

2011 HOUSE JUDICIARY

HB 1086

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1086
January 11, 2011
12734

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1086.

Mary Muehlen Maring, Justice, ND Supreme Court: Sponsor, support (see attached testimony).

Rep. Delmore: I have a question about the notification that goes to the school now. Before going to drug court, is the school notified and informed for eligibility purposes, if they're in an extra-curricular activity.

Mary Muehlen Maring: No. Let me make sure I understand your question. If a juvenile is referred to drug court, the school would not necessarily be notified that the individual is in the juvenile drug court, but of course, the school representative that's on the team knows that they are in the drug court. The school representative on the team shares information with the rest of the team about how that student is doing in school; grades, attendance, how they're treating their teachers.

Rep. Delmore: The bottom line is that I was wondering about eligibility requirements for extra-curricular activities. I understand the need for this and I've had several of your students that I fill out information for.

Mary Muehlen Maring: It's very possible that the way that the juvenile was referred into juvenile court to begin with, was of public knowledge. If the administrators, the teachers are aware that this student was involved in some alcohol or drug related incident, outside of any information that they get through the drug court, their eligibility certainly will be affected, yes.

Chairman DeKrey: Thank you. Further testimony in support of HB 1086.

Bill Newmann, Executive Director, State Bar Association: We are in support of this bill. Juvenile drug courts are able to work miracles.

Chairman DeKrey: Thank you. Further testimony in support of HB 1086. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1086.

House Judiciary Committee

HB 1086

January 11, 2011

Page 2

Rep. Delmore: I move a Do Pass.

Rep. Maragos: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Delmore

Date: 1/16/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle			Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Delmore

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

REPORT OF STANDING COMMITTEE

HB 1086: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1086 was placed on the
Eleventh order on the calendar.

2011 SENATE EDUCATION

HB 1086

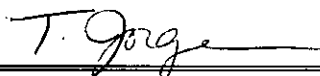
2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1086
March 30, 2011
16174

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notifications regarding student use of alcohol or controlled substances

Minutes:

See "attached testimony."

Chairman Freborg opened the hearing on HB 1086; no fiscal note attached.

Mary Muehlen Maring, Justice, North Dakota Supreme Court introduced the bill (#1 Testimony)

Senator Heckaman: When you identify that this was a difficulty, what have teachers or administrators been doing currently with that problem? **Justice Maring:** So far the information has not been disclosed; just had one problem recently which is what brought this to the floor. The team member did take the information from the confidential juvenile court setting and informed the coaches of the situation. Places the teacher or administrator in a difficult situation with the federal law prohibiting this disclosure; thinks the important paragraph in her testimony is that if the information comes from another source/setting then can be shared. Problem is when the information only is coming from the confidential setting of the juvenile drug court. **Senator Heckaman:** If a student is in drug court and has a violation, they can still participate (now with this bill) in North Dakota high school activities? **Justice Maring:** Yes, they would be able to still participate; will state that in her experiences (most of the time) the judges of the drug court have taken them out of those activities. **Senator Heckaman:** How many drug courts across the state? **Justice Maring:** Have six right now.

Senator Marcellais: What is the parent involvement in all this? **Justice Maring:** They have a very good participation by parents in juvenile drug courts. It is a program requirement that a parent or significant adult in the child's life participate. They attend the drug court with the child.

Senator Flakoll: What prohibits them now from sharing the information; is that in Title 42? **Justice Maring:** Yes, it is; the federal laws that she cited prohibit the disclosure or redisclosure of treatment information. Also our statutes in the juvenile court act prohibit the disclosure of confidential information received in the setting of the juvenile court. Federal and state laws prohibit it, but this statute is inconsistent with those laws.

Senator Luick: Have trouble with this because he feels that the more the staff knows about an individual the more they could possibly help that individual if certain instances should arise in their daily functions in the classroom or hallways or wherever. If a teacher does not know about that individual's activities, wouldn't that be harmful? **Justice Maring:** Actually every one of the juvenile drug court teams has either a teacher on it or a superintendent/principal on it. This team does share information and often the teacher or administrator on the team is permitted to allow other teachers of that student to know they are involved in a drug court setting. It isn't necessarily kept from the rest of the teachers; this is a wonderful program because there is a sharing that has never gone on in the normal juvenile court setting. They know if the student is tardy, not going to school, grades, and the judge addresses all of those things. Knows how the student is treating teachers; have had students have to write letters of apology to teachers for how they are behaving, etc. This is a very beneficial setting.

