

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1212

2005 HOUSE JUDICIARY

HB 1212

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1212

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/10/05

Tape Number

1

Side A

Side B

xx

Meter #

8.2-26

Committee Clerk Signature



Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1212.

Representative Delmore: Explained the bill, and is in favor of reducing the length of time the records are on the person's record from 5 years to 3 years.

Chairman DeKrey: You think 3 years would be better than 5 years.

Representative Delmore: There is some feeling, Mr. Tupa, is also going to be testifying on this bill. LC put in 5 years, I certainly would not have any problem with reducing it to either 2 or 3.

Representative Koppelman: It seems like a reasonable idea. It says that the investigation reveals no grounds to support the complaint. Who decides that and what are considered grounds.

Representative Delmore: The investigation itself would be done probably in-house; but they would try to substantiate. If you filed a complaint against me, they would want to make sure that they investigated it and found there were no grounds to back it up. That is my understanding of

what would be done, internally. Right now, it would stay there forever, even if we had a very bad day and you weren't very pleased with me that day, that's why you would put it in my record.

Chairman DeKrey: Rep. Meyer, do you wish to speak.

Representative Meyer: I support the bill.

Chairman DeKrey: Thank you. Further testimony in support of HB 1212.

Gisele Thorson, ND Public Employees Association: We are here to support the legislation.

We believe that the groundless complaints should be removed from the social worker's file after 5 years.

Chairman DeKrey: How do you feel about 3 years.

Gisele Thorson: Three is actually better.

Chairman DeKrey: Are you hedging here, that you could get five passed, that three wouldn't go.

Representative Meyer: If the investigation doesn't reveal any grounds, why would it stay on the record at all.

Gisele Thorson: Because an investigation was done, I believe.

Representative Koppelman: Is there any danger of the fox watching the hen house here, in terms of people who receive these complaints or investigate. Are these people going to be fair, if they are the ones determining there are no grounds, is there potential for abuse, where they would say, well we don't think that's worthwhile, when it might be a valid claim.

Gisele Thorson: Are you wondering who would do the investigation?

Representative Koppelman: Yes. The investigation, the bill says that if the investigation reveals no grounds to support the complaint. I am curious about, if it is an internal investigation,

so I assume a supervisor or someone like that would be the one doing the investigation, and what constitutes grounds, how does that person arrive at the conclusion that there are no grounds.

Gisele Thorson: I believe it would be if they are acting outside the scope of their employment.

If someone feels that they are doing something not within their job duty that they would file a complaint against them. Generally the social worker is doing what their job entails; however, the client may feel they are not acting within that scope and file charges against them.

Representative Koppelman: Exactly, but if that happens, say a disgruntled client files a claim, what protection is there for the public or the person filing the claim that the supervisor doing the investigation isn't just going to say about their employee and their conduct, I found no grounds for that. I don't know the procedure. If you are going to expunge something from a record, I want to make sure that those investigations are done in such a way that things aren't going to be dismissed out of hand, when in fact there might be some merit.

Gisele Thorson: There again, I'm not sure I have the answer.

Representative Charging: At what point in time, if there are accruing a number of complaints, at what point is there a danger to the social worker's record, or is there a certain procedure that occurs after that time. If one social worker's record might be expunged, is there a point where they have 1, 2, 3, 4, 5 complaints, does it affect their employment.

Gisele Thorson: At some point, I would believe that the employee would probably be placed on suspension, pending an investigation; so that if there are situations out there, that no further case would come against them until the investigation was concluded.

Representative Charging: The change would protect them over time.

Chairman DeKrey: Thank you. Further testimony in support of HB 1212.

