

2009 SENATE HUMAN SERVICES

SB 2097

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 1-14-09

Recorder Job Number: 6992

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee opened the hearing on SB 2097 relating to the definition of a person responsible for a child's welfare and who may receive confidential reports of child abuse and neglect.

Tara Lea Muhlhauser, Dept. of Human Services, offered testimony in support of SB 2097.

See attachment #1. She will be providing an amendment removing "being requested" on page 2, line 10.

Senator J. Lee had a concern about the school issue and felt that there wasn't room for any consistent policy to be in place if this is removed. She asked if there is any involvement if there is a complaint about an alleged offense in a school district between an employee and a student.

Ms. Muhlhauser said that one of the things they know across the state is that situations are quite different. Sometimes they are just the people who are talking and gathering the facts, making a recommendation and handing it over. Sometimes they are actually invited into the process. They aren't very effective in how they do the work in this area because they really have no ability to enforce anything.

Senator J. Lee had reservations about removing child protective services entirely.

Senator Heckaman asked who would investigate this for the school if the Dept. doesn't.

Ms. Muhlhauser answered they would expect that the school would do it. They are in care of the youth that are in their building, their institution, and their program.

Discussion continued on school situations. The Department is still available for consultation.

Their question and concern is whether they should be the ones under law going in to do all of these as part of the child abuse and neglect report.

There was agreement that there should be someone outside the school system involved.

Senator Dever asked if the incidents of child abuse are trending upward.

Ms. Muhlhauser said child abuse and neglect rates are up but not a dramatic spike. Foster care numbers are down. She talked about foster care and reasons why those numbers might be down.

Senator Heckaman asked if the public and private school was addressed to take it out last session.

Ms. Muhlhauser said it was but the definition was left in the actual law when they agreed on a friendly amendment when the bill was heard.

Sandy Bendewald, Stutsman County Social Services, testified in support of SB 2097.

Attachment #2. It is her understanding that schools already have policies in place in relation to teacher and student issues. Those policies might not be consistent across the state. Social Services has no authority or oversight ability to impact those situations which limits the impact they can have. She talked about child protection teams.

Senator Heckaman asked if this bill would take the school team member off the child protection team.

Ms. Bendewald said no, they could still serve on the child protection team.

Senator J. Lee pointed out that the children need to be protected but everybody needs to be treated fairly which is not happening.

There was discussion on who can receive reports on an abused child coming into a school system if public and private school is taken out of this bill. It was pointed out that this simply takes the Dept. of Human Services out of doing child abuse and neglect assessments if what is reported involves the public or private school.

Jim Jacobson, ND Protection & Advocacy Project, testified in opposition to SB 2097. See attachment #3.

Senator J. Lee asked if there were provisions in other areas of statute which relate to public instruction that would put the schools in a position of responsibility. She wanted to know if it was being removed from the section that relates to Dept. of Human Services but not to everybody.

Ms. Muhlhauser answered the question by saying it was being removed from the section relating to child protective services because it is under the child abuse and neglect chapter. She thought there has to be some other mandate to the schools to take care of the children in their premises but she hasn't done the research to know for sure.

Senator Heckaman voiced concerns about taking it out.

Mr. Jacobson said there is no statutory definition of the school responsible for the child's welfare that he could find. He also addressed his concerns about mandatory reporting.

Carlotta McCleary, NDFFCMH, testified in opposition to SB 2097. Attachment #4.

They were only concerned with removing public or private schools from the definition.

Valerie Fischer, Dept. of Public Instruction, reported that the dept. also opposes the removal of the language in section a. The schools really need the outside party to investigate and be involved.

Senator Dever asked if there is a need to better clarify the schools role in the process.

Ms. Fischer said yes, this is the opportune time to not only decide the role and rights and responsibilities of all parties but look at who has the authority and where the authority should lie.

There was no neutral testimony.

Senator J. Lee asked if all interested parties involved in this would meet separately to see if they could come up with a solution. They agreed to do so.

The hearing on SB 2097 was closed.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 1-27-09

Recorder Job Number: 7916

Committee Clerk Signature

Mary K. Moxson

Minutes:

Senator J. Lee opened SB 2097 for committee work

Discussion: (a) Removing the overstrike on the reference to public and private schools and
(b) the request by Tara Muhlhauser to removing "being requested".

Senator Heckaman moved to adopt the amendment as discussed.

Seconded by **Senator Dever**.

Roll call vote 6-0-0. Amendment adopted.

Senator Heckaman moved a **Do Pass** as amended.

Seconded by **Senator Dever**.

Roll call vote 6-0-0. Motion passed.

Carrier is **Senator Marcellais**.

Additional testimony submitted -- #5

JB
1-28-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2097

Page 1, line 1, replace "subsections 1 and" with "subsection"

Page 1, line 2, replace "person responsible" with "sexually abused child"

Page 1, line 3, remove "for a child's welfare" and after the first "and" insert "to"

Page 1, line 5, replace "Subsections 1 and" with "Subsection"

Page 1, line 6, replace "are" with "is"

Page 1, remove lines 7 through 11

Page 2, line 10, remove "being requested"

Renumber accordingly

Date: 1-27-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2097

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number Amendment

Action Taken Do Pass Do Not Pass Amended Rerefer to Appropriations

Adopt Amendment Reconsider

Motion Made By Sen. Heckeman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 1-27-09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2097

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 98190.0101 Title .0200

Action Taken Do Pass Do Not Pass Amended Rerefer to Appropriations
 Adopt Amendment Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Marcellais

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

REPORT OF STANDING COMMITTEE

SB 2097: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2097 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsections 1 and" with "subsection"

Page 1, line 2, replace "person responsible" with "sexually abused child"

Page 1, line 3, remove "for a child's welfare" and after the first "and" insert "to"

Page 1, line 5, replace "Subsections 1 and" with "Subsection"

Page 1, line 6, replace "are" with "is"

Page 1, remove lines 7 through 11

Page 2, line 10, remove "being requested"

Renumber accordingly

2009 HOUSE HUMAN SERVICES

SB 2097

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2097

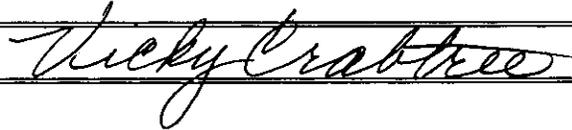
House Human Services Committee

Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9542

Committee Clerk Signature



Minutes:

Chairman Weisz opened the hearing on SB 2097.

Tara Lea Muhlhauser, Director of Children and Family Services testified in support of bill: See Testimony #1.

Chairman Weisz: Under abused child caused by a person responsible for the child's welfare why wouldn't you want to change that language to coincide with (inaudible) language changed in sexual abuse?

Tara Muhlhauser: Don't understand question.

Chairman Weisz: (Reads part of bill) why didn't you change that language if you changed it under sexual abuse?

Tara Mulhauser: In ND if a child is sexually abused there has been a long history requiring that sexual abuse to be recorded or to fall into that mandate to report when it is a situation that might fall under the law that we would do an assessment in. Easy way to explain this is those neighbor situations. The neighbor is not a care giver, but if they sexually abuses a child and someone has knowledge of it, you still say there is a mandate to report it so law enforcement can act on that. Taking mandate in sexual abuse situations and making it larger.