Senator Marcellais: You mention a team; is the school counselor part of the team?

Justice Maring: The school will choose one representative for the team; have had some counselors on the teams.

Senator Flakoll: If there are two individuals in the school who are both privy to the information and know that they both know the information, can they discuss that student?

Justice Maring: Yes, they would be able to discuss it between the two of them.

Bill Neumann, Executive Director, North Dakota State Bar Association support the bill for all the reasons just discussed.

No further testimony in favor; no opposition. Hearing closed.

Senator Flakoll: Move a Do Pass to HB 1086; second by **Senator Heckaman**.

Motion carried 7-0-0; **Senator Schaible** will carry the bill.

Date: 3/30/11
Roll Call Vote # 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Sen. Flakoll Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Schaible

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

REPORT OF STANDING COMMITTEE

HB 1086: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1086

HEARING ON HB 1086

House Judiciary Committee
January 11, 2011

Testimony of Mary Muehlen Maring, Justice
North Dakota Supreme Court

Chair DeKrey and Members of the Committee:

My name is Mary Muehlen Maring and I appear before you in support of House Bill 1086.

I am a Justice on the North Dakota Supreme Court and have been involved with the juvenile drug courts since their inception in this State. For those of you who are not familiar with our juvenile drug courts, these courts have a special docket for juveniles who have been identified as having substance abuse problems that are contributing to their delinquent behavior. The courts use a team approach to dealing with the participants in the drug court program. These teams consist of a judge, defense attorney, prosecutor, treatment provider, juvenile court officer, law enforcement officer, and a school representative. Each team member shares information about the juvenile participant. Much of this information is confidential information, which could not be shared but for the participant and his parents signing releases of confidential information.

Juvenile court matters are generally confidential matters and information in the files and records of the juvenile court are closed to the public and open only to statutorily identified persons and entities. N.D.C.C. § 27-20-51(1). Juvenile court files and records can be open to inspection with written leave of a juvenile court judge or referee to whom juvenile court matters have been referred upon a showing of a legitimate interest in the proceeding and by the principal of any

public or private school that is a member of the North Dakota High School Activities Association, or the superintendent or any school district that has schools that are members of the North Dakota High School Activities Association, but only to the extent necessary to enforce the rules of the association. N.D.C.C. § 27-20-51(2).

During the course of the team staffings, confidential information concerning the identity, diagnosis, and prognosis and treatment of the juvenile participant relating to substance abuse is disclosed. Title 42, Chapter 6A, Subchapter IIIA, Part D, § 290dd-2 and 42 C.F.R., Part 2 govern the confidentiality of substance abuse patient records and identity and prohibit the disclosure and redisclosure of such information except under certain circumstances.

The problem we have encountered is that the school representative on the team, whether a teacher or an administrator, finds himself bound by the federal law and juvenile court law to keep all information received through the staffing and juvenile drug court proceeding confidential; yet, on the other hand, bound by N.D.C.C. § 15.1-19-13 to notify the administration of the juvenile's school of certain drug and alcohol activities.

The purpose of this bill is to amend N.D.C.C. § 15.1-19-13 to relieve a teacher or administrator, who is on a juvenile drug court team, from the notification requirement if the information concerning a student's drug or alcohol activity is obtained through that teacher's or administrator's participation in the juvenile drug court program. Passage of this bill does not prevent notification by the teacher or administrator if the information about the student, who is a participant in a juvenile drug court, comes from sources other than the juvenile drug court.

In November 2010, I appeared together with Judge Douglas Mattson and Marilyn Moe, our State Juvenile Drug Court Director, before the North Dakota High School Activities Association to discuss how important it is to the integrity of the juvenile drug court program that this information remain confidential. We have agreed upon a memorandum of understanding with regard to this confidential information.

I, respectfully, urge you to recommend a "Do Pass" on House Bill 1086 amending N.D.C.C. § 15.1-19-13.

Thank you.

HEARING ON HB 1086

Senate Education Committee

March 30, 2011

Testimony of Mary Muehlen Maring, Justice
North Dakota Supreme Court

Chair Freborg and members of the Committee:

My name is Mary Muehlen Maring and I appear before you in support of House Bill 1086.

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#1 HB1086

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