

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

13988

2001 HOUSE JUDICIARY

HB 1398

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1398

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-30-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	2040 to 3218
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1398. Relating to correctional facility files and records.

Rep Kroeber: District 48, from Jamestown. This bill helps to bring our county correctional facilities more in line in regards to facility files. I have one short amendment that was requested by the Human Services, would like you to consider them part of the bill.

Mareje Fischer: Administrator of the Stutsman County Correctional Center of Jamestown. None of our records were closed records due to the fact because there is no statute governing them.

Chairman DeKrey: We have a bill before us that deal with opening up records, is that any way going to be impacted by this bill.

Mareje Fischer: No, it will not.

Krista Andrews: Attorney with the North Dakota Department of Human Services Legal Advisory Unit (see attached testimony)

Page 2

House Judiciary Committee

Bill/Resolution Number HB 1398

Hearing Date 01-30-01

Chairman DeKrey: Are there any question, if not thankyou for appearing, anyone else in support of this bill.

Jack McDonald : appearing on behalf of the North Dakota Newspaper Association and athe North Dakota Broadcaster Association. (see attached testimony) will support this bill will the amendments.

Corinne Hofmann: testifying on behalf of the Protection and Advocacy Project (a state agency) (see attached testimony)

Kent Sorenson: General Counsel for the Department of Corrections and Rehabilitations.Our concern with the amendments is state and federal law. There may be a conflict.

Chairman DeKrey: If there is a problem, we will work it out in committee. No further testimony. we will close the hearing on HB 1398.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1398a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		168 to 711
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on HB 1398.

DISCUSSION was held on the three sets of amendments.

Chairman DeKrey: what are the wishes of the committee? Rep Delmore moved the Kroeber amendments and the other amendment. Chairman DeKrey said we will hold off on this bill until we can get the amendments figured out.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1398b

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	2485 to 2975
Committee Clerk Signature <i>Jan Diers</i>			

Minutes: Chairman DeKrey, lets take a look at HB 1398. We are wondering about these amendment that P and A put this bill and why the Attorney General's Office does not want those amendments on the bill. There are three bill that deal with correction facilities file and records. If the amendments are added to the list, this would be in conflict with federal laws.

DISCUSSION

Chairman DeKrey: This bill will have to be looked at, I'll ask Rep Klemm to go over these again.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1398c

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE II	X		338 to 874
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:Chairman DeKrey called the committee to order and we will take up HB 1398.

Vice Chr Kretschmar move the amendments fro Department of Human Services. Seconded by Rep Delmore. Voice vote on the amendments, motion carries.

DISCUSSION

COMMITTEE ACTION

Chairman DeKrey:What are the wishes of the committee? Rep Brekke move a DO PASS as amend. Vice Chr Kretschmar seconded the amendments. The clerk will call the roll on a DO PASS as amend. The motion passes with 12 YES, 2 NO and 1 ABSENT. Carrier Rep Onstad.

Revised

Proposed Amendments to House Bill No. 1398

Page 1, line 13, after "confidentiality," insert: "except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws,"

Renumber accordingly

VR
2/15/01

HOUSE AMENDMENTS TO HB 1398 HOUSE JUDICIARY 02-15-01
Page 1, line 13, after the first comma insert 'except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws,'

HOUSE AMENDMENTS TO HB 1398 HOUSE JUDICIARY 02-15-01

Page 2, line 1, replace "A" with:

- "a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.
- b. Except as provided in subdivision a of this subsection, a"

Renumber accordingly

Date: 02-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1398

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Rep Brekke Seconded By Vinche Kretschmar

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud		✓			
Rep Bruce Eckre					
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos		✓			
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 12 No 2

Absent 1

Floor Assignment Rep Onstad

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

REPORT OF STANDING COMMITTEE

HB 1398: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1398 was placed on the Sixth order on the calendar.

Page 1, line 13, after the first comma insert "except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws,"

Page 2, line 1, replace "A" with:

- "a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.
- b. Except as provided in subdivision a of this subsection, a"

Renumber accordingly

2001 SENATE JUDICIARY

HB 1398

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1398

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 6th, 2001

Tape Number	Side A	Side B	Meter #
1	x		19.1-44.9
2	x		15-32.5
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1398.