Rep. Conrad: On administrative proceedings, what do you include in that?

Tara Muhlhauser: One thing that happened to us was we were asked to expand a case by calling the reporter to the stand to testify. This reporter was working with the family in the home provided the information about the child being in endanger. The mandatory reporter refused to come forward to give testimony. We felt we couldn't subpoena her because it would identify her as the reporter. The law didn't give us the ability to identify her.

Rep. Conrad: What is an administrative proceeding?

Tara Muhlhauser: For us that is an official administrative proceeding heard by the office of administrative hearings.

Rep. Frantsvog: On Section 1 in the third paragraph you talk about the numbers of reports of child abuse. What role does that play with what you are asking for in this bill? How many of these are sexual abuses?

Tara Muhlhauser: Number of reports are not going to be impacted because again that expansive definition of sexual abuse, those really are, we don't count those as typical child abuse and neglect reports because we literally receive the report, they are out of our jurisdiction. We handed over to law enforcement.

Rep. Frantsvog: The 7,657 reports of child abuse, what role does that play with this bill?

Tara Muhlhauser: The first paragraph in line 7-14, determines how we would identify what an abused child would be so we would expect those reports to actually do the assessments we talk about in that third paragraph.

Rep. Frantsvog: I think what the lines are telling us in lines 11-13 is all makes reference to sexual abuse, is that correct?

Tara Muhlhauser: Yes it does. We had a 140 cases of fondling, 100 cases of sexual exploitation, 32 cases intercourse for a total of 273 cases in 2007.

Rep. Potter: Section 1, line 11 "an adult", are you referring to a neighbor?

Tara Muhlhauser: We are asking to strike that "an adult". What if we have a neighbor child next door who abuses a child?

Rep. Kilichowski: Was this person responsible for the child's welfare that was in the original bill?

Tara Muhlhauser: Yes.

OPPOSITION:

John Ford, Director of ND Coalition for CPS and Foster Care Reform testified against the bill: See Testimony #2.

Rep. Conrad: Are you working with a professional group.

John Ford: No

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2097

House Human Services Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9736

Committee Clerk Signature



Minutes:

Chairman Weisz: Let's take up 2097.

Rep. Porter: Mr. Ford felt strongly that page 2, number 7 was an effort to stop people from getting information.

Chairman Weisz: That is correct.

Rep. Porter: On page 2 starting on line 12 and 13 all that new language.

Chairman Weisz: Current law says that anyone engaged in bonafide research, can get the information, as long as it is not individually identifiable and it has to be available to them. But, now under this they would have to be approved by the department's institutional review board.

Rep. Porter: It appears to me that the department's kind of put a road block up for people being able to getting information that should be public and available anyway. It's just one more roadblock for people that are concerned with what is going on in the township.

Rep. Holman: Looks like a delaying tactic.

Chairman Weisz: 50-06-15 reference to what is confidential information. (Read from the century code).

Rep. Porter: I make a motion that on page 2 line 12 that we remove the underlined language and on page 2 line 13 up to the board;.

Rep. Pietsch: Second.

Voice Vote: 11 yeas, 0 nays, 2 absent, Rep. Conrad and Uglem.

MOTION CARRIED.

Rep. Porter: On Mulhauser's amendments, on page 1, line 11.

Rep. Potter: I move the amendment proposed by Tara Lee Mulhauser in Section 1, page 1, line 1 of the bill.

Rep. Holman: Second.

Voice Vote: 11 yeas, 0 nays, 2 absent.

Rep. Porter: Motion for a DO PASS as amended.

Rep. Potter: Second.

Roll Call Vote: 11 yes, 0 no, 2 absent.

MOTION CARRIED DO PASS.

BILL CARRIER: Rep. Potter

VR
2/26/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2097

Page 1, line 11, remove the overstrike over "~~a person responsible for the child's welfare~~", remove "an adult", and overstrike "to any act" and insert immediately thereafter ", or by any individual who acts"

Page 2, line 12, remove "approved by the department's"

Page 2, line 13, remove "institutional review board"

Renumber accordingly

Date: 2-25-09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 20917

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By POTTER Seconded By Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					

Vote

Total (Yes) 11 No 0

Absent 2 Rep. Conrad & Uglem

Bill Carrier _____

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

Date: 2-25-09
 Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2097

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. PORTER Seconded By Rep. POTTER

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	A	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	A				

Total (Yes) 11 No 0

Absent 2 Conrad & Uglem

Bill Carrier Rep Potter

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

REPORT OF STANDING COMMITTEE

SB 2097, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2097 was placed on the Sixth order on the calendar.

Page 1, line 11, remove the overstrike over "~~a person responsible for the child's welfare~~", remove "an adult", and overstrike "to any act" and insert immediately thereafter ", or by any individual who acts"

Page 2, line 12, remove "approved by the department's"

Page 2, line 13, remove "institutional review board"

Renumber accordingly

2009 SENATE HUMAN SERVICES

CONFERENCE COMMITTEE

SB 2097

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 4-15-09

Recorder Job Number: 11864

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee opened the conference committee on SB 2097. All members were present:

Senator J. Lee, Senator Dever, Senator Marcellais, Rep. Uglem, Rep. Damschen, and Rep. Potter.

Rep. Uglem explained the changes the House made. They wanted to give broader coverage in the definition of what would be "sexually abused child" so they changed "adult" to "any individual". The other change was to remove who defines bona fide research. There was a concern that the department was being too tight with the information.

Senator J. Lee asked if members of the House committee felt it was appropriate for an individual to be able to get statistical information from the department about sexually abused children.

Rep. Uglem – yes, as long as nothing is individually identifiable.

The discussion continued that someone needed to determine what bona fide research was and maybe it needed to be someone other than the department. Only one person came to the House committee with complaints about not receiving the information.

Rep. Damschen reported that he had concerns expressed by other people and thought the testimony from that one person who testified in committee reinforced those concerns.

Bone fide research was discussed. What defines it? Who should have access to the information? This information is about kids.

Rep. Uglem said they were looking more at the general open records laws requiring that information not personally identifiable should be available to the public or anybody doing research.

Senator J. Lee pointed out that bills have been dealt with this session about records of juveniles that are never released even after they become adults in order to preserve their privacy as children.

Senator J. Lee asked who the House thought the person or entity should be that would have the decision as to whom this should be released.

Rep. Uglem said it wasn't really discussed in committee but a suggestion would be maybe the Attorney General's office.

Senator J. Lee asked if they had talked to anyone in the Attorney General's office about whether that would be workable for them.

Rep. Uglem – no.

Senator J. Lee asked if they had discussed their concerns with the health department.

Rep. Uglem didn't believe they did.

Senator J. Lee said it might be helpful for everyone to ask the health dept. to explain how they decide. She suggested they also talk to the Attorney General's office.

Rep. Uglem agreed that how the House left it doesn't give a definition of who should decide.

