

2009 HOUSE JUDICIARY

HB 1041

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1041

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/12/09

Recorder Job Number: 6806

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1041.

Rep. Klemin: Sponsor (attachment). This bill was passed last session as HB 1219, but had no fiscal funding. Funding was found through a grant.

Chairman DeKrey: Thank you.

Vonette Richter, Legislative Council: (see attachment). Pages 8-10 are updates to the HB 1219 bill, and pages 1-7 were already in law before 2007, but we are changing some wording and definitions.

Chairman DeKrey: Thank you. Further testimony in support.

Janelle Moos, ND Council on Abused Women's Services: Support (attachment).

Chairman DeKrey: We will appoint a subcommittee to look at this. Thank you. Further testimony in support. Testimony in opposition.

Chris Lipsh, Director, Victim Witness Program for Walsh County: Opposed (attachments). We don't want the Victim's bill of rights to be changed.

Rep. Delmore: Could you quickly walk us through those amendments are you wanting, and would you prefer that victims not be included.

Chris Lipsh: I provide services that many of the other agencies do across the state.

Rep. Delmore: If there is a better, quicker way to get that information to witnesses and victims, why would you be opposed to that.

Chris Lipsh: If it's better and quicker, that's great. I would not be opposed to that. But many victims do not have telephone or internet to make that contact. I've actually had to drive to make notification to victims to let them know what is happening. If you are only going to make it only for registered victims, she would not have had the opportunity afforded to her.

Rep. Delmore: Rep. Klemin, I take it that is provided for in the bill, that if someone doesn't register.

Rep. Klemin: For purposes of response here, refer to excerpt handed out by Vonette, on page 7, the first full paragraph, testimony in support of the bill draft indicated that it is the intent of the SAVN system is to retain the rights that victims are currently afforded under the current system, and to paraphrase this, this is not intended to replace anything other than the automation of the notification. All of the other systems that are in effect now, would remain in effect; this is simply a supplement to existing procedures and I believe that is the intent reflected in this report.

Chris Lipsh: With leaving everything intact, we're all in favor of that. The change of victim or registered victim is going to be crucial when it comes down to a jail administrator deciding to notify the victim if they are not registered. If the law says that only registered victims are to be notified, then that is how the jail administrator is going to respond. I'm going to do my best, when I find out, which may a little too late, to notify the victim. We don't want the notification system to change, we have worked hard to establish relationships with law enforcement, etc. so that our organization is notified and we notify the victims and witnesses as well.

Rep. Klemin: Thank you. Further testimony in opposition. Testimony neutral.

Amy Vorachek, Program Manager for SAVIN Program, in the CJIS Office: Neutral.

SAVIN is a 24 hour service for victims. They can call in anytime. We are talking today about notification but it is also about information (explained the program).

Rep. Kretschmar: Some of the testimony handed out here said that SAVIN was not operational, is that correct.

Amy Vorachek: It is in the process of being integrated with the agencies. Technically, no it's not up and running right now. It will be, it has a staggered effective date for the different modules and I think there is a provision for an effective date.

Rep. Kretschmar: Can you estimate a time when it will be fully operational.

Amy Vorachek: Our grant runs through June of 2010, so it needs to be complete by June 30, 2010; if the courts take a little bit longer to get registered, we can get a grant extension for that project.

Rep. Griffin: Is it the intent of SAVIN to eventually require all victims to be registered to be notified.

Amy Vorachek: You do have to be registered to take advantage of the automated services of notification. You don't have to be registered victim to obtain information. Anybody can call or register.

Chairman DeKrey: Thank you. Further testimony. We will close the hearing. A subcommittee will be comprised of Rep. Kingsbury as chair, Wolf, Dahl.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1041

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/13/09

Recorder Job Number: 6931

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1041.

Rep. Kingsbury: The subcommittee met and we went over the amendments that had been presented, and concluded that we didn't need any changes. I move a Do Pass.

Rep. Wolf: Second.

Chairman DeKrey: Further discussion on the bill.

Rep. Griffin: My only concern is with "registered victim". I understand, that for purposes of this system that they have to be registered. My only concern is that most counties do have victim's advocates and they might not be notified of what was going on.

Rep. Delmore: I think they put the language in there to make the system work. If you are not registered, you may also be given notice by other means.

Chairman DeKrey: The impression I got during testimony is that was on purpose because some people don't want to be in the system.

Rep. Kingsbury: Victim advocates will still be notified and they will notify the people not registered.

Rep. Klemin: Since this is an automated system, how would the computer know who to contact if they haven't registered.

Rep. Griffin: Is this a supplement to current law?

Rep. Klemin: The part you are referring to is under the SAVIN statute, and so the registered part doesn't apply to everything, just to the SAVIN statute; secondly it was made clear to us during the Interim study that it's not that the old method supplements the SAVIN system, the SAVIN system supplements the old method. So you really have both systems continuing.

Chairman DeKrey: The clerk will call the roll.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

FISCAL NOTE
Requested by Legislative Council
04/21/2009

Amendment to: HB 1041

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to notification of registered victims once the statewide automated victim information and notification system is operational. CJIS is currently building this system.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

According to Pam Schafer, Criminal Justice Information Sharing, this bill has no fiscal impact.

The amendments will not create a fiscal liability.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name:	Mike J. Ressler	Agency:	ITD
Phone Number:	328-1001	Date Prepared:	04/22/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: HB 1041

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to notification of registered victims once the statewide automated victim information and notification system is operational. CJIS is currently building this system.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

According to Pam Schafer, Criminal Justice Information Sharing, this bill has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	12/22/2008

Date: 1/13/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1041

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Kingsbury Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE (410)
January 13, 2009 3:41 p.m.

Module No: HR-06-0249
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1041: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1041 was placed on the
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1041

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1041

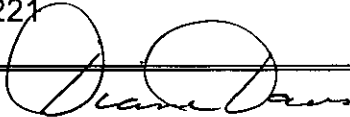
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/4/09

Recorder Job Number: 10221

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the statewide automated victim information and notification system.

Representative Klemin – Introduces the bill. Says last session they passed SAVIN, but it was not funded. He was on an interim committee that was notified they received a million dollar grant. To fully implement this system they need the additional things in this bill. This new system is in addition to what is in place.

Vonette Richter – Legislative Council – Staffed the Interim Judiciary Committee. – She explains the bill. See Interim Committee report handed out by Richter.

Senator Nething - Notices on page 9 there are several items deleted, he asks if they are picked up elsewhere.

Richter – Said they are covered in earlier sections.

Janelle Moos – ND Abused Women's Services. See written testimony – urges support.

Senator Olafson – Asks if there are some victims out there that do not want to register and do not want to be notified.

Chris Lipsh – Victim Witness Coordinator in Grafton – ND Victims Association – See written testimony.

Senator Nelson – Asks if he took part in the interim studies.

Lipsh – He said he doesn't believe his organization did.

Senator Fiebiger – Mentions that on page 4 it states the any victims will be notified.

Lipsh – Replies that his organization is concerned with a bond hearing, it says here only registered victims would be notified. They have concern with that.

Close the hearing HB1042

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1041

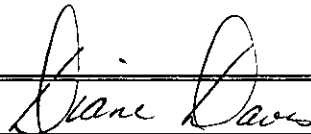
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11125

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Olafson discusses an amendment he has proposed. He said there is concern from the ND Victims Assistance Association that people who aren't registered with the SAVIN

System wouldn't be required by law to be notified when an offender is let out of jail. They will be encouraged to register but the old system needs to stay in place for those who choose not to register. Senator Fiebiger asks what the issue is if they don't want to be registered.

Senator Olafson said in his conversations with NDVA they have said even though the victim does not want to be notified they will let them know one time just to make sure they feel the same way. The committee discusses where the amendment Senator Olafson proposes will fit in. He said this is the process being used now.

Senator Olafson moves the amendment

Senator Schneider seconds

Verbal vote – all yes

Senator Olafson moves do pass as amended

Senator Lyson seconds

Senator Olafson will carry

Date: 3/17
Roll Call Vote #: 1
1041

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Amendments
96 233-8201

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Olafson Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	/		Sen. Tom Flebiger	/	
Sen. Curtis Olafson – V. Chair.	/		Sen. Carolyn Nelson	/	
Sen. Stanley W. Lyson	/		Sen. Mac Schneider	/	

Total (Yes) _____ (N) _____

Absent _____

Floor Assignment Sen.

