.8042.02001 to replace “has substantial probable cause to believe” with “it has been confirmed, or an investigation is underway”.**

**Vice Chairman Dwyer: Seconds.**

**Senator Osland:** Can we talk about the intent of this bill?

**Chair Larson:** When we have school personnel involved in a sexually inappropriate circumstance, the concern is that this person may leave that school where their reputation is so tarnished and move to another school, get hired there and carry on with the same poor behavior. The intent is that if someone in that school helps that offender get a job someplace else without letting the new location know that they have this background, then they can be charged with a class B misdemeanor of aiding and abetting in doing this. The quotation that the testifier used was a “pass the trash” situation. We’ve been discussing if this bill will actually fulfill that attempt, or is this going to be a situation to help further sully someone’s reputation that it shouldn’t be. The intent is that when there is sexual abuse of a student, then there needs to be some investigation and maybe charges. They felt that by passing this bill, it would make people investigate and charged if need be. If these offenses are investigated, then you’re not going to be in any trouble as the reporter.

**Senator Myrdal:** I think that mandatory reporting is already there for many of these officials; it's already in Century Code. This is still a slippery slope. I personally think it's already protected and it can be abused either way to cover that hole that someone might have a "good ol boy" system and get their friends jobs. I'm not sure if this actually accomplishes anything, but it opens up a risk that if you have a 17-year-old girl in love with a 30-year-old teacher and she claims that he sexually abused her, the investigation is on and that teacher's life can be on hold for a year or two. I'm likely not voting for this legislation.

**(7:30) Chair Larson:** Mr. Kolosky from DPI came in to testify. He said this is currently in federal law, and they inform school workers of this. They brought this to us because they wanted to have the state law be consistent with federal law. We amended this to be even more specific on exactly what kind of information needed to be passed on. Rather than being just "probable cause" it became "substantial probable cause" and we may change it further with this amendment to say "it's been confirmed or an investigation is underway". The federal legislation is much more encompassing; we have made it narrower.

**Senator Myrdal:** I was talking to the School Boards Association after our hearing and they said nothing prevents a school from following federal law even if this doesn't pass. Another thing we should be aware of is the House put "substantial probable cause" so if we're changing that, we're changing it away from the federal language to our language, but there's nothing that keeps the schools from following federal law as it stands now.

**Vice Chairman Dwyer:** It wouldn't necessarily jeopardize any federal funds if we didn't pass this. Mandated reporters- whether you're a teacher, school counselor or administrative staff- reports to Social Services or the police department, not to another school. That's what this addresses- communicating with another school.

**Chair Larson:** Right, so that another school doesn't hire somebody that has that cloud hanging over them.

**Senator Bakke:** We were concerned that money was tied to this and if they didn't follow the federal regulations, they would lose that money. Mr. Kolosky said he doesn't think that would happen. I know that this has happened. In Grand Forks I was on a committee to hire someone for a fairly important position and when we called for a review, we received a glowing recommendation for this person and found out later it was only to take the person off their hands. This is trying to prevent a poor character from being passed on with fraudulent recommendations and information being withheld.

**Chair Larson:** They told us that it is also a crime to give false allegations, so there is that protection in place as well.

**Vice Chairman Dwyer:** I'm not sure how I feel about this bill, but I like the amendment. I wouldn't support the bill without this.

**A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.**

**Chair Larson:** We will think on this and plan to take action next week.

**Chair Larson ends discussion on HB 1082.**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1082  
2/11/2019  
#32531 (8:50)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to the prohibition on aiding and abetting sexual abuse; and to provide for a penalty.

## Minutes:

No Attachments
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**Chair Larson** opens discussion on HB 1082.

**Chair Larson:** This is federal law. It's good the way it is, but if we tweak it too much more, then the school boards and schools will be in a difficult situation because state law and federal law will be in conflict.

**Senator Bakke:** This is federal law?

**Senator Myrdal:** The actual, original language we got from the House, is the federal language. From what I understand, if we don't pass this, the school boards can apply this anyhow.

**Senator Bakke:** Line 9 is just saying state or local educational agencies that receive funds through the Elementary and Secondary act. It's taking private schools, homeschooling and anybody that doesn't receive federal dollars- it's a way to define who they're talking about. I pulled up the Education Commission and they had language from different states. We already say that if a mandatory reporter suspects that there is child abuse going on, and they don't report it, they're already going to be guilty of a misdemeanor. Now by doing this, we've now given them a second charge. I'm thinking it's a bit of overkill, that we're over-legislating.