Tom Tupa, Social Work Board Office: The Board of Social Work Examiners does not have a problem with this bill. We are neutral. Presently, there are complaints that come before the Board routinely, that are dismissed for lack of information or no cause, or something else, and those are the cases that we are normally talking about here. This has been around and has been a part of the discussion for a number of years and with regard to the 3 year suggestion, we do have some board members and have had some board members in the past, that support a 3 year retention span. Right now, we do have a retention program in place, and at the end of 10 years, the records are expunged and the records are destroyed. So there is no record beyond the 10 year period. What this bill would do is actually that 10 years to 5 years and if you so choose to amend it to 3 it would go to 3 years. In terms of the process, there is a very specific process in place for dealing with complaints. Complaints have to be formally submitted to the Board. At that time, they will then do their investigation, which will take information from both sides of the question, and they will discuss that, debate that. They all go before the Board. The Board has a thorough examination based on the information that's provided, either through Board's counsel or through the Licensee's counsel. At some point in time, the Board will then decide whether or not to dismiss the case, if they dismiss it, it goes into a file and it's retained for 10 years. If they continue to pursue it, obviously, then you have some disciplinary action at some point in time against the licensee.

Representative Kretschmar: When someone is charged with a complaint, that information goes into that person's personnel file. Is that right.

Tom Tupa: That is correct. There is a file maintained. Some of these files are fairly huge after while, and when we do have reoccurring complaints, as happens with child welfare. That area

tends to be an area where you get more complaints than somebody being a case worker in a long-term care facility, as an example. Those can be quite detailed and you get a number of complaints, and even when the Board dismisses a complaint, then they will sometimes follow up with another one within a short period of time. But that information is retained within the system. It's not exactly a part of the licensee file. In our office, we have two files, licensee file and complaint file. Because of the volume of the complaints, we have to keep those in a separate file cabinet. It is noted in their record, that a complaint was filed against them, and then it has been dismissed by the Board. So if anybody were to call our office today and ask if someone had been charged with a complaint, the response would be yes, but then we would follow it up by saying that the Board dismissed it for lack of ... Whatever.

Representative Koppelman: What is the make-up of the Board.

Tom Tupa: The Board is a 6 member board appointed by the Governor. The make-up is two licensed certified social workers, that's the highest level; one qualified for independent practice and one qualified for non-independent practice, two LCSW's, which are the four year degree social workers and then two consumer representatives, and they have rotating terms, and they are limited to two terms of 3 years each.

Representative Koppelman: On the current status of the expungement after 10 years, is that just for complaints like this, that were dismissed or deemed to have no validity or all complaints.

Tom Tupa: Just for these without validity.

Representative Delmore: You said you would have no problem with lowering it to three years either, that would be agreeable. The Board would think that is all right.

Tom Tupa: We haven't had any Board meetings since this bill was presented, so we do not have any official discussion about it. However, we did send the bill out to the Board members for response. One of the current board members did say that three years was fine with him. Legal counsel also responded, and he didn't indicate one way or the other whether 3, 5 or 10 were significant. He said as a general rule, he wouldn't have any problem with anything other than that.

Representative Charging: What determines the validity of the claim.

Tom Tupa: The Board will take the official complaint that is filed. Then they will solicit a response from the licensee. If the response raises some question in the Board member's mind, about the validity, they will proceed with putting it on the agenda and discussing it as a Board. If they feel that there is no legitimacy to the complaint, the odds are that they probably would dismiss that particular complaint at its next Board meeting after they heard the initial complaint. It's based on input from the licensee, and based on input from the consumer representatives. There are a solid set of standards within the licensure. There is the licensure law and there is a very detailed code of ethics that goes with that. If any of the board members determines that any provisions of the statutes, the rules and regulations, the code of ethics would be violated, they would continue to pursue it.

Representative Kretschmar: If there is a complaint filed against someone, and later it is determined that there are no grounds or evidence to support the complaint, and the complaint is dismissed, I am assuming there is some evidence of that gets into the employee's record also. Even if there is a complaint in there that's been dismissed, nothing to it, is that kind of a mark against the person after a period of time.