Senator Dever pointed out that if there is some question about the objectivity of the department's Institutional Review Board there needs to be some method of appealing that to someone else to determine if that is appropriate.

Rep. Potter wondered if there isn't identifiable information would interested people off the street be able to figure out who it is.

Senator J. Lee recalled testimony she had heard with concerns that in rural communities, even if the personal information is taken off, everybody knows about the incident. She felt it is important to protect these kids as much as possible.

Discussion continued on defining bona fide research and who determines it.

The deferred legal definition of bona fide is "good faith without fraud".

The committee agreed that the definition was too broad and that they might want to restrict it in the language.

Senator Dever referred to the other amendment, page 1 line 11. He wasn't sure what the implications were.

Rep. Uglem explained that it takes it beyond the guardian to any person who sexually abuses a child. Then he had a question on the first definition of abused child. Are they abused only if it is done by a person responsible for their welfare or are they abused if anybody abuses them?

That's why it was made broader by the House. The Senate put in "adult". They didn't want to let schools off the hook. Discussion continued that the offender could be a family member, not necessarily an adult.

Senator J. Lee asked Tara Muhlhauser, Director of Children and Family Services, to provide some information on this topic.

Ms. Muhlhauser explained the difference between the Senate version in terms of the definition and the House amendment. They had feedback from the counties that the language

was not broad enough and were given examples of juvenile offenders. The House amendment would broaden the mandatory reporting and how they would look at the case

within the big circle of child protective services. It is the language that should have been introduced in the Senate.

Rep. Uglem was confused why this language was only changed for sexually abused child and not abused child.

Senator J. Lee asked Ms. Muhlhauser to think about this and come back to the committee with an explanation why this is different or if there would be a recommendation to include both of them.

Senator Dever wanted to know why it was necessary to restore the words "person responsible for the child's welfare" if they were talking about "any individual".

Senator J. Lee asked Ms. Muhlhauser if she would also provide that information to the committee at the next meeting. She agreed to do so.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 12013

Committee Clerk Signature	<i>Mary K. Monson</i>
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Minutes:

Senator Judy Lee called the meeting of the conference committee to order. All members were present. (Senator Judy Lee, Senator Dever, Senator Heckaman, Representative Uglem, Representative Damschen, Representative Potter)

Senator Judy Lee said Tara Muhlhauser has put together some information for our consideration. (Attachment #1) The information contains a definition of "abused child" and a bona fide "researcher".

Tara Muhlhauser, Director Children and Family Services, Department of Human Services, appeared to answer questions and to review her memo. The term "caregiver" denotes people within the child's immediate circle. Those are the cases the staff at the county social service agencies get involved with and complete the assessment process. When they look at sexual abuse cases, they wanted the definition to be written more broadly so that all of the cases, not just caregiver cases, will come into them as reports of child abuse and neglect. Those that did not include a caregiver would be handed off to law enforcement partners. The public policy behind this theory is to make sure if someone knew about a child being sexually abused that it be mandated to be reported by the list of mandatory professionals and CFS would work out the jurisdictional issues when they accept the report. When it is a caregiver, there is some sort of

law enforcement involvement, but when it is not a caregiver, it goes straight to law enforcement. The public policy issue is that all sexual abuse situations should be reported. It is easier for reporters because they do not have to decide who to report to. This was in law prior to the changes made in 2005. It wasn't explicitly clear but it was in law. She discussed the process of getting it back into law. (8.57) The amendments now before the committee will put the provision back in good standing so all sexual abuse cases would be reported. "Abused children" would stand as the definition of the caretaker group, for physical abuse and physical neglect. They would assure the people under the law would not be just adults which allows them to bring in an adolescent that has sexually abused someone in a caretaker or same household situation. After a number of attempts, they think they have all the amendments in place with language that is broad enough.

Senator Judy Lee clarified the House amendments which made it "by an individual who acts" would be preferable, it isn't just adults.

Tara Muhlhauser said yes.

Representative Uglem asked if it is still duplication to have "a person responsible for a child's welfare".

Tara Muhlhauser said the reason they left it in there was so they could be clearer about the two categories. She explained the nuances of the language. (11.31)

Senator Judy Lee asked Tara Muhlhauser to move on to section 2, the bona fide researcher.

Tara Muhlhauser spoke about the differences between an open records request vs. a constituent that wants to have some information on the data that is available. She showed a copy of the annual statistical data bulletin that covers all the child welfare programs in CFS but

most specifically in Child Protective Services because it is an area where people want lots of data related information about what is going on programmatically. There are about 30 pages

of child abuse and neglect data. If someone asks for additional information on the child abuse and neglect reports, they can give them some detail about the number of reports in an area or statewide, there are categories they can provide to people. It is all available on the website. It is done so there is no identifying detail or nuance. Aggregating the data in this way allows them to give people a window into the program without even a glimmer of identifying information.

Senator Judy Lee said in our small population in North Dakota it is sometimes possible to deduce identifying information.

Tara Muhlhauser said they have an institutional process in place in the department, the Institutional Research Board. Their IRB is set up to make the kinds of decisions about who is a bona fide researcher. She recommends giving it to the IRB rather than to her as a program person because program people have a bias. Let the independent board decide who is a bona fide researcher. As a program person, they get requests all the time for data and they give it to them if it is available or refer them to the website. She worked with a request during the past session regarding specific data regarding home schooled children. They could give them some general aggregate data but they could not give them data to the level they wanted because they don't collect it that way. They decided in order to answer that request, they would have to go back and read the files and that is the kind of data request that would have money attached to it since their personnel would have to go through the case files page by page to read and collect the data. (17.51) She said they cannot give out reports with names blacked out because there may be some information that to some people could be identifying. At the time the child abuse and neglect law was written with the paragraph on bona fide researcher, the IRB did not exist. They never went back and added the IRB. As part of clean up language this year they decided to make it more explicit.

Senator Judy Lee asked about the IRB, how long has it been in place and who serves on the board.

Tara Muhlhauser said she did not bring the information with her. She can find the information and email it.

Senator Judy Lee said that would be helpful. She said Representative Uglem had a list of the membership of the IRB and she read the list. (20.24)

Senator Judy Lee adjourned the meeting of the conference committee.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12130

Committee Clerk Signature

Mary K Monson

Minutes:

Senator Judy Lee opened the meeting of the conference committee. All members were present.

Senator Judy Lee said the committee wanted additional information on the IRB. Tara

Muhlhauser brought someone with expertise.

Maria Gokim, Chairperson for the Institutional Review Board, Department of Human Services, appeared to answer questions and discuss the activity of the board. She distributed an updated membership list (attachment #1). She also distributed an IRB information packet (attachment #2).

Senator Judy Lee asked for a quick walk through of the information packet.

Maria Gokim said the IRB is a committee established to protect the rights and welfare of human research subjects recruited to participate in research activities conducted under the auspices of the institution with which it is affiliated. (3.42) They provide oversight to any human research study. When their IRB was formed in September of 2000, they moved towards complying with HIPPA. The board meets as needed to complete its business.

Senator Judy Lee asked for an example of a topic or two the IRB might look at and who the subjects might be and how the board reviews it.