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

Verbal yes

3/17
I Vote #: 2

1041

Senate	JUDICIARY	Committee
--------	------------------	-----------

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen. Wabson Seconded By Sen. Tyson

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment Sen. Jackson

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

REPORT OF STANDING COMMITTEE

HB 1041: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1041 was placed on the Sixth order on the calendar.

Page 3, line 27, after "~~Victims~~" insert "a."

Page 4, line 2, after the period insert:

"b. Victims who are not registered must be given prompt notice by the law enforcement agency that has made an arrest in any case involving a crime of violence of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness.

c."

Page 6, line 10, after the period insert "Victims who are not registered must be given the same information by the prosecuting attorney."

Page 7, line 1, after the period insert "Victims who are not registered must be given the same notice by the prosecuting attorney."

Page 7, line 9, after the period insert "Victims who are not registered must be given the same notice by the appropriate custodial authority."

Page 7, line 13, remove the overstrike over "~~The notice given by the custodial authority must~~"

Page 7, remove the overstrike over line 14

Renumber accordingly

2009 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1041

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1041

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/15/09

Recorder Job Number: 11860

Committee Clerk Signature



Minutes:

Rep. Kingsbury: We will call the conference committee on HB 1041 to order.

Attendance: 5 present/Sen. Nelson absent.

Rep. Kingsbury: Can you please explain your amendments to HB 1041.

Sen. Olafson: Our amendment (attachment A) inserted the last sentence in (b). There was some concern in the AG's office and the ND Supreme Court Chief Justice over the way the bill was first constructed. Most of the language in the amendment was already in the bill as amended from Senate, but the substantive change was in subsection b, the last sentence, "The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system".

Rep. Delmore: Are we putting an added step to the prosecuting attorney, I don't see that included in there and I haven't had time to match it up to the whole bill.

Sen. Olafson: No, we are not. The amendment that we put on the bill, you're referring to the page 6, line 10 and page 7, line 1.

Rep. Delmore: It does not say prosecuting attorney, unless that's understood as the custodial authority and I don't think that it is. You have the law enforcement agency or the custodial

authority may fulfill its obligation but you don't have listed the prosecuting attorney. I wonder if that needs to be in there or if I'm misreading.

Tom Trenbeath, Attorney General's office: I think that if you read that entire subsection it has to do with the pretrial appearances where bond may be set. So I believe that the law enforcement authority would be enough to ensure registration was taken care of.

Rep. Delmore: On page 7 of the amended Senate bill, it says that victims not registered must be given the same notice by the prosecuting attorney. I think we are including him in some of the processes. It might be a good idea to put that in as a stop-gap measure so that is understood for all three of these.

Tom Trenbeath: It doesn't bother me to put it in there; I don't know how prosecuting attorneys feel, but I don't think they raised it because they appear on bail. I would say that would be okay.

Sen. Olafson: The language requiring the notification by the prosecuting attorney was added in the amendments that we put on. That's in the bill now, this language in the amendment is going back in the same manner that we had amended it. We had that language in the amendment.

Rep. Delmore: Do you have it covered for the same thing.

Sen. Olafson: Yes.

Rep. Delmore: Where is that found? I see it on part 16 and 17; both say "custodial authority and prosecuting attorney".

Sen. Olafson: On page 6, line 19; page 7, line 11; page 7, line 20. There are two references to notification given by the prosecuting attorney and then by the appropriate custodial authority. Those were included in our amendments.

Rep. Delmore: I understand that; but the last part says, "The law enforcement agency or custodial authority may fulfill its obligation to notify". I think we should add the prosecuting attorney in with that. I think it might be best to amend the amendment to do that.

Tom Trenbeath: The bill before you is already of that section. Please notice that subsection (b) on page 4 deals with hearings and pretrial proceedings.

Rep. Delmore: That's correct, but if you go to page 7, in section 16, it says that victims who are not registered must be given the same notice by the prosecuting attorney.

Tom Trenbeath: All I'm saying to you is that, adding something to page 4, doesn't necessarily affect the other obligations; it's exclusive of the other obligations in the preceding section. It doesn't hurt to put it in there, but it doesn't have to be in there.

Rep. Dahl: In this amendment, it talks about victims who are not registered, must be given prompt notice by the law enforcement agency. If they're not registered, and these folks want to disappear, how is this to be fulfilled?

Tom Trenbeath: I don't know how it works practically in the field. But there has always been an obligation to notify. This is just providing the electronic version of that. So in practical application, if somebody doesn't want to be notified, they're not going to notify them. We're not forcing anybody to do this registration.

Rep. Kingsbury: I still have a question with this. The law enforcement agency or the custodial authority will fulfill its obligation to notify, by registering the victim with the system. What happens to those who choose not to be registered? Isn't it the victim that makes the choice to be registered, it's not that the law enforcement agency takes it upon themselves to do that, if they aren't on that list.

Sen. Lyson: When I read this bill, it tells me as a law enforcement officer that I am supposed to notify the victim upon the attorney's notification to me; that's how law enforcement finds out

this information, from the prosecuting attorney. That's the way the system works; law enforcement isn't always in court to hear these actions. There are people who don't want to be registered and we do have other people out there, victim's service officer, that still have contact with the victim and they notify them. This is really a very sensitive area, because a lot of these people never want to hear about anything again, as you well know. I think we have it covered pretty well.

Rep. Kingsbury: In regards to wanting to put a little more in there, like registering victims, could we include "or contact person".

Sen. Lyson: You could do a lot of things. I can tell you what I do now. When I get a call from the state's attorney office informing me that a person is being let out of jail/prison and to notify the victim. I'm going to call our victim's service officer and ask them if they want to accompany us to notify the victim.

Rep. Delmore: I understand that. If you put in another person; if someone isn't out for 20 years, that person could very well be retired, they could have changed jobs, etc. but going back to Rep. Dahl's comment, that there are some people that don't want to be registered, they don't want to be notified. Have we addressed that adequately in the bill?

Sen. Lyson: I don't know if there is a way to get the notification to them other than calling the victim's service officer and ask if they have a way to contact the victim to let them know. They usually have information to get in touch with them and then they take care of the matter.

Tom Trenbeath: I think a better way to handle this matter would be to put it in Section 3 of the bill, the Victim & Witness Bill of Rights. Sub 2 says that the victims and witnesses, upon request, must be informed by law enforcement authorities...it seems that would cover it.

Sen. Lyson: We tried to cover situations.....(can't hear).

Rep. Dahl: So this would be consistent, section 2 and then this last addition here in the amendment. Here we have, saying if they want this information they must be able to receive it, and then this says law enforcement can register the victims; they don't have to but they can.

Tom Trenbeath: It seems to me that if the Bill of Rights says that you are entitled to it, if you request it. Everything after that, I think, presumes the request. The situation we're trying to prevent is one that I have in my hand here, an email dated April 3, written to the AG, "we're writing on behalf of our daughter who was victimized by the below named individual when she was 13. I have been checking the site periodically to see the perpetrator's release date. I have been watching it, and had I not been watching it, we would not have known that he was released. I contacted the victim witness agent and asked why we weren't notified, she agreed that we should have been. She did give me the name of the person in charge of victim witness for the prison and left a message for her, she returned my call to say that she would not be the one to call and give us the information. She gave me the name of another person to call within the facility. I called him and left two messages. Eventually I heard from his assistant and we asked why we had not been notified of his release. Her response was that the victim's name was not in the court papers and we did not know who to contact." This just points out the problem. This is attempting to assist, not replace, the human factor with the electronic modern technology.

Rep. Delmore: I believe we're the 50th state to add this automated system. Are you aware of glitches that have come through in the other states that are covered in this bill. They had to start somewhere as we are too.

Tom Trenbeath: I'm not aware of problems with other states. By the way, the system that we are adopting here and putting in place, is for the most part the only one out there. It's an off-the-shelf situation that every state uses but MT, and I think they have their own system.

Rep. Delmore: I would like to look at this further, the amendments. I really think we should add the prosecuting attorney part in there.