Rep. Kroeber, district 48, (testimony attached).

Marcie Fisheer, nothing in law that permits privacy of records. We need something in the law to prevent this.

Senator Trenbeath, what has been the problem?

Marcie Fisheer, no problem to date.

Senator Nelson, your stating in sections 4 and 5, which files should be open or closed.

Marcie Fisheer, yes.

Senator Nelson, health and personal records are also closed?

Marcie Fischer, yes.

Ken Sorenson, General Council for the Department of Corrections, (testimony attached). The attorney general's opinion facilitated this bill. We are creating 3 categories of confidentiality. Most institutional matters are exempt.

Corinne Hofmann, testifying on behalf of the Protection and Advocacy Project, (testimony attached).

Senator Traynor, did you propose these amendments to the House Committee? What happened? Why?

Corinne Hofmann, I think that is the kind of confusion I'm talking about. What we're trying to do is resolve this confusion and it has been resolved in the House.

Senator Trenbeath, couldn't your client grant you authorization to those records?

Corinne Hofmann, no.

Senator Trenbeath, I don't see this bill as inhibiting an inmate to disclose information.

Corinne Hofmann, I don't see it that way.

Senator Traynor, do you have clients that can't give out information?

Corinne Hofmann, Some that are psychotic. Our concern is that the language of the bill puts barriers on our ability to access information on clients.

Senator Traynor, does the bill as written jeopardized your funding?

Corinne Hofmann, no.

Senator Nelson, this parallels with what happens in pens. How do you operate them?

Corinne Hofmann, with difficulty.

Senator Trenbeath, does the Attorney General have an opinion on this? I would like to know it.

Ken Sorensen, regarding the amendments, I'm neutral. That would need to be addressed by the agencies.

Senator Trenbeath, with the proposed amendments, it would clarify federal preemption.

Wouldn't it avoid a lot of hassle in the future if we adopted them?

Senator Traynor, closed the hearing on HB 1398.

Page 3
Senate Judiciary Committee
Bill/Resolution Number 1398
Hearing Date March 7th, 2001

Discussion followed.

SENATOR LYSON MOTIONED TO MOVE SORENSON AMENDMENTS, SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH MOTIONED TO AMEND THE BILL, SECONDED BY SENATOR NELSON. VOTE INDICATE 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR WATNE MOTIONED TO DO PASS AS TWICE AMENDED, SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

Date: 3/7/01
Roll Call Vote #: (

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1398

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken	Move Soriana Amendment
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Motion Made By Lyson Seconded By Trenbeath

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Date: 3/7/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1398

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DEA Amend

Motion Made By Walter Barth Seconded By Bert Nelson

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment _____

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

Amend on line 7, pg. 1 delete: "and" insert "a sentence"
line 11, pg. 2; after "to" insert "a sentence" inmate's"
line 13 pg; Same modification as Above.

Date: 3/7/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1396

Senate	<u>Judiciary</u>	
		Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Watne Seconded By Trebeath

[illegible]

Total (Yes) 7 No 0

Absent _____

Floor Assignment 7c

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2001 12:47 p.m.

Module No: SR-40-5122
Carrier: Trenbeath
Insert LC: 18318.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1398, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1398 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "an" with "a sentenced"

Page 2, line 9, replace "may be disclosed to an" with "is an open record."

Page 2, remove line 10

Page 2, line 11, replace "inmate" with "a sentenced inmate's"

Page 2, line 13, replace "inmate" with "a sentenced inmate's"

Renumber accordingly

Date: 3/12/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

**Seconded
By**

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment

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

Date:
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate	Judiciary	Committee

☐ Subcommittee on ameal HB 1398
or
☐ Conference Committee

Legislative Council Amendment Number HB 1398

Action Taken _____

Motion Made By Tremblay Seconded By Berger

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment

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

Date: 3/12/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate	Judiciary	Committee
--------	-----------	-----------

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 1398

Action Taken Do Pass as amended

Motion Made By Traubert Seconded By Bauer

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment Trembeath

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

REPORT OF STANDING COMMITTEE

HB 1398, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1398 was placed on the Sixth order on the calendar.