● Maria Gokim said recently they had a study submitted from a researcher at a university who was looking at surveying staff at Human Services. (7.03) There was not enough information submitted with the application so the IRB has not acted yet. They also recently received studies from a physician who was interested in looking at information on the effectiveness of certain medications. He was on a phase 3 trial of one medication that was being looked at for approval and wanted to look at having individuals who receive services of the Human Service Centers participate in the study. It was reviewed thoroughly and went over their 30 day limit because they had to ask for more information. They had another individual who did a qualitative study by interviewing people who received services from a Human Service Center and asked them when they were aware they were diagnosed or something was wrong when they had a mental illness and how that affected their life. It was a very nice narrative. One of the benefits of the IRB being in place is they ask the investigators to submit a report to the board. The report is kept on file as well as shared with the department. The studies reviewed and completed as well as the opportunities and information is posted on their website.

Representative Potter asked with the people they approve for studies, it is mainly professional type researchers. Could it be high school students working on a paper?

Maria Gokim said it could be any individual that wants to pursue a research study affecting either personnel or clientele of the department. They have had high school students who have been interested in doing research projects, however once they found out there was a formal process with the IRB, they decided there was not enough time for them. They have had a lot of college and graduate students. Most who have applied are researchers by profession or tied to a university.

● Representative Potter asked if she could apply.

Maria Gokim said yes, she just has to follow the rules. They also provide technical assistance.

Senator Heckaman asked about the five that were disapproved and the 9 that were exempt.

What are examples?

Maria Gokim gave an example of a disapproved and exempt study. (15.25) One was disapproved because the information requested would have been overwhelming and the department head did not have the staff to handle it.

Representative Uglem said 2 members of the board are not health department.

Maria Gokim said that is correct. The board has community members who represent the consumer.

Representative Uglem asked if it takes a majority of the board to approve a study.

Maria Gokim said it takes the majority of a board. Their decisions are typically unanimous decisions.

Senator Judy Lee adjourned the meeting of the conference committee.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2097

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: April 24, 2009

Recorder Job Number: 12213

Committee Clerk Signature *Mary K. Monson*

Minutes:

Senator Judy Lee opened the meeting of the conference committee. All members were present.

Representative Uglem distributed amendment .0202. He read the amendment.

Senator Judy Lee asked if it will be "the individual who acts".

Representative Uglem said yes.

Senator Dever clarified the IRB remains intact.

Senator Judy Lee and Representative Uglem said that is correct. The IRB stays in the bill.

Representative Uglem said we are putting "the individual who acts" back in.

Senator Dever asked if the department is happy with this.

Senator Judy Lee said the department is happy.

Senator Dever asked if there will be other amendments.

Senator Judy Lee said this will be it.

Representative Uglem moved amendment .0202, seconded by Senator Dever.

The motion passed 6 – 0 – 0.

Senator Judy Lee will carry the bill to the Senate floor.

Representative Uglem will carry the bill to the House floor.

 Senator Judy Lee dissolved the conference committee.



Date: 4-15-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB2097 as (re) engrossed

Senate _____ **Human Services** _____ Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House Amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

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.

Motion Made By _____ Seconded By _____

Senators		Y	N	Representatives		Y	N
		e	o			e	o
		s				s	
Senator J. Lee	P			Rep. Uglem	P		
Senator Dever	P			Rep. Damschen	P		
Senator Marcellais	P			Rep. Potter	P		

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Date: 4-20-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB2097 as (re) engrossed

Senate Human Services Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House Amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

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.

Motion Made By _____ Seconded By _____

Senators				Y	N	Representatives				Y	N
				e	o					s	o
				s							
Senator J. Lee	P					Rep. Uglem	P				
Senator Dever	P					Rep. Damschen	P				
Senator Marcellais						Rep. Potter	P				
Senator Heckaman	P										

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Date: 4-22-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB2097 as (re) engrossed

Senate Human Services Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House Amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____

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.

Motion Made By _____ Seconded By _____

Senators				Representatives			
		Y e s	N o			Y e s	N o
Senator J. Lee	P			Rep. Uglem	P		
Senator Dever	P			Rep. Damschen	P		
Senator Marcellais				Rep. Potter	P		
Senator Heckaman	P						

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

98190.0202
Title.0400

Prepared by the Legislative Council staff
for Representative Uglem
April 22, 2009

JS
4/24/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2097

That the House recede from its amendments as printed on page 651 of the Senate Journal and pages 752 and 753 of the House Journal and that Engrossed Senate Bill No. 2097 be amended as follows:

Page 1, line 11, remove the overstrike over "~~a person responsible for the child's welfare~~", remove "an adult", and overstrike "to any act" and insert immediately thereafter ", or by any individual who acts"

Renumber accordingly

Date: 4-24-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB2097** as (re)engrossed

Senate _____ **Human Services** _____ Committee

Check here for **Conference Committee**

- Action Taken SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 1651 -- _____

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2097 was placed on the Seventh order of business on the calendar.

Motion Made By Sen. J. Lee Seconded By Rep. Uglem

Senators				Y	N	Representatives				Y	N
				e	o					e	o
				s						s	
Senator J. Lee	P			✓		Rep. Uglem	P			✓	
Senator Dever	P			✓		Rep. Damschen	P			✓	
Senator Marcellais						Rep. Potter	P			✓	
Senator Heckaman	P			✓							

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier Sen. Lee House Carrier Rep. Uglem

LC NO. 98190 . 0202 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2097, as engrossed: Your conference committee (Sens. J. Lee, Dever, Heckaman and Reps. Uglem, Damschen, Potter) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 651, adopt amendments as follows, and place SB 2097 on the Seventh order:

That the House recede from its amendments as printed on page 651 of the Senate Journal and pages 752 and 753 of the House Journal and that Engrossed Senate Bill No. 2097 be amended as follows:

Page 1, line 11, remove the overstrike over "~~a person responsible for the child's welfare~~", remove "an adult", and overstrike "to any act" and insert immediately thereafter ", or by any individual who acts"

Renumber accordingly

Engrossed SB 2097 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2097

Testimony
Senate Bill 2097 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 14, 2009

Chairman Lee, members of the Senate Human Services Committee, I am Tara Lea Muhlhauser, Director of the Children and Family Services Division and Program Administrator for Child Protective Services, in the Department of Human Services. I am here today to provide you with an overview of Senate Bill 2097. The Department supports passage of this bill.

Child Protective Services, under the authority of NDCC 50-25.1, is the program that provides the institutional infrastructure for child abuse and neglect reporting, prevention, assessments, decisions, and services for abused and neglected children and their families in the state. County Social Service agencies and their staff provide the actual direct protective services to protect children in each of the communities in the state.

In Federal Fiscal Year 2007, we received 7,657 reports of child abuse and neglect, involving 6,271 potential victims. This is a number that has remained relatively steady in the past five years. Of the total number of reports received, 660 cases were determined to be "Services Required" involving 1,288 victims. A "Services Required" case indicates the presence of safety issues and risks that are addressed through services and referral to the Juvenile Court for consideration of legal action.