Rep. Kingsbury: Rep. Delmore would like time to look over this in terms of adding the prosecuting attorney so we will recess and reschedule.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1041

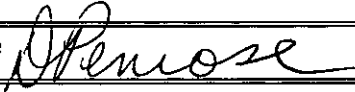
House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/17/09

Recorder Job Number: 11940

Committee Clerk Signature



Minutes:

Rep. Kingsbury: Call to order.

Attendance: All present.

Rep. Kingsbury: Amendment 90235.0204 has the changes that we had talked about.

Tom Trenbeath: The new language you have before you is exactly the same as what we dealt with the other day, plus on page 3, line 13, for the folks that do not want to be in the system. We want to be able to do that. We needed a more definitive statement on that line, so we inserted language in the Victims & Witnesses Bill of Rights. The new language is "A victim or witness who clearly objects to registration may not be required to register with the system." That's the change from the other amendments.

Rep. Delmore: We talked about not registering and I certainly agree with that. Has anybody thought about a form or something like that that would make it very clear, especially in case somebody comes back, if they aren't registered and something happens to them, and they come back and say "you never told her and now she's gone". I'm still somewhat concerned that there is somewhat of a liability in opting out of this program and I would hope that law enforcement people wouldn't have this problem.

Tom Trenbeath: That's why, we did look at this from a lot of perspectives. From the perspective of the victim or witness, I think we and society want what is best for these people. We think it best that the victims and witnesses be notified. Of course, there may be exceptions to that; consent carries a lot of baggage. Consent is complicated and that's why when I sat down and wrote up this bill, I chose to use the term "clearly objects". I think that will set up a presumption that there is acquiescence in the registration unless the law enforcement officer can "clearly see" that the person doesn't want to be registered.

Rep. Dahl: I move that the Senate recede from its amendments and amend as in 90235.0204, title .0400.

Sen. Olafson: Second.

6 YES 0 NO 0 ABSENT

MOTION CARRIED

Rep. Kingsbury: The conference committee is adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1041 (, as (re)engrossed):

Date: 4/15/09

Your Conference Committee H/Jud

For the Senate:

For the House:

	YES / NO			YES / NO	
<u>Sen. Alafson</u>			<u>Rep. Kingsbury</u>		
<u>Sen. Lyson</u>			<u>Rep. Dahl</u>		
<u>Sen. Nelson</u>			<u>Rep. Delmore</u>		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the
Seventh order:

_____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((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 _____	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

Revised 4/1/05

*All members present
except Sen Nelson.
No action taken.*

April 17, 2009

VR
4/17/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1044 and 1045 of the House Journal and page 808 of the Senate Journal and that House Bill No. 1041 be amended as follows:

Page 3, line 13, after the underscored period insert "A victim or witness who clearly objects to registration may not be required to register with the system."

Page 3, line 27, after "~~Victims~~" insert "a."

Page 4, line 2, after the period insert:

"b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.

c."

Page 6, line 10, after the period insert "Victims who are not registered must be given the same information by the prosecuting attorney."

Page 7, line 1, after the period insert "Victims who are not registered must be given the same notice by the prosecuting attorney."

Page 7, line 9, after the period insert "Victims who are not registered must be given the same notice by the appropriate custodial authority."

Page 7, line 13, remove the overstrike over "~~The notice given by the custodial authority must~~"

Page 7, remove the overstrike over line 14

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1041 (, as (re)engrossed):

Date: 4/17/09

Your Conference Committee H-JUD

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen. Olafson	✓		Rep. Kingsbury	✓	
Sen. Lyson	✓		Rep. Dahl	✓	
Sen. Nelson	✓		Rep. Delmore	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/HJ) page(s) 1044 - 1045

____, and place _____ on the Seventh order.

X, adopt (further) amendments as follows, and place 1041 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1041 was placed on the Seventh order of business on the calendar.

DATE: 4/17/09

CARRIER: Rep. Kingsbury

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Dahl

SECONDED BY: Sen. Olafson

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1041: Your conference committee (Sens. Olafson, Lyson, Nelson and Reps. Kingsbury, Dahl, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1044-1045, adopt amendments as follows, and place HB 1041 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1044 and 1045 of the House Journal and page 808 of the Senate Journal and that House Bill No. 1041 be amended as follows:

Page 3, line 13, after the underscored period insert "A victim or witness who clearly objects to registration may not be required to register with the system."

Page 3, line 27, after "~~Victims~~" insert "a."

Page 4, line 2, after the period insert:

"b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.

c."

Page 6, line 10, after the period insert "Victims who are not registered must be given the same information by the prosecuting attorney."

Page 7, line 1, after the period insert "Victims who are not registered must be given the same notice by the prosecuting attorney."

Page 7, line 9, after the period insert "Victims who are not registered must be given the same notice by the appropriate custodial authority."

Page 7, line 13, remove the overstrike over "~~The notice given by the custodial authority must~~"

Page 7, remove the overstrike over line 14

Renumber accordingly

HB 1041 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1041

Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007

HOUSE BILL NO. 1219
(Representatives Delmore, Dahl, DeKrey, Kretschmar)
(Senators Lyson, Nelson)

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to establishment and administration of a statewide automated victim information and notification system; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

Statewide automated victim information and notification system.

1. The information technology department may establish a statewide automated victim information and notification system that may be administered by the department of corrections and rehabilitation and must:
 - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public web site.
 - b. Notify a registered victim by telephone, mail, or e-mail when any of the following events affect an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility in the state:
 - (1) The offender is transferred or assigned to another facility.
 - (2) The offender is transferred to the custody of another agency outside the state.
 - (3) The offender is given a different security classification.
 - (4) The offender is released on temporary leave or otherwise.
 - (5) The offender is discharged.
 - (6) The offender has escaped.
 - (7) The offender has been served with a protective order that was requested by the victim.
 - c. Notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding at which the victim is entitled to be present, a scheduled parole or pardon hearing, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
 - d. Notify a registered victim by telephone, mail, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement.
 - e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility or for a registered sexual offender by calling the system on a toll-free telephone number or by accessing the system through a public web site.

2. If a statewide automated victim information and notification system is established, the provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
3. If a statewide automated victim information and notification system is established, the system operator shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
4. Custodial authorities shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

SECTION 2. LEGISLATIVE COUNCIL STUDY - STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1219.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State

FISCAL NOTE
Requested by Legislative Council
01/10/2007

Bill/Resolution No.: HB 1219

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$3,338,348	\$0	\$986,518	\$0
Appropriations			\$3,338,348	\$0	\$986,518	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill would require the DOCR to establish and administer a statewide automated victim information and notification system. It is unknown at this time the costs to counties to interface with the statewide system.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

In addition to the initial cost of the development of the automated system, there will be reoccurring costs related to the operation and maintenance of the system. In addition, the bill requires access to a live operator 24 hours a day 7 days a week. While there are many ways to accomplish this requirement, for the purpose of this fiscal note it is assumed the requirement will be met through the hiring of 5 FTE pay grade 10 operators. Another options would be to contract with an appropriate entity. The administration of this system will require 1 FTE with related operating costs. In addition there will need for ongoing contract agreement with an appropriate entity for software maintenance.

The costs noted above are based on the following:

- 1) System development - \$2,902,648
- 2) System administration - \$550,818
- 3) System response (24/7-operator assistance) - \$435,700

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- 1) System development - \$2,902,648
- 2) System administration - \$550,818
- 3) System response (24/7-operator assistance) - \$435,700

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

General Funds - \$3,338,348

Name:	Charles Placek	Agency:	DOCR
Phone Number:	328-6198	Date Prepared:	01/26/2007

EXCERPT FROM 2009 LEGISLATIVE COUNCIL REPORT

Interim Judiciary Committee

House Bill No. 1041

*Same testimony
given to
Senate.*

STATEWIDE VICTIM AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM

The committee, pursuant to section 2 of House Bill No. 1219, conducted a study of the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. Section 1 of House Bill No. 1219 authorized the Information Technology Department to establish a statewide automated victim information and notification system.