In lieu of the amendments printed on page 743 of the Senate Journal, Engrossed House Bill No. 1398 is amended as follows:

Page 2, line 9, replace "may be disclosed to an" with "is an open record."

Page 2, remove line 10

Page 2, line 13, replace "Inmate" with "a sentenced inmate's"

Renumber accordingly

2001 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1398

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1398-conference

House Judiciary Committee

☒ Conference Committee

Hearing Date 03-27-01

Tape Number	Side A	Side B	Meter #
TAPE I	X		01 to 1630
Committee Clerk Signature <i>Joan D. [Signature]</i>			

Minutes: Chairman Klemin opened the meeting of the conference committee. Let the record show that all Senators and Representatives are present. The reason we are here is that HB 1398 that was amended in the Senate and the House declined to concur without further testimony. I have asked Ken Sorenson, who was involved in these amendments on the Senate side if he could address the issue as to why these amendments were put on.

Ken Sorenson: on page two line nine, it refers to employment for work release status of an inmate as an open record. I prepared an amendment that would establish that the work record of an inmate would be open records. The word sentenced inmate was put in all the way through the bill, and by putting in the word sentenced inmate, it is a matter of statutory construction. He goes on to explain the meaning of the wording in the amendment. The effect would be that the non sentenced person, such as a pretrial detainee, person on contempt proceedings, a juvenile, a person detained as a witness, then all there records are open records. If we add the word sentenced it makes any other category of inmate open records.

Senator Trenbeath: The to make our thoughts complete, we should say that records with respect to sentenced inmates are exempt records, but records with respect to unsentenced inmates are closed records.

Ken Sorenson: If that is the case, if you want to make any body else confidential. I couldn't find my notes on that, but an additional sub section could make it confidential.

Senator Trenbeath: a separate section that dictates that all records pertaining to unsentenced inmates are confidential.

Ken Sorenson: yes, and you could say records with respect to a unsentenced inmate institutional or protective management are subject to sub section one.

Chairman Klemin: Are you saying that we would change the section on page two line 13 and 14 on 5 completely.

Ken Sorenson: If you left records with respect to inmate institutional, if you left that language there, and added all other records would be confidential, then you would have the words. You would be adding another sentence to sub section five.

Chairman Klemin: would you restate that sentence.

Ken Sorenson: Records with respect to the unsentenced inmate institutional discipline and conduct and protective management are confidential and may only be disclosed as set forth in sub section one. I am putting it at the end of five. Do you want me to repeat that. Instead of saying unsentenced inmate, you could say any other inmate.

Chairman Klemin: In five we have records with respect to inmate institutional discipline are exempt and then we say records with respect to any other inmate are confidential, isn't that a

little confusing, because we don't know what we are talking about, we don't know which inmate is which.

Ken Sorenson: we are still leaving the word sentenced in there.

DISCUSSION

Chairman Klemin: asks for the language of the amendment again.

Senator Nelson: Reads the language of the amendment.

Senator Lyson: The only way that I would change that is from a grammar point, I would say that

- Institutional discipline and conduct and protective records of all other inmates are confidential.

It would read cleaner.

Chairman Klemin: asks that they read it one more time.

Senator Lyson: reads the language again.

DISCUSSION ON THE LANGUAGE OF THE AMENDMENT

Chairman Klemin: Going back to the amendment that you proposed on page 2 line 9, where you said, change that to and open record. A question that we have is that in the definition chapter 44.04 section 17.1, open record is not defined. Closed record is defined, exempt record is defined. We were wondering if the choice of words, open record, is the right words to use.

Ken Sorenson: That is unnecessary language, because if we didn't refer to it at all, it would be open.

Jim Flemming: I think that the phrase open record is used numerous times throughout the codes. It generally incorporates the default rule 44-04-18. It says that unless another law provides otherwise everything is open. In sub section three and four it only restates what the law is anyway.