The bill before you today concerns amendments to the current law addressing several issues that will allow for greater clarity and efficiency in our ability to provide protection for children.

Section 1 of the Amendment concerns definitions. We are asking that employees of "public or private schools" be removed from the definition of "a person responsible for the child's welfare". The effect of this change would mean that Child Protective Services would no longer conduct Child Protective Service assessments when the reported abuse or neglect involved a teacher (or school employee) and student.

Child Protective Services has no authority to enforce recommendations or decisions made by local Child Protection Teams when the subject is a school employee and the child abuse incident concerns a child under their supervision in a school setting. Juvenile Court has no jurisdiction in these cases when the parent is not the alleged subject of the abuse or neglect; thus, we have no ability to enforce recommendations or decisions made to protect children in these cases. In addition, schools have their own processes in place for gathering facts and disciplining their employees in these incidents, and we believe it is an issue best addressed by school administrators, school boards, law enforcement, and parents.

Also in this section is a clarification to the definition of "abused child" so that any child who is sexually abused (not just those reported to be abused by "a person responsible for the child's welfare") is covered under the mandated reporting section found elsewhere in the law. This was an oversight that occurred in the changes made in this definition during the last legislative session.

Section 2 of this bill contains language to clarify several provisions under the "Confidentiality of Records" section of the current law. This proposed change allows the department to make a report-by-report decision on whether we might release records to the requesting individual or entity, and gives greater clarity to this provision. Also included is language that clarifies what information is available to be used in administrative proceedings in child abuse and neglect appeals. In this section, I would also like to offer an Amendment to this bill. Our original draft included language that upon later review is superfluous and adds nothing to the meaning of the provision; therefore, I respectfully request that "being requested" be removed.

Finally, we have updated the language in the "bona fide research" exemption under this section to refer to the involvement of the department's Institutional Review Board in approving research requests. This board was not in existence when this section was initially written.

Thank you very much for the opportunity to appear in support of Senate Bill 2097. I am available to answer any questions.

T. Muhlhauser

PROPOSED AMENDMENT TO SENATE BILL NO. 2097

Page 2, line 10, remove "being requested"

Renumber accordingly

Testimony
Senate Bill 2097
Senate Human Services Committee
Senator Judy Lee, Chairman
January 14, 2009

Chairman Lee and members of the Senate Human Services Committee, my name is Sandy Bendewald and I am the director of Stutsman County Social Services. The ND County Director's Association has not taken an official stand on this bill so I am here today representing Stutsman County. I have however spoken with many directors who across the state who share my opinion.

I support SB 2097. Presently social services are required to provide the direct protective services. This means that reports of abuse and neglect are received from the public related to school personnel social services completes an abuse and neglect assessment and provides results of that assessment to the mandated reporter and the subject, and the school administration. At that point we do not have any additional authority nor does juvenile court. More commonly we deal with children and their families where the juvenile court has jurisdiction.

Social service agencies work very closely with school systems in other areas of Child Welfare. School personnel are often sitting on our child protection teams, family team meetings, and other collaborative efforts to deal with individual child needs. Being the agency responsible for providing child protective services when reports come in concerning school personnel often put us in an adversarial situation.

It is my understanding that schools already have policies in place in relation to teacher student issues such as no corporal punishment, internal investigations etc that deal with employee discipline if necessary.

Basically social services does not have any authority or oversight ability to impact these situations and that limits the impact that we can have. We support this bill which would give that responsibility to the schools.

Thank you. I would be willing to answer any questions you may have.

Testimony
Senate Bill 2097 – A bill to amend and reenact
subsections of NDCC 50-25.1-02
Senate Human Services Committee, Senator Judy Lee – Chair
January 14, 2009

Senator Lee and members of the Senate Human Services Committee my name is Jim Jacobson. I am the Director of the ND Protection and Advocacy Project's (P&A) Protective Services Unit. I am here to testify in opposition to Senate Bill 2097, specifically the amendments proposed to subsection 1, page 1.

P&A receives state and federal funds to provide advocacy and protective services to people with disabilities. Through ND Century Code, specifically NDCC 25-01.3-01(8)(f), children may be eligible for protective services from ND P&A. Through this statutory provision P&A has conducted protective services activities in school settings. Through this experience it is clear that there are situations that require oversight and intervention by a third party to ensure the safety of ND children.

P&A opposes the proposed amendment to subsection 1, line 11, page 1 eliminating "public or private school" from the definition of "A person responsible for the child's welfare." North Dakota law mandates that "Any person having responsibility for a child between the ages of seven and sixteen shall ensure that the child is in attendance at a public school for the duration of each school year", (NDCC 15.1-20-01. Compulsory attendance). This means that parents must entrust their children to the school for 7 hours per day, 180 days per year. Eliminating the statutory provision that identifies the school as responsible for the child's welfare is inconsistent with mandating that parents put their children in the hands of ND public and private schools. North Dakota State Law also mandates reporting of suspected child abuse and neglect. Eliminating schools from the definition of "responsible for the child's welfare" also eliminates the mandate that child abuse that may be perpetrated by school staff be reported. This creates a concern that there is no longer a third party responsible to receive and assess those reports.

North Dakota public and private schools may have internal policies and procedures that require some level of reporting of any incidents that may constitute mistreatment of a student. These may, in many cases be model policies. There is still a need to ensure third party responsibility and oversight regarding possible abuse or neglect of North Dakota's children in educational settings. The risk to children by eliminating that oversight is too great. Therefore, I request that you do not support eliminating public and private schools in ND from the statutory definition of "responsible for the child's welfare."

Thank you for the opportunity to testify on Senate Bill 2097 and I would be happy to attempt to answer any questions you may have.

**Testimony
Senate Bill 2097
Senate Human Services Committee
Senator Judy Lee, Chairman
January 14, 2009**

Chairman Lee and members of the Committee: my name is Carlotta McCleary. I am the Executive Director of ND Federation of Families for Children's Mental Health (NDFFCMH). NDFFCMH is a parent run advocacy organization that focuses on the needs of children and youth with emotional, behavioral and mental disorders and their families, from birth through transition to adulthood.

NDFFCMH is concerned with removing a public or private school from the definition of a person responsible for the child's welfare. We believe employees of public and private schools are responsible for a child's welfare.

NDFFCMH believes that we need to keep the best interest of the children as our priority. We are concerned with the potential consequences of removing schools from this section. We are concerned that individuals still have a way of making confidential reports of suspected abuse. It is not clear to us how suspected abuse that occurs in a school or private school will be handled. We are concerned it be more difficult for individuals to report suspected abuse if the abuse occurs in a school. Will this remove mandated reporting responsibilities for children who are abused by an employee of a public or private school?

01-14-09

Dear Honorable Committee Member,

I see that your committee was to meet today to discuss possible century code changes concerning childcare issues of which I have an interested in, in particular, that of self certification and registered childcare.

I am a provider of almost 30 years and value my experience and my occupation. I have over the years, increased my training and education, and have helped mentor other in this profession. I am a current member and past president of the ND State Childcare Association (NDCCPI), I am licensed, I have a CDA (child development associate) certification, I have a 2 yr. Early Childhood degree and I am Nationally Accredited.