**Chair Larson:** In the testimony from Mr. Kolosky, it says that this bill arises from the "Every Student Succeeds Act" that replaced the "No Child Left Behind". That's where he said this comes from, from that verbiage.

**Vice Chairman Dwyer:** We're talking about the bill as amended.

**Chair Larson:** Correct.

**Senator Osland:** This is a federal issue, and I don't know if it makes much difference what we have in the statutes. We need to address this. This may compliment or be obtuse to something, but assuming the federal government is competent in chasing this, we need to have this in law. It's complying with federal law.

**Chair Larson:** This bill is not necessarily complying but being in line with what the federal legislation is so that the state law mimics that. From what I understand from the school boards, they already have this in federal law. They wanted to bring the language into North Dakota law to be the same language. If we do too much changing on it, we will have conflict. The way we have it now as amended, they feel comfortable with.

**Vice Chairman Dwyer:** In regards to Senator Bakke's concern about the two misdemeanors-one is mandated reporting to Social Services or the police department and this is mandated reporting to the next school. They really are two different issues. I think we should pass it.

**Vice Chairman Dwyer Moves a Do Pass as Amended.**

**Senator Osland: Seconds.**

**A Roll Call Vote was Taken: 4 yeas, 2 nays, 0 absent. Motion carries.**

**Chair Larson:** If this passes on the floor, it will probably go to conference committee. Good work everyone.

**Chair Larson will carry the bill.**

February 5, 2019

8/4  
1801

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1082

Page 1, line 13, remove the second "or"

Page 1, line 14, replace "has substantial probable cause to believe, that" with "there is confirmation, or there is an investigation underway based on a claim"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1082**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.8042.02001

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 Senator Bakke Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**Replace “has substantial probable cause to believe” with “it has been confirmed, or an investigation is underway”**



**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1082**

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 Vice Chairman Dwyer Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Chair Larson

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

**REPORT OF STANDING COMMITTEE**

**HB 1082, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1082 was placed on the Sixth order on the calendar.

Page 1, line 13, remove the second "or"

Page 1, line 14, replace "has substantial probable cause to believe, that" with "there is confirmation, or there is an investigation underway based on a claim"

Renumber accordingly

**2019 TESTIMONY**

**HB 1082**

#1  
HB1082  
1-9-19

**TESTIMONY ON HB 1082**

**Judiciary Committee**

**1/9/2019**

**By: Joe Kolosky, Deputy Director**

**701-328-2295**

**North Dakota Department of Public Instruction**

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Mr. Chairman and Members of the Committee:

My name is Joe Kolosky and I am the Deputy Director of the Office of School Approval & Opportunity with the Department of Public Instruction. I am here to speak in favor of HB 1082 relating to the prohibition on aiding and abetting sexual abuse, or the "Pass the Trash Bill."

This bill arises from the Every Student Succeeds Act that replaced No Child Left Behind which took effect Dec 10, 2015. Under ESSA, states were given greater authority and flexibility in several key areas including accountability, resources, interventions, and teacher evaluation systems. North Dakota stakeholder's created the entire state Every Student Succeeds Act plan including our unique accountability system. This system incorporates indicators in student engagement, choice readiness in the high school, student academic growth in the elementary school and GED completion rates. This is a stark contrast to No Child Left Behind in which accountability was solely based on test scores and graduation rates.

North Dakota's Every Student Succeeds Act plan was accepted and approved by the United States Department of Education on Sept 1, 2017. With this approval, the expectation was that ESSA's subsections would be abided by as well. This includes Fiscal Transparency, which outlines spending to the school level, and the subsection in which I am speaking on today.

It is important to note that The North Dakota Department of Public Instruction has worked closely with Senator John Hoeven and his office on this amendment to Every Student Succeeds Act

#1  
HB 1082  
1-9-19

to ensure that school districts were not passing harmful teachers, administrators and other personnel from one district to another by providing positive letters of recommendations or failing to inform future school districts of situations that occurred involving minors or students.