Background

North Dakota Law Regarding Victims Rights

North Dakota Century Code Chapter 12.1-34 provides for the rights granted to a victim of a crime in North Dakota. Section 12.1-34-02 provides that victims of a crime have certain rights including the right to receive prompt notice of the inmate's release from custody, including work release program, community residential program or transfer to mental health facility; to be informed of the parole and pardon process, including notice of any pending review; to submit a written statement to the parole board and pardon advisory board concerning the impact of the crime; to be notified of the parole board and pardon advisory board's decision; to be notified of protection available in cases of intimidation; and to be informed of appropriate and available community services. Section 12.1-34-03 provides that victims and witnesses have the following responsibilities to aid in the prosecution of crime including to make a timely report of the crime; to cooperate with law enforcement authorities throughout the investigation, prosecution, and trial; to testify at trial; and to notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court of any change of address.

North Dakota Century Code Chapter 12.1-34 also establishes the entities that are responsible for providing victim services and victim information and notification. Section 12.1-34-06 designates the prosecuting attorney as the person responsible for securing for victims and witnesses of crime the rights and services described in Chapter 12.1-34. Section 12.1-34-02 provides that law enforcement is responsible for providing information to victims and

witnesses regarding investigations and arrests. This section also provides that custodial authorities, which includes the Department of Corrections and Rehabilitation and the state's jails and regional correctional facilities, are responsible for informing victims and witnesses if a criminal defendant receives a temporary, provisional, or final release from custody or if the defendant escapes from custody.

In addition to the rights and responsibilities that NDCC Chapter 12.1-34 provides to victims and witnesses, Chapter 12.1-35 addresses certain services and rights that are to be provided to victims and witnesses who are children. Section 12.1-35-02 provides that states attorneys are encouraged to provide the certain additional services to children who are involved in criminal proceedings as victims or witnesses including explanations of all legal proceedings in which the child will be involved.

The Department of Corrections and Rehabilitation, through its Victim Services Program, employs a victim coordinator who is responsible for informing victims of inmate status changes and issues. The program also provides victims with crises intervention and referral information. The Victim Service Program works closely with the Parole Board and the Pardon Advisory Board and also serves to educate law enforcement, prosecutors, judiciary, and the public on victim's rights, needs, and issues. The other custodial authorities in the state, the jails and regional corrections facilities, are responsible for providing information to victims and witnesses regarding an offender's release from custody.

2007 House Bill No. 1219

2007 House Bill No. 1219, as introduced, would have directed the Information Technology Department to establish the statewide automated victim information and notification system. The bill also directed the Department of Corrections and Rehabilitation to ensure that an offender's information contained in the statewide automated victim information and notification system was updated to timely notify a victim regarding an offender's status. The bill also directed other custodial authorities to cooperate with the Department of Corrections and Rehabilitation in establishing and maintaining the statewide automated victim information and notification system. The fiscal note for the introduced bill included 2007-2009 general fund fiscal effect of \$3.33 million and a 2009-2011 fiscal effect of \$986,518.

As passed, the language of Section 1 of the bill, which has been codified as NDCC Section 12.1-34-06, authorizes the Information Technology Department to establish a statewide automated victim information and notification system that may be administered by the Department of Corrections and Rehabilitation and must permit a victim to register or update the

victim's registration information for the system by calling a toll-free telephone number or accessing a public web site; notify a registered victim by telephone, mail, or e-mail when certain effects affect an offender under the supervision or in the custody of the Department of Corrections and Rehabilitation or other correctional facility in the state; notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding at which the victim is entitled to be present, a scheduled parole or pardon hearing, or a change in the status of the offender's parole or probation status, including a change in the offender's address; notify a registered victim by telephone, mail, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement; and permit a victim to receive a status report for an offender by calling the system on a toll-free telephone number or by accessing the system through a public web site.

Testimony and Committee Considerations

The committee, in its study of the feasibility and desirability of establishing a statewide automated victim information and notification (SAVIN) system, received extensive information and testimony from the Criminal Justice Information Sharing Initiative of the Information Technology Department regarding the status of the establishment of a SAVIN system. The committee also sought the opinions of those directly involved in the process of providing information and notification for victims, including law enforcement, correctional facilities, and victim advocacy organization. The committee's considerations centered on the desirability of establishing a SAVIN system and the implementation and funding for the SAVIN system.

Desirability of Establishing a SAVIN System

The committee received periodic reports from the Information Technology Department regarding the status of a federal grant for the establishment of a SAVIN system. According to the report, in December 2006, the Information Technology Department submitted an application to the federal Bureau of Justice Assistance for a federal grant for a statewide automated information and notification system. In October 2007, notification was received that North Dakota had been awarded the grant. At the October 30, 2007, meeting of the Budget Section, the Information Technology Department, on behalf of the Criminal Justice Information Sharing (CJIS) Initiative, requested authorization for an increase of \$1.4 million in federal spending authority. The Budget Section requested that CJIS refine the future costs of implementing a SAVIN system. The Budget Section also delayed the authorization of the spending authority until the Judiciary Committee had the opportunity to make a recommendation regarding SAVIN. According to the report, the ongoing costs of the program are \$423,998 per year or \$847,996 for

a biennium. According to the testimony, the SAVIN project is expected to have a two-year implementation cycle. It was noted that the grant funds must be expended by June 2009 with the potential for a one-year extension.

According to the testimony, the Information Technology Department would contract with a vendor for the SAVIN services. It was noted that research indicates that there is only one vendor--Appriss, Inc.-- capable of providing the services needed. According to the testimony, Appriss, Inc. is the only company with an existing service that meets the federal grant requirements and provides victim notification services in 44 states. It was noted that the department would attempt to negotiate a two-year to five-year contract with this company at an estimated yearly cost of the vendor is \$311,150.

In response to the request of the Legislative Council's Budget Section for the Judiciary Committee to make a recommendation regarding the SAVIN project, the committee received testimony regarding the desirability of establishing a SAVIN system.

Testimony from various law enforcement agencies indicated that law enforcement spends a great deal of time notifying domestic violence victims about the status of an abuser or offender. The status notification includes notifying the victim when protection orders have been served and when an abuser is released from jail. According to the testimony, these services can be streamlined in an automated system. It was noted that 47 other states use an automated system. The testimony also indicated that an automated system would allow law enforcement and detention staff to better use their time in providing emergency services, serving protection orders, investigating crime, and attending to the ever-growing jail population. According to the testimony, information provided to a victim is not only a right, but it also may be the only thing that keeps a victim feeling safe and able to continue with everyday life. It also noted that a SAVIN system will require the victim to take an active role in obtaining information about a case.

The testimony of a county jail administrator indicated that a SAVIN system will provide local jurisdictions another means to notify victims of crimes as required under NDCC Chapters 12.1-34 and 12.1-35. It was noted that the system would be extremely helpful to many of the local jails that do not have an automated notification process. For those counties that have an automated process in place, the SAVIN system will allow those to input information and provide a secondary means of notification.

Testimony from a county victim witness coordinator also expressed support for a SAVIN system. According to the testimony, many victims are not notified of any criminal procedures and may not be aware that their offender has been charged with a crime. It was noted that many rural counties do not have the resources to provide services to victims. With the SAVIN

system, prompt notification of release can be made. The testimony indicated that this information will give victims some sense of security and control over their lives. It was noted that the system would also provide a way to track victims for statistical purposes. According to the testimony, a SAVIN system would give victim service providers more time to provide more direct services to victims.

The committee also received testimony in support of a SAVIN system from victim advocacy organizations. According to the testimony, victims have a need to be kept informed of the criminal case involving their victimization. For victims of domestic violence and sexual assault, their safety and security depend on access to timely information of the criminal case proceeding and the service of protection orders. It was noted that in 2006, domestic violence advocacy programs assisted 754 individuals in seeking emergency protection orders. When a victim seeks a protection order, advocates work with the victim to develop a safety plan that is primarily based on the victim's past experience with the offender but also seeks to predict how the offender may react when served with the order. According to the testimony, it is imperative for a victim to know when the protection order was served and how the offender reacted in order for the victim to determine which safety plan option to implement, such as go to a shelter or stay in the residence. The information gathered through the enhanced communication between the criminal justice system and victims will lead to the establishment of better rapport with victims, an increased level of trust in the criminal justice system, and the ability for victims to be empowered through knowledge. The testimony indicated that a SAVIN system will empower victims with knowledge and allow victims to better determine their needs in regard to the safety and security of their lives.