My concern with self certification and registered childcare is that those doing this type of care are made to feel like they are not professional or valued, so they stay in that mode. We all need to feel that we are invaluable in our occupations and childcare providers are no different. By allowing providers to skirt under regulations, with respect to licensing, they never try to improve or excel in this profession. The present system keeps these such providers in that position. If these providers were encouraged and required to license they would not only feel better about their profession, but would increase their professionalism in the field and subsequently the number of spots available for children in their program and the quality of care given.

If you continue to allow this type of childcare, there should be a very short cap on the time frame that a provider could provide childcare under this provision. If a provider was not sure if childcare was the profession for them, they may want to start here, but in a year if they do not know that, then they need to get out of childcare. We need to make sure ND children are not cared for by persons who are not committed to their well being. **NO CHILDCARE IS BETTER THAN BAD CHILDCARE.**

Please feel free to call me at any time to discuss this or other childcare issues. Because of weather and distance I was unable to be at the capital today. I hope you get this information in time to make a difference, and I appreciate your consideration of my thoughts and feelings.

Sincerely,

Judy Vinger
1213 Knoll Street
Williston, ND 58801
701-572-8083
701-570-5972

Testimony
Senate Bill 2097 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
February 16, 2009

Chairman Weisz, members of the House Human Services Committee, I am Tara Lea Muhlhauser, Director of the Children and Family Services Division and former Program Administrator for Child Protective Services, in the Department of Human Services. I am here today to provide you with an overview of Senate Bill 2097. The Department supports passage of this bill.

Child Protective Services, under the authority of N.D.C.C. chapter 50-25.1, is the program that provides the institutional infrastructure for child abuse and neglect reporting, prevention, assessments, decisions, and services for abused and neglected children and their families in the state. County social service agencies and their staff provide the actual direct protective services to protect children in each of the communities in the state.

In Federal Fiscal Year 2007, we received 7,657 reports of child abuse and neglect, involving 6,271 potential victims. This is a number that has remained relatively steady in the past five years. Of the total number of reports received, 660 cases were determined to be "Services Required" involving 1,288 victims. A "Services Required" case indicates the presence of safety issues and risks that are addressed through services and referral to the Juvenile Court for consideration of legal action.

The bill before you today concerns amendments to the current law addressing several issues that will allow for greater clarity and efficiency in

our ability to provide protection for children.

Section 1 is a clarification to the definition of "abused child" so that any child who is sexually abused (not just those reported to be abused by "a person responsible for the child's welfare") is covered under the mandated reporting section found elsewhere in the law. This was an oversight that occurred in the changes made in this definition during the last legislative session. In addition, I respectfully submit the attached amendment that further clarifies the application of this section to sexual offenses committed by other children in the home who are not adults.

Section 2 of this bill contains language to clarify several provisions under the "Confidentiality of Records" section of the current law. This proposed change allows the department to make a report-by-report decision on whether we might release records to the requesting individual or entity, and gives greater clarity to this provision. Also included is language that clarifies what information is available to be used in administrative proceedings in child abuse and neglect appeals. In this section, I would also like to offer an amendment. Our original draft included language that, upon later review, is superfluous adding nothing to the meaning of the provision; therefore, I respectfully request that "being requested" be removed.

Finally, we have updated the language in the "bona fide research" exemption under this section to refer to the involvement of the department's Institutional Review Board in approving research requests. This board was not in existence when this section was initially written.

Thank you very much for the opportunity to appear in support of Senate Bill 2097. I am available to answer any questions.

PROPOSED AMENDMENT TO SENATE BILL NO. 2097

Page 1, line 11, remove the overstrike over "a person responsible for the child's welfare", remove "an adult", overstrike "to any act", and insert immediately thereafter "or by any individual who acts"

#2

Testimony on SB 2097 to House Human Services Committee 2/16/09

Chairman Weisz and esteemed committee members, my name is John Ford and I am co-founder and director of the North Dakota Coalition for CPS and Foster Care Reform, a state-wide grass roots watchdog organization with over 100 member families. I am here today to offer testimony on SB 2097 which the Senate recently passed. While the bill as a whole is a good bill in so far as clarifying what an abused child is, we have issue with section 50-25.1-11(7) which reads "*approved by the department's institutional review board*".

In order to fully understand our concerns with this addition to 50-25.1-11(7), I need to provide the committee with some background information on some of the more recent happenings in my home county, Pierce, and how the ineffective management of the CPS system has affected several families and children in the last 2 years.

Approximately a year ago, Boyd Wilkie was arrested and charged with Gross Sexual Imposition and Continuing Sexual Abuse of a Minor. Mr. Wilkie had been sexually abusing his step daughter for over 6 years. The child ended up pregnant at age 14. This tragedy was compounded by the fact that about one year prior to the child becoming pregnant, at least two parents or friends filed reports of suspected child abuse with Pierce County Social Services. There was never an investigation completed. Mr. Wilkie pled guilty to both charges and was sentenced to 20 years in the state prison 13 days ago.

Additionally, about 10 months ago, Lori Voeller, a local day care operator, was arrested and charged with 6 counts of felony child abuse and neglect. Ms. Voeller is scheduled to go on trial next month. Once again this tragedy was compounded by the fact that at least 4 reports of suspected abuse were filed with Pierce County Social Services and no investigations were completed. It wasn't until one of the children involved was a child of a Rugby police officer that any investigation was instituted.

There are at least 2 other cases of suspected abuse, that we know about, reported but no 960's filed by Pierce County Social Services.

As I am sure all the committee members are aware, state law requires a 960 report to be filed with DHS. As best we can ascertain there are no reports on file. I use the phrase "as best we can ascertain" because back in September I attempted to gain access to the 960 reports filed by Pierce County Social Services in the last 3 years. While we weren't seeking any identifying information, we wanted to compile statistics on the reports for use in legislative hearings on several bills. This was bona fide research for the purposes of furthering better accountability and compliance with state laws in the areas of Child Protection Services.

I met with Julie Leer and discussed the issues with the two previously mentioned cases and also the request for 960 data. Ms. Leer informed me that DHS policy required a written proposal that would be reviewed by the Institutional Review Board. In any event, I wasn't getting the information I requested.

If SB 2097 is approved, this legislation will in effect allow DHS to prevent any independent watchdog agency or group from evaluating the system. Having spoken with several legislators, including some on this committee, we all have concerns with the lack of oversight and accountability that DHS is presently under. Passing this bill will continue this pattern and will give DHS another layer of insulation from

having the public eye on what takes place at this agency. If this bill passes as written, it will effectively prevent any outside watchdog group from even seeking a court order to gain access to the records should they not be an agency or group that DHS wants evaluating them.

It is imperative that there be oversight on DHS and its agents, i.e. social service boards, and to allow DHS to have sole authority over who may or may not engage in research is counterproductive to oversight and accountability. DHS has operated for far too long answerable to no one, and as a direct result it is out of control. Since I will be back to address SB 2420 and its first engrossment, I will refrain from taking up any more of the committee's time today, but the horror stories that have occurred around the state at the hands of an unaccountable DHS are nothing short of atrocities. I am here today strongly urging this committee to amend SB 2097 and urge you to strike the section that reads "*approved by the department's institutional review board*".