Specifically in Every Student Succeeds Act it is stated: "The state educational agency, or local educational agency that receives federal funds under the Elementary & Secondary Education Act, Section 8546 (20 U.S.C. § 7826) shall prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law."

This bill is intended to keep our children safe and fulfill the expectations and obligation that all schools in North Dakota are compliant with state and federal laws. The language of this bill is as minimalistic as necessary to fulfill those expectations.

Chairman Koppelman and Members of the Committee, that concludes my prepared testimony and I will stand for any questions you may have.

#1 HB 1082  
1-15-19  
pg. 1

19.8042.01001  
Title.02000

Prepared by the Legislative Council staff for  
Representative Becker  
January 15, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

Page 1, line 14, after "has" insert "substantial"

Page 1, line 17, remove "giving rise to probable cause"

Page 2, line 5, replace "four years" with "one year"

Renumber accordingly

#1  
HB 1082  
2-4-2019

**TESTIMONY ON HB 1082**  
**Senate Judiciary Committee**  
**2/4/2019**

**By: Joe Kolosky, Deputy Director**  
**701-328-2295**

**North Dakota Department of Public Instruction**

---

Madam Chairwoman and Members of the Committee:

My name is Joe Kolosky and I am the Deputy Director of the Office of School Approval & Opportunity with the Department of Public Instruction. I am here to speak in favor of HB 1082 relating to the prohibition on aiding and abetting sexual abuse, or the “Pass the Trash Bill.”

This bill arises from the Every Student Succeeds Act that replaced No Child Left Behind which took effect Dec 10, 2015. Under the Every Student Succeeds Act, states were given greater authority and flexibility in several key areas including accountability, resources, interventions, and teacher evaluation systems. North Dakota stakeholders created the entire state Every Student Succeeds Act plan including our unique accountability system. This system incorporates indicators in student engagement, choice readiness in the high school, student academic growth in the elementary school and GED completion rates. This is a stark contrast to No Child Left Behind in which accountability was solely based on test scores and graduation rates.

North Dakota’s Every Student Succeeds Act plan was accepted and approved by the United States Department of Education on Sept 1, 2017. With this approval, the expectation was that the Every Student Succeeds Act’s subsections would be abided by as well. This includes Fiscal Transparency, which outlines spending to the school level, and the subsection in which I am speaking on today.

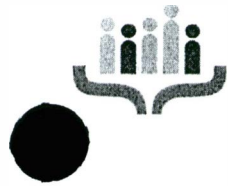
It is important to note that The North Dakota Department of Public Instruction has worked closely with Senator John Hoeven and his office on this amendment to the Every Student Succeeds Act. This amendment will help ensure that school districts are not passing harmful teachers, administrators and other personnel from one district to another by providing positive letters of recommendations or failing to inform future school districts of situations that occurred involving students.

Specifically in the Every Student Succeeds Act it is stated: "The state educational agency, or local educational agency that receives federal funds under the Elementary & Secondary Education Act, Section 8546 (20 U.S.C. § 7826) shall prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law."

This bill is intended to keep our children safe and fulfill the expectations and obligation that all schools in North Dakota are compliant with state and federal laws. The language of this bill is as minimalistic as necessary to fulfill those expectations.

Chairwoman Larson and Members of the Committee, that concludes my prepared testimony and I will stand for any questions you may have.





## This response was prepared for Kirsten Baesler, State Superintendent, North Dakota Department of Public Instruction

### Your Question:

You requested information regarding how states address and report teacher misconduct, specifically in response to the section of ESSA requiring policies that prohibit the provision of a recommendation of employment for an employee if the state education agency, school district, or school knows, or has probable cause to believe, that the employee has engaged in sexual misconduct with a student (20 U.S.C. § 7926).

### Our Response:

The 2015 passage of ESSA and the recent U.S. Department of Education "Dear Colleague..." letter sent out to remind education administrators of the requirements under ESSA specifically regarding educator sexual misconduct have prompted some states to change their statutes, regulations, or even local district policy to align with the federal provision.

While some states incorporated the federal policy almost verbatim, there are other, more varied approaches to attempting to meet the ESSA requirement. States address general school personnel misconduct using various methods such as establishing grounds for the revocation of an educator license, revising criminal statutes, requiring reporting, creating training programs, establishing specific hiring processes, prohibiting certain confidentiality agreements, and more.