Other testimony in support of a SAVIN system was received from a victim whose daughter was shot and killed 28 years ago. According to the testimony, there had been numerous incidents involving the man who was convicted of her daughter's murder of which she never received notification, including the offender's escape from prison on two different occasions. The testimony indicated that the victim has the right to be the first to be notified when there is any information about the criminal. It was noted that because victim service providers cannot be working around the clock, a SAVIN system would provide victims with the needed information. It was also noted that a SAVIN system would enable a victim to feel more in control of the situation which would help alleviate some of the victim's frustration.

In response to committee concerns regarding the operation of the SAVIN system, the testimony indicated that it would be the responsibility of the victim to sign up for the notification and to keep contact information updated. Under a SAVIN system, the information would be

updated on a daily basis. It was noted that system does not replace victim coordinators but rather it gives them another tool to assist victims.

In light of the testimony in support of the establishment of a SAVIN system, the committee recommended that the Budget Section authorize the Information Technology Department to accept the federal grant and to expend the funds in the grant for the SAVIN project. At its March 19, 2008, meeting, the Legislative Council's Budget section authorized the expenditure of the Bureau of Justice SAVIN grant.

SAVIN System Implementation and Funding

Upon authorization of the Bureau of Justice SAVIN grant, the committee received information regarding the implementation of the program. According to the testimony, the Information Technology had refined the cost estimates for the SAVIN project and the necessary ongoing funding required for maintaining the program. It was noted that matching funds for the project will come from the Supreme Court's replacement project of its current UCIS application and the CJIS Interface Projects that will supply data to the SAVIN system as well as the CJIS portal. The court's replacement project was approved by the 2007 Legislative Assembly and the funding is in the court's budget. According to the testimony, the implementation estimates were provided by the vendor given the state's size and functional requirements. It was reported that these estimates plus estimated nonvendor costs range from \$1.2 million to \$1.4 million, which indicated that the project can be accomplished using the federal grant funds awarded. It was noted that because the delay in obtaining approval for expending the funds, the department intended to apply for the one-year extension that will extend the project to June 30, 2010. It was also reports that a project manager had been hired.

The committee received testimony that in light of the implementation of the SAVIN system, there would be a need for legislative changes to various state laws regarding victim notification. In response to this information, the committee considered a bill draft that would change the current victim notification laws to require the victim and other concerned citizens to register with SAVIN to receive their victim notifications. The bill draft makes the changes to the North Dakota Century Code which will be necessary upon implementation of the SAVIN system. The bill draft provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities would be automated under the SAVIN system.

The committee received testimony from a victim advocacy organization which expressed concerns that the automated system may affect some of the victim's rights that are provided for

in current law, particularly regarding the notification of pretrial release. According to the testimony, if a victim must be registered to be notified, some victims may not get the notification. It was noted that there are some victims who do not want to release their notification information to anyone out of the fear that the offender may gain access to the information. According to the testimony, it would be helpful if the advocacy organization would be permitted to register with the SAVIN system on behalf of the victim. The testimony expressed a concern that the bill draft and the SAVIN system change the rights of the victims.

Testimony in support of the bill draft indicated that it is the intent of the SAVIN system is to retain all rights that victims are currently afforded under the current system. It was noted that not all information will be relayed to victims and witnesses through the SAVIN system. Some information will continue to be the responsibility of the entity to relay to the victim. According to the testimony, the SAVIN system puts the responsibility on the victim to keep the victim's contact information updated. The registration system will allow up to six contact telephone numbers and up to three e-mail addresses. The SAVIN system will replace those notification situations that were previously handled by a letter or a telephone call. In other notification situations, there will still be direct notification from an entity. Finally, it was noted that the SAVIN system is not intended to replace the current notification system but rather it is an additional tool that will be available to make some of the notification process automated and more efficient.

Several committee members expressed concerns regarding the use of the term "address" as it related to the information required from a victim for notification. The committee made the decision to change the term to "contact information". The committee also requested that the bill draft be clarified that all contact information must be kept confidential.

Recommendation

The committee recommends a bill relating to statutory changes necessary for the implementation of a statewide automated victim information and notification system. The bill changes the current victim notification laws to require the victim and other concerned citizens to register with SAVIN to receive their victim notifications. The bill provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities would be automated under the SAVIN system.

Testimony on HB 1041
House Judiciary Committee
January 12, 2009

Chair DeKrey and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services (NDCAWS). I currently serve as a member of the SAVIN Governance Committee. During two of our meetings this fall the committee reviewed the proposed changes to the Fair Treatment Standards and had discussions regarding the potential impact on victims and witnesses. Overall, NDCAWS is in support of SAVIN, although we do have concerns with some of the changes proposed in HB 1041.

NDCAWS has been intimately involved with the evolution of the Fair Treatment Standards for victims and witnesses since its adoption by the 1987 Legislative Assembly. These standards apply equally to all victims of crime, not just victims of domestic violence and sexual assault. A number of changes have been made to the statute over the years, although the core "rights" have been sustained. Important changes included:

- Section 3, subsection 19 (p.8 , line 5) which extended rights to victims and witnesses of juvenile crime; and
- Section 3, subsection 17 (p. 7, line 11) which expanded notification of transfers to include mental health facilities;

Since the inception of this crime victims' "bill of rights" agencies have used them as a framework or tool for providing direct services. SAVIN is yet another tool that victim service providers and communities can use to assure victims and witnesses are afforded the rights under 12.1-34. Over the years communities have established interagency protocols and policies to ensure that each agency is carrying out their responsibilities and communicating those responsibilities to other agencies. It is important that this communication not cease to exist even as SAVIN becomes operational. These observations leads to a couple of concerns we have with the bill in its current form.

It is not clear whether the form of notification is the victim's choice or the notifying entity's choice. It is important that we have a provision for inclusion of victims that may want to opt out of registering with the automated system. Victims and witnesses may have legitimate reasons for not wanting to register including safety and accessibility. We need to provide alternative provisions that will allow for all victims and witnesses to have access to the information that the law provides for. Allowing domestic violence programs to register and provide notification to the

victim would be a means of providing that access. It would be a shame if an automated system in any way diminished the life and death urgency of notification in personal violence crimes.

Secondly, it seems redundant to have two definitions of victim and witness in the code that describes if they are registered or not registered with SAVIN. By having one definition of victim and witness that encompasses registration with SAVIN it would then imply throughout the code that all victims and witnesses need to be notified whether they are registered or not, which is the intent of 12.1-34. The registration language would only refer to how they are notified. Over the years, we have learned that not all victims want updates on their offenders. Some need separation to get on with their lives. We need to honor that choice, and a victim registration system for notification provides that choice.

Finally, as I mentioned earlier, the Fair Treatment Standards are used as a guide to the rights for victims and witnesses. The comprehensive list of events that a victim must be notified of that "affect an offender under supervision of the Department of Corrections" (Section 5, lines 1-13) provides that. It seems important to include this list even as SAVIN becomes operational.

To end on a positive note, the addition to the statute that is especially important to victims of domestic violence and sexual assault:

Section 5, subsection 1-e (p.9, lines, 22-23), includes the notice of service of protection orders. Such notice has long been a problem, and if this notification can be smoothly incorporated, it would be a huge step forward.

NDCAWS is grateful to the interim Judiciary Committee for their thoughtful work on the SAVIN system and stand ready to assist in any way we can in its implementation.

Thank you.