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1398-conference
Hearing Date 03-26-01

Chairman Klemin: Explain to me again, Ken, why do you want the change.

Ken Sorenson: It was only going to be accessible for child support enforcement purposes. It was decided that, that was pretty narrow.

Senator Trenbeath: Committee's thinking was that in respect to work release, that there was no reason that the public shouldn't be aware of that.

Ken Sorenson: So we changed it from child support to open record.

Chairman Klemin: Any other questions from the committee, thank you Ken.

Senator Nelson: The proper motion would be that the House accede to the Senate amendments and further amends.

Chairman Klemin: If that is the agreement of the committee, I think it would be that the House Concurs with the Senate amendments and further amends and add sub section six.

Rep Onstad: I so move.

Rep Disrud: second.

Chairman Klemin: Ask the clerk to call the roll on the amendment. The motion passes with 6 YES, 0 NO and 0 ABSENT.

VR
3/26/01

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL 1398 JUD 03-27-01
That the House accede to the Senate amendments as printed on page 925 of the House Journal and page 743 of the Senate Journal and that Engrossed House Bill No. 1398 be further amended as follows:

Page 2, after line 14, insert:

- "6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1."

Renumber accordingly

Date: 13-26-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HC 1398

House	JUDICIARY	Committee
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☐ Subcommittee on _____
or _____

☒ Conference Committee

Legislative Council Amendment Number Amendments

Action Taken

Motion Made By Rep Onstad Seconded By Rep Dierck

[illegible]

Total (Yes) 4 No 0

Absent 

Floor Assignment

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

REPORT OF CONFERENCE COMMITTEE

HB 1398, as engrossed: Your conference committee (Sens. Trenbeath, Dever, C. Nelson and Reps. Klemin, Disrud, Onstad) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 925, adopt amendments as follows, and place HB 1398 on the Seventh order:

That the House accede to the Senate amendments as printed on page 925 of the House Journal and page 743 of the Senate Journal and that Engrossed House Bill No. 1398 be further amended as follows:

Page 2, after line 14, insert:

- "6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1."

Renumber accordingly

Engrossed HB 1398 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB-1398 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen. Trenbath
Sen. Dever
Sen. C. Nelson

For the House:

Rep. [unclear]
Rep. [unclear]
Rep. [unclear]

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on 925 page(s) 925 - 800

☐ and place _____ on the Seventh order.
727

☒ , adopt (further) amendments as follows, and place
HB-1398 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: ____/____/____

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

2001 TESTIMONY

HB 1398

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING
HOUSE BILL NO. 1398
JANUARY 30, 2001**

Chairman DeKrey and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. The Department is neutral, but would like to offer the following comments and suggested amendments to House Bill No. 1398.

Notwithstanding any other provisions of law relating to privilege or confidentiality, House Bill No. 1398 allows various persons or entities, without prior application to the court, to inspect the medical, psychological, or treatment records of inmates. However, the federal law addressing disclosure of drug and alcohol treatment records, found at 42 CFR Part 2, Subpart A, is very restrictive regarding when the drug and alcohol treatment records of a patient may be released.

Absent client consent, drug and alcohol treatment records may only be released, essentially, in a few situations: 1) to medical personnel for a medical emergency; 2) to qualified personnel to conduct scientific research, to conduct audits, or to conduct program evaluations; or 3) if authorized by a court order after a showing of good cause. Almost all releases of drug and alcohol treatment records are made by client consent. Furthermore, 42 CFR §2.20 provides that although state law may be more restrictive than the federal law, "no State law may either authorize or compel any disclosure prohibited by these regulations." According to the current language of House Bill No. 1398, it could be argued that the bill is

less restrictive than 42 CFR, and attempts to supersede all other provisions of law.

The Department of Human Services would recommend clarifying the provisions of House Bill No. 1398, so that it clearly states that the bill does not attempt to curtail the provisions of federal law.

Subsection 2 of House Bill No. 1398 also provides "A person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records." This language would further complicate the Department's record keeping process. The Department would be required to treat records received from a correctional facility differently than those received from other sources, thereby creating a sort of segregated file system. Further, the Department would not be allowed to "redisclose" records received from the correctional facility, even if the person or entity requesting the records would be able to properly receive those records through other means.