Below are some examples of recent state legislation (some enacted before ESSA) on school personnel misconduct that incorporate some of those approaches to address the issue. Please note that this is not an exhaustive list of ways states are tackling this problem. We have highlighted components of bills that may be more comprehensive in their approach to addressing teacher sexual misconduct.

### *Reporting Requirements*

**Tennessee:** The legislature passed a few bills related to teacher misconduct in 2018:

- SB 2013 (2018) revises the teacher code of ethics, adding among other things, a prohibition on teacher-student sexual misconduct, and requires professional development and training. It also adds a reporting requirement for any teacher who

### Additional Resources

- ✓ ECS 2017 and 2018 state education policy tracking on teacher misconduct and archived policy tracking, 1994-2016 on: School safety, Background checks, and Teacher rights
- ✓ Oregon Legislative Counsel opinion memo on sex abuse in schools.
- ✓ US Department of Education guidance on 20 U.S.C. § 7926.
- ✓ Child Welfare: Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel (GAO Report, 2014)
- ✓ The National Association of State Directors of Teacher Education and Certification (NASDTEC) developed a Model Code of Ethics for Educators as well as a database of actions taken against individual educator licenses for LEAs' reference.

has personal knowledge of another educator in breach of the code of ethics and provides that a failure to report will also be a breach of the code.

- **SB 2012** (2018) requires the state board of education to develop policies concerning the transmittal of final disciplinary actions taken by the board on educator licenses to the national clearinghouse administered by the National Association of State Directors of Teacher Education and Certification (NASDTEC). In addition, it requires the state board to post on its website all final disciplinary actions taken by the board on educator licenses. *\*For more information about NASDTEC's clearinghouse see "Additional Resources" sidebar.*

**Utah:** **HB 345** (2015), titled "Education Abuse Policy", among other things, requires the State Board of Education and the Utah Professional Practices Advisory Commission to take disciplinary action against any educator who violates the state's mandatory physical or sexual abuse reporting laws. Other components of the bill modified disclosure requirements concerning related investigations, reports, hearings or significant information about an educator, required a review of an applicant's references and discipline records prior to hiring them, and modified the duties and processes related to the oversight of complaints and investigations of educators.

### *Training*

**California:** **AB 1058** (2015) requires the State Department of Education to establish best practices for school personnel to prevent abuse, including sexual abuse, of children on school grounds, by school personnel, or in school-sponsored programs, and to post on its Internet Web site links to existing training resources. The bill encourages local educational agencies, state special schools, and diagnostic centers to participate in training on the prevention of abuse, including sexual abuse of children on school grounds, by school personnel, or in school-sponsored programs. It also encourages them to provide school employees with that training at least once every 3 years.

### *Changes to Hiring Processes, Confidentiality Agreements, and Disclosure Requirements*

**Indiana:** **HB 1005** (2016), among other things, provides that a confidentiality agreement entered into by a school and an employee is not enforceable against the school if the employee committed an act resulting in a substantiated report of abuse or neglect.

**Pennsylvania:** **HB 1816** (2014) provides that applicants for positions with school entities that would involve direct contact with children must disclose whether they have ever been the subject of an investigation into allegations of abuse or sexual misconduct, among other things.

Additionally, school entities and independent contractors may no longer enter into contracts or agreements that have the effect of suppressing or expunging information related to employee sexual misconduct, unless after an investigation of the allegations are found to be false. (See summary [here](#).)

**Missouri:** Among the provisions of **SB 54** (2011)—named the "Amy Hestir Student Protection Act" after a student that was sexually assaulted by a teacher—is a requirement that all school districts adopt a written policy relating to information that the district will provide about former employees (certified and non-certified) to other public schools.

The bill also permits school districts to be held civilly liable for failure to disclose information about an employee who was dismissed or who resigned due to substantiated allegations of sexual misconduct to a subsequent employing district. Finally, it requires districts to reveal findings of substantiated allegations on any former employee to any public school district that inquires. (See summary and related policy recommendations [here](#).)

**Nevada:** AB 362 (2017) requires an applicant for employment who may have direct contact with pupils to provide employment history and authorization to release employment information to the prospective employer. It provides that an applicant who knowingly provides false information or willfully fails to disclose information is subject to discipline and is guilty of a misdemeanor.