Testimony today is in opposition to HB 1041

Chris Lipsh

Director Victim Witness Program for Walsh County, Grafton, ND

Registered Lobbyist for the North Dakota Victims Assistance Association - NDVAA
(Group of Victim Service Provider from across ND)

Lobbyist registration # 372

PREFATORY STATEMENTS

- NDVAA Totally supports the State Automated Victim Information Network – SAVIN
 - o It will empower victims
 - o It will enhance the services provided to victims across ND
 - o It will provide victims a 24 hour service of notification
 - o It will possibly free up some resources for Victim Service Programs to give more direct services to victims

OPPOSITION TO HB 1041 BY NDVAA & WALSH COUNTY VICTIM ASSISTANCE PROGRAM

- This bill changes the Fair Treatment and Standard for Victims and Witness – the Victim's Bill of Rights and does not take into account how it may affect the victims.
 - o 12.1-34 has been a successful piece of the North Dakota Century Code for many years, especially in areas where the entities that work with victims are pro-victim.
 - o 12.1-34 was written to ensure victims would receive notifications or services by specific entities as a case proceeds through the criminal justice process. The notification or service to a victim by one or more of these entities play an important role in engaging the victim and getting them on the track back to normalcy. This form of the contact should be left up to the victim not mandated by law to be automated.
- This bill is a bit too premature since SAVIN is not up and running yet OR when it is up and running what would happen when the system is down?
- This bill does not give the victim the option to use SAVIN or not.
- This bill abdicates the responsibility of a few entities PRE-SENTENCING of the offender and therefore may allow victims to slip through some cracks or re-victimize them.
 - o Pre-Sentencing is the most important time to provide direct personal service to victims to keep them informed, safe, and involved in the criminal justice process. Granted if they opt to use SAVIN that should be their choice not the law.
 - o The agency charged with providing service to the victim should be given the leeway to establish an internal policy on their following of the law 12.1-34 and use of SAVIN.

SUGGESTIONS

- The production of HB 1041 has shed light on the possibilities of different ideas to best serve victims of crime in ND and it uncovered a need for a study which includes all entities that serve victims. This study can help determine:
 - o The implementation of the current Fair Treatment and Standards of Victims and Witness – The Victims Bill of Rights – N.D.C.C. 12.1-34
 - o Making sure all entities work with the SAVIN program to ensure its success and empowerment of victims.
 - o Giving the victim the option to use SAVIN or not
 - o Allowing the different entities that serve victims the ability to establish internal procedures on how and when to use SAVIN.
 - I know my program will recommend victims to use SAVIN as much as possible so they have the information at their fingertips at all times. And when they need direct services I should have the resources to provide them.

*Same to
given
Senate*

A BILL for an Act to amend and reenact subsection 13 of section 12.1-32-15 and sections 12.1-34-01, 12.1-34-02, 12.1-34-03, and 12.1-34-06 of the North Dakota Century Code, relating to the statewide automated victim information and notification system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access in the offender:

- a. Is required to register for a lifetime under section 8;
 - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guideline developed by those agencies; or
 - c. Has been determined to be a moderate risk, public disclosure must include, a minimum, notification to the victim of the offense and to any agency, civic organization, or group of persons who have characteristic similar to those of a victim of the offender.
- Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

SECTION 2. AMENDMENT. Section 12.1-34-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-34-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions,

Legislative Assembly **HOUSE BILL NO.1041 NDVAA VERSION**
of North Dakota
Introduced by

1 criminal complaints, informations, or indictments.

2 2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of
3 section 6-08-16.1 for no-account checks; all violations of chapters 12.1-17 and
4 12.1-20, including all corresponding violations of municipal ordinances; and any of
5 the offenses in this subsection that may result in adjudication of delinquency.

6 3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-
7 04, or threat of force was used against the victim.

8 4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional
9 corrections center, halfway house, state penitentiary or Missouri River correctional
10 center, state hospital, or any other inpatient mental health or treatment facility to which a
11 criminal defendant may be sentenced or referred.

12 5. "Disposition" means the sentencing or determination of penalty or punishment to be
13 imposed upon a person convicted of a crime or found delinquent or against whom a
14 finding of sufficient facts for conviction or finding of delinquency is made.

15 6. "Family member" includes a spouse, child, sibling, parent, grandparent, legal
16 guardian, or custodian of a victim.

17 7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or
18 their assistants.

19 **8. "System" means the statewide automated victim information and notification**
20 **system.**

21 8- **9. "Victim" means a natural person who has suffered direct or threatened physical,**
22 **financial, or emotional harm where there is probable cause to believe that the harm has**
23 **been caused by the commission of a criminal act. The term "victim" whether registered**
24 **or not register with the statewide automated victim information and notification**
25 **system** includes the family members of a minor, incompetent, incapacitated, or
26 deceased person.

27 9- **10. "Witness" means any person who has been or is expected to be summoned to testify**
28 **for the prosecution whether or not any action or proceeding has yet been commenced**
29 **whether registered or not register with the statewide automated victim information**
30 **and notification system.**

31 **SECTION 3. AMENDMENT.** Section 12.1-34-02 of the North Dakota Century Code is

Legislative Assembly **HOUSE BILL NO. 1041 NDVAA VERSION**
of North Dakota
Introduced by

1 amended and reenacted as follows:

2 **12.1-34-02. Fair treatment standards for victims and witnesses.** Victims and
3 witnesses of crime must be afforded the following rights where applicable:

4 **1. Informed by those entities that have contact with the victim or witness as**
5 **to the availability of, the methods for registration and the options with the**
6 **statewide automated victim information and notification system. Those entities**
7 **include law enforcement, prosecuting attorneys, the courts, and custodial**
8 **authorities.**

9 ~~4-~~ **2.** Informed as to status of investigation. Victims and witnesses, upon request, must
10 be informed by law enforcement authorities investigating a criminal case of the status of
11 the investigation, except where the prosecuting attorney or law enforcement authority
12 determines that to disclose such information would unreasonably interfere with the
13 investigation, until such time as the alleged offender is apprehended or the investigation
14 is closed.

15 ~~2-~~ **3.** Informed as to criminal charges filed. Victims must be promptly informed by the
16 prosecuting attorney of any criminal charges, arising from an incident in which the
17 person was a victim, filed against any person arrested. The prosecuting attorney shall
18 also provide a brief statement in nontechnical language of the procedural steps involved
19 in the processing of a criminal case. Victims must also be informed by the prosecuting
20 attorney of the pretrial status of each person arrested, including bail and any pretrial
21 release conditions.

22 ~~3-~~ **4.** Notice of pretrial release. Victims must be given prompt notice by the law
23 enforcement agency that has made an arrest in any case involving a crime of violence of
24 any hearing in which the arrested person's pretrial release status will be determined. If
25 the alleged offender in a crime of violence is scheduled to be released to an appearance
26 in court the custodial authority shall give prompt notice must be given to the victim and
27 witness or if unavailable, to the arresting law enforcement agency that shall provide the
28 notice. Victims and witnesses of crimes of violence must be informed by the prosecuting
29 attorney of the methods for enforcing pretrial release conditions including information as
30 to the level of protections available from law enforcement in the case of harm, threats, or
31 intimidations made to the victim or witness.

Legislative Assembly **HOUSE BILL NO. 1041 NDVAA VERSION**
of North Dakota
Introduced by

1 4- 5. Notice as to victims' and witnesses' participation in court proceedings. Victims
2 must be informed by the prosecuting attorney of all court proceedings in a reasonable
3 time prior to the proceedings. Witnesses must be informed by the prosecuting attorney
4 of all court proceedings at which their presence is required in a reasonable time prior to
5 the proceedings and informed in nontechnical language of the procedural steps involved
6 in the processing of a criminal case. Victims and witnesses must be notified by the
7 prosecuting attorney or by the statewide automated victim information and notification
8 system of the cancellation of any scheduled court proceeding in sufficient time to prevent
9 an unnecessary appearance in court. All victims and witnesses shall provide the
10 prosecuting attorney with current information as to address and telephone number, such
11 information to be kept confidential subject to other provisions of this chapter. The notice
12 given by the prosecuting attorney to the victims and witnesses must be given by any
13 means reasonably calculated to give prompt notice.

14 5- 6. Services available. Victims and witnesses must be informed by the prosecuting
15 attorney and arresting law enforcement agency of all appropriate and available public or
16 private programs that provide counseling, treatment, or support for victims and
17 witnesses, including rape crisis centers, victim and witness assistance programs, elderly
18 victim services, victim assistance hot lines, social service agencies, and domestic
19 violence programs. The prosecuting attorney and law enforcement authority shall advise
20 victims eligible for services of the relevant provisions of chapter 54-23.4.

21 6- 7. Employer intercession. Victims and witnesses upon request must be provided by
22 the prosecuting attorney with appropriate employer intercession services to ensure that
23 employers of victims and witnesses will cooperate with the criminal justice process in
24 order to minimize an employee's loss of pay and other benefits resulting from court
25 appearances.