Tom Tupa: I won't say that there haven't been cases where the board has received, perhaps, 6, 8 10 complaints against an individual and all of them being dismissed. But there are some board members who, from time to time, say that if there is a track record here, maybe there is an issue where the individual is not acting appropriately under the law. So under those situations, the board will sometimes, they won't ask to see the old records, but it will raise a question in their own mind, about whether or not this individual is appropriately practicing. We have a check system in our database that says was there a complaint filed, yes or no. We check yes. Then we have a little postscript on the bottom, so we have a record. So if this were to come into play, I suspect that our legal counsel would tell us that even that check mark would disappear after 3 or 5 years, so there would be no evidence other than somebody's memory of something being filed earlier.

Representative Delmore: In your estimation, however, if there was a pattern that was going to be established, you would think those would be filed closer together than one every year or five years, would you not.

Tom Tupa: Actually, we haven't done any research on a filing pattern, but they will generally come within a one or two year period of time, and then there are board members who serve a total of 6 years, so if something does happen, there will be a recollection someplace along the line, either formally recorded or in somebody's memory.

Representative Koppelman: What happens if you take two social workers, neither of them has ever had a complaint that was deemed valid, but one has had 40 complaints filed against them and the other has had two. If the Board is looking at their record, is there an impact, how would that be acted upon, or wouldn't it be, it would be just raised eyebrows.

Tom Tupa: If the Board were to see that, they would probably give more scrutiny to the individual who had a number of complaints filed against him or her. If you are going to have a one time instance, the Board will probably just look at it, and if there is nothing glaring, they may dismiss it. But if somebody says this is the 3rd, 4th or 5th one, maybe we better look a little more closely at this and they will probably do that as a general rule. They are probably going to give it a little extra attention.

Representative Koppelman: What would that attention result in. Is it the Board's purview to revoke licenses, or what happens.

Tom Tupa: Obviously the Board can do anything from issue letters of reprimands to actually taking away a license. What they would probably do here, is probably rely somewhat on legal counsel's advice. Legal counsel would bring them back to only deal with what is on paper in front of you. You don't necessarily look at the other cases that were previously filed, the other complaints previously filed. We have some attorneys on staff here, but you are only going to look at that information that's before you. Legal counsel will provide a lot of attention to those kinds of things and a lot of consultation to the board members.

Chairman DeKrey: Thank you. Further neutral testimony. Testimony in opposition. We will close the hearing.

(Reopened in the morning session).

Chairman DeKrey: We will take up HB 1212.

Representative Delmore: Before we vote, I would like to know what the feel of the committee is on the three years. I talked to Tom, he didn't have any problem with it, we could amend.

Representative Maragos: I would like to make a motion to change from 5 years to 3 years.

Representative Zaiser: Second the motion.

Chairman DeKrey: We have a motion to amend line 15, change 5 to 3. Any discussion on the amendment.

Representative Maragos: I think that as long as it just deals with a complaint that reveals no grounds, I think it is probably a good idea. I think 3 years is long enough to show a pattern, if there is a social worker that has had another complaint like that within 3 years, then the red flag would probably go up. Five years, especially if there is no grounds, I would say this is a good amendment.

Representative Koppelman: I am going to resist the amendment, just because I think that we are already cutting in half, from 10 years to 5. That's substantial. I guess I don't see a problem with the 5 year track record to look at. I think the Board should have the benefit of looking at a little longer history.

Chairman DeKrey: Further discussion.

Representative Maragos: Going back to the two sets of files that they have. They have the complaint file and, of course, they have the individual file, and I think this is just expunged out of the social worker's individual record, not out of the complaint file. That is probably saved there for quite a while. I assume it would stay there quite a bit longer. That's fine.

Chairman DeKrey: All those in favor of the amendment, that changes it from 5 to 3 years, on line 15, HB 1212, opposed (Rep. Kretschmar and Rep. Koppelman). Carried.

Representative Meyer: I move a Do Pass as amended.

Representative Zaiser: Seconded.

Representative Kretschmar: I am going to vote for this bill, but I always have a little concern

when we in the legislature are trying to change history, or change what happened in the past.