Additionally, it prohibits a district, charter school or university school governing body from entering into any agreement that:

- 1) has the effect of suppressing information relating to an investigation of a report of suspected abuse or sexual misconduct by a current or former employee;
- 2) affects the ability of the governing body or independent contractor to report suspected abuse or sexual misconduct; or
- 3) requires the governing body or independent contractor to expunge certain information from any documents maintained by the governing body or independent contractor.

Finally, the bill provides that any information collected from an applicant for employment or an employer is confidential and is not a public book or record.

**New Jersey:** S 414 (2018) requires applicants to submit a written statement disclosing if they were ever the subject of any child abuse or sexual misconduct investigation or had their employment or license adversely affected during such an investigation. It further requires schools, districts, and services providers, to review and confirm the applicant's written statement.

#### *Changes Related to Educator Licenses*

**Wyoming:** SF 42 (2018) permits the state board to deny any applicant for teacher certification who has been convicted of a felony if the felony related to the practice of teaching. The bill specifically adds that any felony related to a sexual offense shall be considered to relate to the practice of teaching.

#### *Criminal and Other Penalties*

**Texas:** Among the provisions of SB 7 (2017) is an expansion of the prohibition on improper employee and student relationships for any school employee serving in a capacity that requires a license. The bill also creates an offense for certain persons who fail to file a timely report with the intent to conceal an educator's criminal record or an alleged incident of misconduct, which would be punishable as a state jail felony.

Additionally, the bill expands misconduct reporting requirements for principals, superintendents, and district directors of school districts, charter schools, districts of innovation, service centers, and shared service arrangements.

**Utah:** HB 213 (2014) modifies criminal statutes concerning sexual abuse of a minor to include school employees and volunteers in addition to adult teachers and further clarifies that such abuse is grounds for disciplinary action and revocation of the educator's license.

#### *Revisions to Statutes Related to People in Positions of Trust/Authority*

**Florida:** HB 485 (2014) expands the definition of "authority figure" to include anyone over the age of 18 working, contracting, or volunteering with a school. It subsequently reclassifies the felony degree of an offense, making the offense more severe if the offense is committed by an authority figure of a school against a student.

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Erin Claussen

SJ 1082

Judiciary Committee

February 4, 2019

Chairman Larson, Vice Chair Dwyer, other Senators. I would like to first thank you for being here today and listening to my testimony.

My name is Erin Claussen. I am a junior at the University of Mary and I am studying Social Work and Addictions Counseling. Over the past few years I have worked in a variety of jobs in which I have worked with youth in different crisis settings from ages five to eighteen.

I am here in support of Bill SJ 1082. This bill should be passed because there is currently no law against aiding and abetting sexual abuse. This is a problem because it further promotes indifference and bystander apathy, which is the failure to take action based on the belief that someone else will. With sexual assault, there is already a stigma about speaking up about one's experiences and letting this indifference persist only strengthens that stigma in our culture. In a Crisis Intervention class, we discussed how important it is for people to talk about their trauma in order to help their healing process. This healing is so important because trauma can affect one for the rest of their lives.

The children addressed in this bill deserve to be defended and protected from sexual assault. If this bill is enacted correctly, it will give the youth a safe environment to learn in and know that they are being cared for by the adults they are entrusted to. In my experience as a shelter worker, if a child comes into an uncomfortable space with people they do not trust, they are less likely to talk about problems they are dealing with. However, if a child feels they are in a safe environment, they will feel they are able to share what is going on with a trusted adult. This

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bill will improve the safety of our schools by making adults stand up for the kids that are entrusted to them, as well as create a punishment for those who fail to do so.

If we show this generation of youth how they deserve to be protected and cared for, it will become natural for them to do the same for generations to come. If this bill does not pass, the cycle of indifference will continue when it comes to sexual abuse. If the bill does pass, we have the opportunity to change the way kids deal with trauma in our schools.

Thank you and I stand for questions.

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Prepared by the Legislative Council staff for  
Senator Bakke  
February 5, 2019

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2.6.19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1082

Page 1, line 13, remove the second "or"

Page 1, line 14, replace "has substantial probable cause to believe" with "it has been confirmed, or an investigation is underway"

Renumber accordingly