26 7- 8. Witness fee. Witnesses must be informed by the prosecuting attorney or the
27 court of the procedures to be followed in order to apply for and receive any witness fee
28 to which they are entitled under law.

29 8- 9. Return of property. Victims shall have any personal property that was stolen or
30 taken for evidentiary purposes, except contraband, property subject to evidentiary
31 analysis, and property the ownership of which is disputed, returned by the court,

Legislative Assembly **HOUSE BILL NO.1041 NDVAA VERSION**
of North Dakota
Introduced by

1 prosecuting attorney, or law enforcement agency within ten days after its taking or
2 recovery if it is not needed for law enforcement, prosecution, or defense purposes or as
3 expeditiously as possible when the property is no longer needed for law enforcement,
4 prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall
5 notify the defendant of the intent to return the property to the owner. Upon a motion
6 made by the defendant and upon good cause shown that the property contains
7 exculpatory evidence of the defendant's innocence, the court may order the law
8 enforcement personnel in possession of the property not to release it to the owner.

9 ~~9-~~ 10. Waiting area. Victims and witnesses must be provided by prosecuting attorneys
10 and defense attorneys as assisted by the court with a waiting area separate from the
11 defendant, defendant's relatives and friends, and defense witnesses if such an area is
12 available and the use of the area is practical. If a separate waiting area is not available
13 or practical, the court shall provide other safeguards to minimize the victims' and
14 witnesses' contact with the defendant, defendant's relatives and friends, and defense
15 witnesses during court proceedings.

16 ~~40-~~ 11. Protection of identifying information. Victims and witnesses may not be
17 compelled to testify at any pretrial proceeding or at trial for purposes of identifying the
18 victims' or witnesses' address, telephone number, place of employment, or other
19 personal identification except for name without the victims' or witnesses' consent,
20 unless there is a showing of good cause as determined by the court.

21 ~~41-~~ 12. Right to be present throughout trial. The victim must be informed by the
22 prosecuting attorney of the victim's right to be present throughout the trial of the
23 defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.

24 ~~42-~~ 13. Prompt disposition of case. Victims and witnesses must be informed by the
25 prosecuting attorney of their rights to a prompt disposition of the cases in which they are
26 involved as victims or witnesses as defined by the docket currency standards of the
27 North Dakota Supreme Court.

28 ~~43-~~ 14. Notice as to scheduling of hearing. Victims must be informed by the prosecuting
29 attorney of the date, time, and place of hearing at which a plea of guilty or not guilty will
30 be entered and of a sentencing hearing. The prosecuting attorney shall explain to and
31 consult with the victim in nontechnical language details of any potential plea agreement

Legislative Assembly **HOUSE BILL NO. 1041 NDVAA VERSION**
of North Dakota
Introduced by

1 or verdict.

2 14- 15.Victim impact statement. The victim must be informed by the prosecuting
3 attorney, prior to sentencing, of the victim's right to submit or make a written impact
4 statement to the court in any criminal case. If a presentence investigation is ordered, the
5 probation officer assigned the report shall include this information in the report. This
6 statement may include an explanation by the victim of the nature and extent of any
7 physical, psychological, or emotional harm or trauma suffered by the victim; an
8 explanation of the extent of any economic loss or property damage suffered by the
9 victim; an opinion of the need for and extent of restitution; and the victim's
10 recommendation for an appropriate sentence. The prosecuting attorney shall advise all
11 victims that the presentence report is subject to review by the defendant and that the
12 report will include the victim's statement. If the sentencing court does not order a
13 presentence investigation, the victim may submit a written impact statement, under oath,
14 to the office of the state's attorney which statement must be submitted to the sentencing
15 court. The victim of violent crime may appear in court to make an oral crime impact
16 statement at the sentencing of the defendant in appropriate circumstances at the
17 discretion of the judge. This oral statement must be made under oath and is subject to
18 cross-examination.

19 14- 16.Notice of final disposition and parole procedures. Victims and witnesses must be
20 informed by the prosecuting attorney of the final disposition of any criminal case. The
21 prosecuting attorney shall explain the parole process and pardon process and further
22 advise the victim of the necessity of advising the custodial authority and the parole board
23 and the pardon clerk of the victim's address in order for the victim to receive further
24 information under other provisions of this chapter.

25 14- 17.Prompt notice of custodial release. Victims and witnesses must be informed by
26 the appropriate custodial authority whenever a criminal defendant receives a temporary,
27 provisional, or final release from custody or whenever the defendant escapes from
28 custody. Notification must include the transfer of the defendant to a work-release
29 program, a community residential program, or transfer to a mental health facility. All
30 notices to the victim and witnesses concerning this release information must be within a
31 reasonable time prior to the defendant's release or transfer.

Legislative Assembly **HOUSE BILL NO.1041 NDVAA VERSION**
of North Dakota
Introduced by

1 47- 18.Participation in parole board and pardon decision. Victims may submit a written
2 statement for consideration by the parole board, the governor, or the pardon advisory
3 board, if one has been appointed, prior to the parole board, the governor, or the pardon
4 advisory board taking any action on a defendant's request for parole or pardon. A victim
5 statement made under this subsection is a confidential record and may be disclosed only
6 to the parole board, the governor, the pardon advisory board, or their authorized
7 representative. Victims of violent crimes may at the discretion of the parole board, the
8 governor, or the pardon advisory board personally appear and address the parole board,
9 the governor, or the pardon advisory board. Victim testimony and written statements
10 under this subsection are confidential and may be disclosed only to the parole board, the
11 governor, the pardon advisory board, or their authorized representative. If the offender
12 will make a personal appearance, notice must be given by the parole board or pardon
13 clerk informing the victim of the pending review and of the victim's rights under this
14 section. The victim must be provided notice of the decision of the parole board or of the
15 governor and the recommendations of the pardon advisory board, if any, and, if
16 applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon,
17 conditional pardon, reprieve, commutation, or remission of fine. Notice must be given
18 within a reasonable time after the parole board or the governor makes a decision but in
19 any event before the parolee's or pardoned prisoner's release from custody.

20 48- 19.Victims and witnesses of crimes committed by juveniles are entitled to the same
21 rights under this chapter in juvenile delinquency proceedings as in any other proceeding.
22 In addition, every victim or a witness who is a minor is entitled to have that person's
23 spouse, parent, guardian, and no more than two other designated adults present with
24 that person during any juvenile delinquency proceedings.

25
26 **SECTION 4. AMENDMENT.** Section 12.1-34-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **12.1-34-03. Responsibilities of victims and witnesses.** Victims and witnesses have all
29 of the following responsibilities to aid in the prosecution of crime:

- 30 1. To make a timely report of the crime.
- 31 2. To cooperate with law enforcement authorities throughout the investigation,

1 prosecution, and trial.

2 3. To testify at trial.

3 4. To notify the system, law enforcement authorities, prosecuting attorney, custodial
4 authority, parole board, pardon clerk, and court, where appropriate, of any change
5 of address. The address information provided to these persons must be kept
6 confidential.

7 **SECTION 5. AMENDMENT.** Section 12.1-34-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-34-06. Statewide automated victim information and notification system.**

10 1. The information technology department may establish a statewide automated victim
11 information and notification system that ~~may be administered by the~~ must:

12 a. Permit a victim or entity that has contact with the victim or witness to
13 register or update the victim's or witness's registration information for the system
14 by calling a toll-free telephone number or accessing a public ~~web site~~ website.

15 b. Notify a registered victim by telephone, mail, or e-mail when any of the
16 following events affect an offender under the supervision or in the custody of the
17 department of corrections and rehabilitation or other correctional facility in the
18 state:

19 (1) The offender is transferred or assigned to another facility.

20 (2) The offender is transferred to the custody of another agency
21 outside the state.

22 (3) The offender is given a different security classification.

23 (4) The offender is released on temporary leave or otherwise.

24 (5) The offender is discharged.

25 (6) The offender has escaped.

26 (7) The offender has been served with a protective order that was-
27 requested by the victim in accordance with this chapter.