I would be happy to answer any questions the Committee may have.

Presented by:

Krista Andrews
Attorney, Legal Advisory Unit
ND Department of Human Services

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1398

Page 1, line 3, after "confidentiality," insert "except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws,"

Page 2, line 1, replace "A" with:

- "a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality of the information and records under those statutory confidentiality requirements.
- b. Except as provided in subdivision b, a"

Renumber accordingly

January 30, 2001

HOUSE JUDICIARY COMMITTEE
HB 1398

REPRESENTATIVE DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose the concept of HB 1398 as it stands and believe that it should be considered in conjunction with HB 1044, which is now being considered by one of your subcommittees.

This bill grew out of a long standing dispute between *The Dickinson Press* and the Southwest Multi-County Correction Center over the records of a juvenile who died while in the custody of the center.

This dispute generated not one, but three, Attorney General's opinions, all of which stated that the records being sought were open records absent any legislation to the contrary. This is now legislation to the contrary.

However, there is a great deal of confusion over which records are being dealt with in this bill, and which are being dealt with in HB 1044. There is also confusion between the two bills regarding who has access to these records.

Therefore, we would urge you to consider assigning this bill to the subcommittee as well and see if the two can be reconciled. Frankly, only one bill is needed.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

TESTIMONY ON HOUSE BILL 1398

**BEFORE THE
JUDICIARY COMMITTEE
JANUARY 16, 2001**

**CORINNE HOFMANN
PROTECTION AND ADVOCACY**

Chairman DeKrey and Members of the Committee, my name is Corinne Hofmann and I am testifying on behalf of the Protection and Advocacy Project. The Protection and Advocacy Project [the Project] is a state agency. The Project is granted authority under federal and state laws to advocate for and protect people with developmental disabilities, mental illness, and other disabilities. The Project is authorized to pursue legal, administrative and other appropriate remedies and approaches to achieve this purpose. Federal and state laws also authorize the Project to access records regarding individuals we serve.

House Bill 1398, if passed, would conflict with state and federal laws that grant the Project authority to access records. Therefore, we are opposed to House Bill 1398 in its current form.

We propose an amendment that would eliminate our opposition. Our proposed amendment would ensure that the statute is consistent with state and federal laws that mandate the Project have access to records.

Some individuals in correctional facilities are eligible for our services. We routinely receive referrals from correctional facility staff on behalf of individuals with disabilities. Facility staff sometimes encounter great difficulty in mobilizing community resources to provide treatment or services to individuals with disabilities that are incarcerated. We assist them in this process. Obtaining records and information is a necessary and integral component in providing this assistance.

When we receive complaints from individuals with disabilities who are incarcerated, a review of records allows us to verify eligibility, objectively analyze the legitimacy of the complaint, and determine an appropriate course of action. Access to records and information is necessary for us to serve our clients in an efficient and timely manner.

House Bill 1398 would hamper the ability of correctional center staff to utilize Protection and Advocacy as a resource and compromise our ability to assist eligible individuals who require assistance. Amending the bill would prevent this result.

Our proposed amendment will eliminate the Project's need to seek a court order when we require access to records of individuals eligible for our services that are in a jail or correctional facility. Requiring the Project's to seek court

order to access records would needlessly use state resources from the Department of Corrections, the Project and the judicial system.

We ask that the Judiciary Committee adopt our proposed amendment to House Bill 1398.

I thank the Committee for your time and would be happy to answer any questions you may have.

PROPOSED AMENDMENT TO HOUSE BILL 1398

Page 1, after line 24 Insert:

- f. The protection and advocacy project.

Renumber accordingly

HOUSE BILL No. 1398

**BEFORE THE
SENATE JUDICIARY COMMITTEE
MARCH 7, 2001**

**TESTIMONY OF
CORINNE HOFMANN
PROTECTION AND ADVOCACY**

Chairman Traynor and Members of the Committee, my name is Corinne Hofmann and I am testifying on behalf of the Protection and Advocacy Project. The Protection and Advocacy Project [the Project] is a state agency. The Project has authority under federal and state laws to advocate for and protect people with developmental disabilities, mental illness, and other disabilities. The Project is authorized to pursue legal, administrative and other appropriate remedies to achieve this purpose.