You can't change the fact that a complaint was filed, but we want to take it off so it's not on the person's record. That happens in the criminal courts too, in certain situations.

Representative Boehning: I guess to follow up, it is removing the record from the Board's office, but is that going to remove it from the employee's records, with the state's personnel file that a complaint was filed against them. Is that two separate records.

Chairman DeKrey: Yes, two separate records.

Representative Boehning: It comes out of the state personnel records of the file.

Chairman DeKrey: Yes. Further discussion. The clerk will take a roll call vote.

14 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

50255.0101
Title.0200

Adopted by the Judiciary Committee
January 10, 2005

VR
1/16/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1212 JUD 1-10-05

Page 1, line 15, replace "five" with "three"

Renumber accordingly

Date: 1/10/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1212

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number 50255.0101 . 0200

Action Taken Do Pass as Amended

Motion Made By Rep. Meyer Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Representative Delmore	/	
Representative Maragos	/		Representative Meyer	/	
Representative Bernstein	/		Representative Onstad	/	
Representative Boehning	/		Representative Zaiser	/	
Representative Charging	/				
Representative Galvin	/				
Representative Kingsbury	/				
Representative Klemin	/				
Representative Koppelman	/				
Representative Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE (410)
January 10, 2005 4:13 p.m.

Module No: HR-05-0244
Carrier: Maragos
Insert LC: 50255.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1212: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1212 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "five" with "three"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1212

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1212

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		1360 -3280

Committee Clerk Signature *Maria L. Lally*

Minutes: Relating to groundless complaints made to the board of social work examiners.

Senator Syverson, Vice Chairman called the Judiciary committee to order. All Senators were present except for Sen. Traynor. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Lois Delmore, Dist. #43 - Introduced the bill. (meter 1394) This bill is cleanup language for groundless complaints filed with the social works board. The great majority of complaints are groundless. This bill will take them off of the social workers record after three years. The original bill stated with five and it was amended in the house to three. This is the same time frame as the drivers license division.

Senator Syverson asked when the "clock" starts at file time? What happens if it is a lengthy investigation? Rep. Delmore stated that the "clock" after the boards investigation.

Sen. Trenbeath stated that this looks like a double contingency. If the three years pass and they found no grounds then it would be expunged.

Chris Rungee - Executive Director of Public Employee Assoc. and are in support of the 3 yr. plan.

Senator Syverson sited changing it to one year after final determination? I do not think so. I think that three years would be fine.

Sen. Trenbeath asked why we needed a time frame at all if the complaint is groundless, should it not be expunged? I do not know. Sometime the public has a right to know that their was a complaint.

Senator Syverson asked about chronic complainers? Senator Triplett discussed of how this could also protect the work comp person from the chronic complainer, who was harassing the claimant.

Tom Tupa, staff person for the board of Social Workers - (meter 2030) We are neutral to the bill. Supported the above testimony.

Testimony in Opposition of the Bill:

none

Senator Syverson , Vice Chairman closed the Hearing

Sen. Trenbeath made the motion to do pass and **Senator Hacker** seconded the motion. All were in favor and motion passes.

Carrier: **Senator Syverson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: *2/14/05*
Roll Call Vote #: *1*

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 12/2

Senate **Judiciary**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By Senator *Trenbeath* Seconded By Senator *Hacker*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	<i>A</i>		Sen. Nelson	<i>✓</i>	
Senator Syverson	<i>✓</i>		Senator Triplett	<i>✓</i>	
Senator Hacker	<i>✓</i>				
Sen. Trenbeath	<i>✓</i>				

Total (Yes) *56* No *0*

Absent *10*

Floor Assignment *Sen. Syverson*

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

REPORT OF STANDING COMMITTEE (410)
February 14, 2005 12:25 p.m.

Module No: SR-29-2761
Carrier: Syverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1212: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1212 was placed on the
Fourteenth order on the calendar.