28 c. Notify a registered victim by telephone, mail, or e-mail when the offender
29 has a scheduled court proceeding at which the victim is entitled to be present, a
30 scheduled parole or pardon hearing, or a change in the status of the offender's
31 parole or probation status, including a change in the offender's address.

Legislative Assembly **HOUSE BILL NO. 1041 NDVAA VERSION**
of North Dakota
Introduced by

1 d. Notify a registered victim by telephone, mail, or e-mail when a registered
2 sexual offender has updated the offender's registration information or failed to
3 comply with any registration requirement.

4 e. Permit a victim to receive a status report for an offender under the
5 supervision or in the custody of the department of corrections rehabilitation or
6 other correctional facility or for a registered sexual offender by calling the system
7 on a toll-free telephone number or by accessing the system through a public web-
8 site-website.

9 f. Notify a registered petitioner by telephone, mail, or e-mail when a
10 protective order requested by the petitioner has been served upon the
11 respondent.

12 2. If a statewide automated victim information and notification system is
13 established, the provision of offender and case data on a timely basis to the automated
14 victim information and notification system satisfies any obligation under this chapter to
15 notify a registered victim of an offender's custody and the status of the offender's
16 scheduled court proceedings.

17 3. If a statewide automated victim information and notification system is
18 established, ~~the system operator~~ user agency shall ensure that an offender's
19 information contained in the system is updated to timely notify a victim that an
20 offender has been released or discharged or has escaped. The failure of the
21 system to provide notice to the victim does not establish a cause of action by the
22 victim against the state or any custodial authority.

23 4. ~~Custodial~~ All affected entities, including law enforcement, prosecuting
24 attorneys, the courts, and custodial authorities the attorney general's office, the
25 pardon board, and the parole clerk, shall cooperate with the system operator in
26 establishing and maintaining the statewide automated victim information and notification
27 system.

28
29 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective on the date the criminal
30 justice information sharing board certifies to the legislative council that the statewide
31 automated victim information and notification system is operational.

Attachment 2
HB 1041

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on HB 1041
Senate Judiciary Committee
March 4, 2009

Chair Nething and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services (NDCAWS). I currently serve as a member of the SAVIN Governance Committee. During two of our meetings this fall the committee reviewed the proposed changes to the Fair Treatment Standards and had discussions regarding the potential impact on victims and witnesses.

NDCAWS has been intimately involved with the evolution of the Fair Treatment Standards for victims and witnesses since its adoption by the 1987 Legislative Assembly. These standards apply equally to all victims of crime, not just victims of domestic violence and sexual assault. A number of changes have been made to the statute over the years, although the core "rights" have been sustained. Important changes included:

- Section 3, subsection 19 (p.8 , line 5) which extended rights to victims and witnesses of juvenile crime; and
- Section 3, subsection 17 (p. 7, line 11) which expanded notification of transfers to include mental health facilities;

Since the inception of this crime victims' "bill of rights" agencies have used them as a framework or tool for providing direct services. SAVIN is yet another tool that victim service providers and communities can use to assure victims and witnesses are afforded the rights under 12.1-34. Over the years communities have established interagency protocols and policies to ensure that each agency is carrying out their responsibilities and communicating those responsibilities to other agencies. It is important that this communication not cease to exist even as SAVIN becomes operational.

On a positive note, the addition to the statute that is especially important to victims of domestic violence and sexual assault:

Section 5, subsection 1-e (p.9, lines, 22-23), includes the notice of service of protection orders. Such notice has long been a problem, and if this notification can be smoothly incorporated, it would be a huge step forward.

Although we voiced concerns and ask for amendments to the bill on the House side, after working with Representatives that worked on the bill in subcommittee we feel more comfortable with the changes proposed in HB 1041 and urge your support.

NDCAWS is grateful to the interim Judiciary Committee for their thoughtful work on the SAVIN system and stand ready to assist in any way we can in its implementation.

Thank you.

Testimony today is in opposition to HB 1041

Chris Lipsh

Director Victim Witness Program for Walsh County, Grafton, ND

Registered Lobbyist for the North Dakota Victims Assistance Association - NDVAA
(Group of Victim Service Provider from across ND)
Lobbyist registration #372

PREFATORY STATEMENTS

- NDVAA Totally supports the State Automated Victim Information Network – SAVIN
 - o It will empower victims
 - o It will enhance the services provided to victims across ND
 - o It will provide victims a 24 hour service of notification
 - o It will possibly free up some resources for Victim Service Programs to give more direct services to victims

OPPOSITION TO HB 1041 BY NDVAA & WALSH COUNTY VICTIM ASSISTANCE PROGRAM

- This bill changes the Fair Treatment and Standard for Victims and Witness – the Victim's Bill of Rights and does not take into account how it may affect the victims.
 - o 12.1-34 has been a successful piece of the North Dakota Century Code for many years, especially in areas where the entities that work with victims are pro-victim.
 - o 12.1-34 was written to ensure victims would receive notifications or services by specific entities as a case proceeds through the criminal justice process. The notification or service to a victim by one or more of these entities play an important role in engaging the victim and getting them on the track back to normalcy. This form of the contact should be left up to the victim not mandated by law to be automated.
- We all know technology is not infallible, so what will happen when SAVIN system is down?
- This bill does not give the victim the OPTION to use SAVIN or not.
- This bill abdicates the responsibility of a few entities PRE-SENTENCING of the offender and therefore may allow victims to slip through some cracks or re-victimize them.
 - o Pre-Sentencing is the most important time to provide direct personal service to victims to keep them informed, safe, and involved in the criminal justice process. Granted if they opt to use SAVIN that should be their choice not the law.
 - o The agency charged with providing service to the victim should be given the leeway to establish an internal policy on their following of the law 12.1-34 and use of SAVIN.

- Some might question, "Why doesn't the victim service providers want to provide the best service to victims by using SAVIN?"
 - NDVAA as stated before wants SAVIN to give victims the option and wants it in place, but does NOT want agencies to replace personal contact when victims need it the most.

CONCLUSION

- This HB1041 makes a HUGE ASSUMPTION in lines 10-13.
 - ◆ This assumption is that all agencies will automatically assume the responsibility for victim services once they learn a victim doesn't want to register.
 - BUT, as someone who works with the North Dakota Century Code each day might say, "It is not in the code therefore I do not have to do it!"
 - So by eliminating any language from 12.1-34 or 12.1-35 victims will be re-victimized or forgotten.
- In other states when a state automated system was established, the Victims Bill of Rights in that state was not altered. Why in North Dakota are we attempting to change our Victim Bill of Rights.
- If anything HB 1041 has shed light on the possibilities of different ideas to best serve victims of crime in ND and it uncovered a need for a study which includes all entities that serve victims. This study can help determine:
 - The implementation of the current Fair Treatment and Standards of Victims and Witness – The Victims Bill of Rights – N.D.C.C. 12.1-34
 - Making sure all entities work with the SAVIN program to ensure its success and empowerment of victims.
 - Allowing the different entities that serve victims the ability to establish internal procedures on how and when to use SAVIN.
 - I know my program will recommend victims to use SAVIN as much as possible so they have the information at their fingertips at all times. And when they need direct services I should have the resources to provide them.
- **DON'T LET VICTIMS SUFFER ANOTHER TRAGEDY IN THEIR LIVES, DO NOT PASS HB1041. AMEND IT**
- **AT A MINIMUM! GIVE VICTIMS THE OPTION TO USE SAVIN AND KEEP ALL THE AGENCIES THAT WORK WITH VICTIMS ON THE SAME TEAM.**

April 14, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1044 and 1045 of the House Journal and page 808 of the Senate Journal and that House Bill No. 1041 be amended as follows:

Page 3, line 27, after "~~Victims~~" insert "a."

Page 4, line 2, after the period insert:

"b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.

c."

Page 6, line 10, after the period insert "Victims who are not registered must be given the same information by the prosecuting attorney."

Page 7, line 1, after the period insert "Victims who are not registered must be given the same notice by the prosecuting attorney."

Page 7, line 9, after the period insert "Victims who are not registered must be given the same notice by the appropriate custodial authority."

Page 7, line 13, remove the overstrike over "~~The notice given by the custodial authority must~~"

Page 7, remove the overstrike over line 14

Renumber accordingly