Thank you for allowing me the opportunity to address this committee.

John Ford

North Dakota Coalition for
CPS and Foster Care Reform
P.O. Box 431
Rugby, ND 58368
701-721-1419

MEMO

April 17, 2009

To: Senator Judy Lee, Chair-Conference Committee on SB2097
From: Tara Lea Muhlhauser, Director, CFS-DHS

Re: Request for information and clarification on SB2097

Based on the Conference Committee's discussion yesterday, I will address the issues of the 1). "Bona fide" researcher and who should determine this designation; and 2). The amendments offered in regard to the definition of "abused child".

Bona Fide "researcher"

An open records request can be used to access child protective service (CPS) records. An open records request would be analyzed based on the confidentiality of records in 50-25.1-11. There are a number of allowed exceptions to the general rule of confidentiality of CPS records. If the requester falls into one of the exceptions, based on the type of exception, we would provide the requested records (or provide whatever the law allows us to provide). One of the exceptions includes a person who is a "bona fide" researcher (provided that no identifying information is given).

It is important to note the distinction between record requests and data requests. CPS data is available and updated annually in aggregate form (e.g. numbers of child abuse and neglect reports/records in the past year in a given county) to anyone on the DHS website and at request, in printed form. An annual statistical bulletin provides non-identifying data for all child welfare programs.

The term "bona fide" researcher has never been defined in this section, and the term was adopted prior to the formation of the department's Institutional Review Board (IRB). If the term "bona fide" researcher is allowed to be any person off the street without a professional research credential, the entire population would have access to all requested CPS records (although again, no identifying information). However, in our world, even "no identifying information" in a small community leaves the possibility of details that might, in some cases, "identify".

When the bill was introduced, DHS requested that the term "bona fide researcher" be determined/approved by the department's Institutional Review Board. This decision is best left to research experts rather than "program" staff (admittedly program folks are not research experts) eliminating the bias that might be involved. I believe your committee referred to it with the terms "fox" and "henhouse". The department has an institutional process set up to address specialized research issues such as this, and we believe this is the most appropriate and efficient way to make this decision. If the Institutional Review Board had been in existence at the time the "bona fide" language became law, I am confident that we would have proposed the Institutional Review Board as the entity to make this determination. As submitted in our bill in this session, this was language to make this section more contemporary with current and best practice.

Definition of "abused child"

As you remember from my attempt at an explanation yesterday, this is a complicated provision to understand. I think it will help to have some background on the concept and the history with this definition.

First, I'll begin with history. In the 2005 session, substantial change was made to the definition of "abused child" at the department's request. In doing so, we inadvertently removed the section that provided a duty to named mandatory reporters to report **all children subjected to the listed sex offenses** in that section. When the bill was introduced in this session in the Senate, we provided what we thought was a "fix" to this issue to restore the reporting mandate. However, based on input from the field (and feedback they gave us with a case example), we determined that our language was not broad enough to equal the original mandate. Thus, we brought an amendment to further "fix" the language to the House. As the language stands in the current engrossed version, there is a mandate to report a child (under 18) "who is subjected by a person responsible for the child's welfare, **or by any individual** who acts in violation of sections...." This means that there is a mandate for designated professionals to report any and all sexual abuse of children, not just sexual abuse that involves "a person responsible for the child welfare" which is defined in 50-25.1-02(1). This definition includes people in the child's family and immediate circle (including teachers and child care providers).

The concept behind these provisions is that all sexual abuse of children should be reported. Allegations that involve a "person responsible" will be handled by CPS county social workers in an assessment process, typically accompanied by law enforcement officers in sexual abuse cases. Situations where the child has been sexually abused by someone who is not a "person responsible" are solely the province of law enforcement as purely criminal matters. CPS social workers can be requested to assist law enforcement with these cases, but law enforcement "manages" the case as they would any other criminal case. The policy behind this is that all sexual abuse be reported. When the reports are received, CPS county staff refer cases to law enforcement when the situation does not involve a "person responsible" as the alleged offender. Again, this assures that when professionals know of or suspect sexual abuse of any kind, they are mandated to report it, and it assures that the reports get to the right entity for action. This also reduces confusion for reporters about what gets reported and to whom.

Representative Uglem asked about why there is this distinction for sexual abuse, but not for physical abuse (or other forms of abuse). Let me try to give a clearer response than I did in the committee session. When physical abuse occurs in regard to a child by someone other than a "person responsible" (e.g. a physical assault between neighbor children where it is not parental neglect that contributed to the incident), the theory is that it should be up to parents to seek the necessary redress for their children through law enforcement or private legal means. CPS does not have the enforcement authority to intervene in these situations, and we do not feel CPS has a role in these situations (as the alleged abuse did not come from a "person responsible"). These are matters for parents to resolve. Law enforcement has tools to use in the investigation and resolution

when they are called into the case by the parent or others (e.g. juvenile court referrals, detention, civil actions). Pragmatically, CPS cannot get involved in every one of these situations as it is out of our jurisdiction and outside the scope of child protective agencies (which are set up to work for the safety of children in regard to their immediate or substitute parent figures). In sexual abuse situations, the theory is that the harm possible to the child is so significant that all situations should be reported so that all appropriate agencies can follow-up, investigate, and offer services where appropriate.

Again, the purpose of the multiple amendments is to clean up the language to clarify that mandated reporters be required to report all sexual abuse incidents involving a child (based on the statutory definition of "abused child").

4-22-09

#1

IRB Membership

March 2009

Name	Address	Phone	Degree	Occupation	IRB Position
Maria Gokim	Decision Support Services 1237 W Divide Ave, STE 1C Bismarck ND 58501 mgokim@nd.gov	(701) 328-8946	M.A.	Analyst, Decision Support Services	Chair, DHS IRB
Julie Leer	Legal Advisory Unit 600 E Boulevard Ave Bismarck, ND 58505 jleer@nd.gov	(701) 328-2311	J.D.	Attorney & Risk Manager, ND DHS Legal Advisory Unit	Member, Legal Representative
Charlotte Siemens	Southeast Human Service Center 2624 9 th Ave SW Fargo, ND 58103 csiemens@nd.gov	(701) 298-4569	M.D.	Psychiatrist, Southeast Human Service Center	Member, Medical Representative
Susan H. Wagner	Mental Health & Substance Abuse Services 1237 W Divide Ave, STE 1C Bismarck ND 58501 shwagner@nd.gov	(701) 328-8941	B.S.	Program Administrator, Division of Mental Health & Substance Abuse Services	Member, Management Representative
Rose Stoller	1929 E Capitol Ave Bismarck, ND 585016 rstoller@agree.org	(701) 222-1634 (701) 224-0588 x 101	B.S.	Executive Director, The Consensus Council	Member, Consumer Representative
Donene Feist	Family Voices of North Dakota P.O. Box 163 Edgeley, ND 58433 fvnd@drtel.net	(701) 493-2634	ASN	Director, Family Voices of North Dakota	Member, Consumer Representative
Kristin Buckmier	Lake Region Human Service Center Box 650 200 Hwy 2 SW Devils Lake, ND 58301 kbuckmier@nd.gov	(701) 665-2271	Diploma, Medical Admin. Asst.	Medical Records/HIPAA Coordinator, Lake Region Human Service Center	Member, HIPAA Representative
Paul Kolstoe	North Dakota Developmental Center 701 West 6th Street Grafton, ND 58237 pkolstoe@nd.gov	(701) 352-4444	Ph.D.	Clinical Director/ Psychologist – ND Developmental Center (NDDC)	Member
Mariah Tenamoc	Decision Support Services 1237 W Divide Ave, STE 1C Bismarck ND 58501	(701) 328-8978	Ph.D.	Lead Analyst, Decision Support Services	Member
Christine Kuchler	West Central Human Service Center 1237 W Divide Ave, STE. 5 Bismarck ND 58501-1208 ckuchler@nd.gov	(701) 328-8877	Ph.D.	Director, Psychological Services, WCHSC & BLHSC	Member
Robert Lisota	North Dakota State Hospital Box 476 Jamestown, ND 58402 rlisota@nd.gov	(701) 253-3880	Ph.D.	Psychologist, North Dakota State Hospital	Member
Vacant					Member