House Bill 1398, if passed, would conflict with state and federal laws that grant the Project authority to access records. Therefore, the Project is opposed to House Bill 1398 in its current form, but would support the bill if amended. A copy of the Project's proposed amendment is attached to my testimony.

The Project receives referrals from correctional facility staff on behalf of individuals with disabilities in various parts of the state. Facility staff sometimes encounter great difficulty in mobilizing community resources to provide treatment or services to individuals with disabilities that are incarcerated. We assist them in

this process. Obtaining records and information is a necessary and integral component in providing this assistance.

The Project also receives complaints from individuals with disabilities who are incarcerated, their family members, or professionals who have been providing services to the individual. A review of records allows us to verify eligibility, objectively analyze the legitimacy of the complaint, and determine an appropriate course of action. Problems reported might be directly related to the incarceration or they may relate to other issues that have followed the individual into the correctional facility. Many times the issues relate to a need for adequate, disability-related treatment and support.

Access to records and information is necessary for us to serve our clients in an efficient and timely manner. When serving an individual in jail, that may include access to correctional facility records.

Chapter 25-01.3 of the North Dakota Century Code outlines the authority granted to the Project regarding individuals with developmental disabilities and mental illness. The Project's authority under state law is based on federal laws that authorize and fund the Project's programs. The Project's right to access records under state law is patterned after applicable federal law. Since the passage of Chapter 25-01.3, the Project has been given authority to serve individuals with other disabilities and our authority to serve individuals with mental illness has

been expanded. Federal laws governing these changes give the Project authority to access the records of the individuals we serve.

Federal law allows the state to give the Project greater authority than granted under federal law, but does not allow the state to restrict that authority. To the extent that state law conflicts with federal law, state law is preempted.

House Bill 1398 requires the Project to obtain a court order to access records. This is more restrictive than the federal laws governing the Project's access. While the Project's right to access records remains unimpaired because of federal preemption, the Project believes the bill will create problems on a practical level.

There are numerous jails and correctional facilities in the state. Most of the staff in those facilities are unfamiliar with the federal statutes that govern the Project. These staff will look to state law for guidance in releasing records and will, in good faith, attempt to follow the provisions of this bill.

Correctional facilities and the Project will be required to expend administrative and legal resources to resolve the conflict created by this bill. This could be quite costly when viewed as a whole, over time. Amending the bill will avoid unnecessary expenditures of time and resources.

We ask that the Judiciary Committee adopt our proposed amendment to House Bill 1398.

I thank the Committee for your time and would be happy to answer any questions you may have.

PROPOSED AMENDMENT TO ENGROSSED
HOUSE BILL 1398

Page 2, after line 10 Insert:

"4. Records shall be disclosed to the extent necessary to comply with chapter 25-01.3 and related federal statutes and regulations."

Page 2, line 11, replace "4" with "5"

Page 2, line 13, replace "5" with "6"

Renumber accordingly

MEMORANDUM

TO: Senator Jack Traynor, Chairman, and Members of
The Senate Judiciary Committee

FROM: Ken Sorenson, Assistant Attorney General

DATE: March 7, 2001

SUBJECT: Proposed Amendment to Engrossed House Bill No. 1398.

Following the committee hearing this morning, there was some discussion that the language in subsection 3 on page 2 of Engrossed House Bill No. 1398 may be too limiting and may preclude disclosure of inmate employment and work information to other agencies or persons that may have use for inmate employment or work release information besides child support enforcement officials, such as community service and restitution programs. This is best resolved by making this information an open record. Marcie Conmy-Fisher, on behalf of the correctional facility administrators, and the Department of Corrections and Rehabilitation, agree to the attached proposed amendment. Thank you.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1398

Page 2, line 9, replace "may be disclosed to an" with "is an open record."

Page 2, remove line 10

Renumber accordingly