ND Department of Human Services

**INSTITUTIONAL REVIEW
BOARD
(IRB)**

What is an IRB?

- The Institutional Review Board (IRB) is a committee established to protect the rights and welfare of human research subjects recruited to participate in research activities conducted under the auspices of the institution with which it is affiliated.

» Office for Human Research Protections (OHRP)

OHRP Definitions

- **RESEARCH:** A systematic investigation designed to develop or contribute to generalizable knowledge
- **HUMAN SUBJECT:** An individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information

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Why does DHS have an IRB?

- There is increasing research activity involving DHS clients and data
- We need to comply with federal regulations for the protection of human subjects and data privacy
 - e.g., 45 CFR 46 and 42 CFR; HIPAA
- We need to comply with applicable state law
 - e.g., law and code re: research with patients of CMHRC's, psychiatric services in hospitals, VR services, state social service board, etc.
- We need to comply with standards of professional conduct and practice
- Not all research proposals are pre-approved by another IRB; and even if they are, the other IRB may not apply all standards relevant to DHS

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What does the IRB do?

- **Reviews research proposals** involving direct contact with DHS staff or clients, or release of DHS staff or client data to researcher(s) outside of DHS
 - **Approves, suggests specific revisions, or disapproves these proposals**
- **Provides Continuing Review** of approved research projects (at least annually)
- **Provides in-service training** about human participant protection in research to DHS staff
- **Responds to consumer** inquiries or concerns about their participation in DHS research
- **Provides technical assistance** to researchers

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When does research need IRB review?

- All prospective projects that pertain to research and human subjects as defined earlier, that involve DHS clients, staff, or data, must be reviewed by the DHS IRB.
- Internal data analysis undertaken by DHS staff exclusively for purposes of DHS needs assessment, program planning, program evaluation, or other administrative requirements is exempt from need for DHS IRB review.

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What does the IRB look for?

- **Protection of participant rights---e.g.:**
 - Adequate Informed Consent to participate
 - Procedures which are not deceptive or harmful
 - Procedures which assure maintenance of confidentiality of sensitive data
 - Right to refuse to participate without adverse consequence such as denial of services
 - Inclusion of women and minorities
- **Scientific Merit of the proposed study**
 - Is the design *minimally adequate* to answer the research questions? Are benefits worth the risks?

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Who is on the IRB?

- Must have at least five members
- Must have professional competence necessary to review specific research activities, and know standards of professional conduct and practice (1+ scientist-practitioners)
- Must be able to ascertain acceptability of proposed research in terms of institutional commitments and regulations (a senior management representative),
- Must be able to ascertain acceptability in terms of applicable law (DHS attorney)
- Must include at least one nonscientific member and one not otherwise affiliated with the institution (consumer advocate)
- Must include member “primarily concerned” with the welfare of vulnerable subjects, e.g., children, prisoners, pregnant women, or mentally ill

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Current membership:

- Maria Gokim, MA, DHS Research Analyst (Chair)
- Julie Leer, JD, Attorney/Risk Manager, DHS Legal Advisory Unit
- Charlotte Siemens, MD, SEHSC Psychiatrist
- Susan H. Wagner, DHS DMHSAS Program Administrator
- Rose Stoller, The Consensus Council, Consumer Representative
- Donene Feist, Family Voices of ND, Consumer Representative
- Kristin Buckmier, DHS Medical Records/HIPAA Coordinator
- Paul Kolstoe, Ph.D., ND Developmental Center Psychologist
- Mariah Tenamoc, Ph.D., DHS Lead Research Analyst
- Christine Kuchler, Ph.D., WCHSC Psychologist
- Robert Lisota, Ph.D., ND State Hospital Psychologist
- Vacant

NOTE: An IRB may invite individuals with competence in special areas to assist in the review of issues which require specialized expertise

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DHS IRB History To Date

- DHS IRB formed in September, 2000 by Karen Larson, Director of the Division of Mental Health and Substance Abuse Services
- Final IRB policies were approved June 24, 2002 by Carol Olson, DHS Executive Director
- Legal services representative has provided legal research and opinions pertinent to IRB; e.g., state law and code references, and CFR child assent requirements
- 62 research proposals submitted to date:
 - 29 approved and completed
 - 7 approved and in progress
 - 5 disapproved
 - 4 terminated
 - 9 exempt
 - 8 withdrawn

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DHS IRB History To Date (cont.)

- “Ad hoc committee” meetings have been held with input from local experts in affected programs, and conferences with researchers to provide detailed feedback/technical assistance
- Database of DHS IRB activity has been established and maintained
- DHS IRB forms have been developed and are available online
- DHS IRB policies have been developed and approved by the Executive Office
- DHS IRB received an award from the Mental Health Association in North Dakota
- DHS IRB has been registered with the Office for Human Research Protections (OHRP)
- Granted a Federalwide Assurance (FWA), which enables the DHS IRB to review federally-supported research

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DHS IRB Website

- Information and rights for potential research participants
- IRB membership roster
- IRB policies/guidelines
- IRB submission instructions and forms
- IRB terms and definitions
- National Institute of Health (NIH) On-line training for researchers on human participants protection
- Frequently Asked Questions (FAQ)
- Abstracts of completed studies
- Contact information

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Future Agenda

- Continue to review research Proposals as received
- Continue to get the word out about the IRB

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If you have questions or comments, please contact:

- Denise Wehri, DHS IRB Administrative Assistant
Phone: 701-328-8940
E-mail: dmwehri@nd.gov
- Maria Gokim, DHS IRB Chair
Phone: 701-328-8946
E-mail: mgokim@nd.gov
- Toll Free: 1-800-755-2719

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DHS IRB Website

state.nd.us/humanservices/info/research/index.html