

2011 HOUSE JUDICIARY

HB 1464

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1464  
February 1, 2011  
13754

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1464.

Rep. Roscoe Streyle: Sponsor, support. I submitted HB 1464 on behalf of the AG's office. This bill would add coercion to the sexually predatory conduct section. In the ever increasing of the internet, our children are often coerced through the internet by sexual predators. I feel this is an important change. The other change also in the same section, would clarify the language to a person reasonably incapable of resisting, instead of reasonable firmness. Then on the second page, number 8, it would include incest in the sexually predatory conduct section.

Ch. DeKrey: Thank you.

Robert Wefald, former district court judge: The reason I asked the Attorney General to introduce this bill, this relates to a sexually predatory conduct. We have a law where people who engage in sexually predatory conduct can be committed to the State Hospital for treatment. I had such an individual before me; what typically happens is that these people are convicted of a crime, oftentimes they are in custody and toward the end of their custody, if they haven't made any kind of progress, then the state's attorney brings a petition to commit the person who is a sexually dangerous offender. I had an individual who was guilty of incest. He was abusing his grandchild/child that he had with one of his two daughters, with whom he had two children. He had children with both of his daughters. In fact, his grandson's son, ultimately got involved in sexual conduct himself. It is generational, it's a problem. When I wrote my opinion committing him to the State Hospital, I indicated that he was guilty of incest and that incest was sexually predatory conduct. That was appealed to the Supreme Court and it was reversed because the Supreme Court said incest is not included in the definition of sexually predatory conduct. I guess I was one of those wild judges who was legislating; I'm here to ask you to legislate and to include in the definition of sexually predatory conduct, incest. Now, it doesn't say incest in #8, but that is what it means, it's a blood relationship they're talking about. I would like to tell you that this isn't a problem in ND, but in fact, we just have these kinds of people who are wired incorrectly and there is nothing you

can do for them. I would say that parenthetically of the people who have been committed to the State Hospital, most of them during the time I was a judge, I think there have 50-60 committed; there's only been a handful that have been deemed to have been cured and sent out, and one of those has been brought back to the Hospital. Unfortunately, these people are just wired differently and that's just the way it is. I'm asking you to amend the definition to include the section #8.

Rep. Koppelman: This is a wording question and it might be a LC thing, on line 14 on page 1 it changes the individual to person. Knowing the distinction between those terms on this committee as we do, a person can mean corporation, etc. or other kind of entity. It would seem to me that individual is better suited for that definition.

Mr. Wefald: I don't have a clue, because the only thing that I was interested in was getting incest included in the definition. I was surprised to see this extra wording in there. It made sense to me when I read it. I'm not certain what the code reviser would think of using the word "person", which we know has a broader meaning to include more entities as opposed to individual. I would simply have to refer you back to the code reviser to get clarification.

Chairman DeKrey: Thank you. Further testimony in support of HB 1464.

Paul Emerson, Asst. Attorney General: I'm appearing on behalf of the Attorney General's office in favor of HB1464 (see attached 1). Jon Byers would normally be appearing in front of you for these kinds of matters, but he is in trial currently so he asked me to appear. Basically, this bill cleans up some language, adds incest as Judge Wefald indicated to the definition of sexually predatory conduct. On page 1, lines 13 and 14, Rep. Koppelman to answer your question, I'm not sure why it was changed from individual to person. My guess is that the language is exactly how it appears in 12.1-20-04, because in Mr. Byer's notes it says that lines 13 to 15 amends the definition of sexual imposition to conform to the language of 12.1-20-04 which was amended in the 2009 session. The last paragraph of the bill deals with records retention and it expands the types of sex offender files that must be retained for 50 years. In its current form, it only requires the files pertaining to sexually predatory offenses to be kept for 50 years, but case files for all sex offenses, whether they are predatory or not, still are important and enter into the analyses that are done by psychologists when they making determinations as to whether there is a sexual disorder, a personality disorder, or any other type of disorder. Those disorders go into their consideration as to whether an individual is likely to engage in further acts of sexually predatory conduct. This language makes agencies retain those records for 50 years on all sex crimes including incest that appear in 12.1-20 and in 12.1-27.2, which is the child pornography statutes.

Chairman DeKrey: Thank you. Further testimony in support of HB 1464. Testimony in opposition. We will close the hearing. Let's take a look at HB 1464. What are the committee's wishes in regard to HB 1464.

Rep. Maragos: I move a Do Pass.

Rep. Delmore: Second the motion.

**14 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER: Rep. Steiner**

Date: 2/1/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1464

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. Maragos Seconded By Rep. Delmore

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) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

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

**REPORT OF STANDING COMMITTEE**

**HB 1464: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1464 was placed on the  
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1464


# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1464  
3/14/11  
Job #15363

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to retention of sexual offender case files and records and the definition of sexually predatory conduct.

## **Minutes:**

There is attached testimony

Senator Nething – Chairman

Representative Roscoe Streyle – District 3 – Introduces the bill – Explains that it is simple changes.

Bob Wefald – Retired District Judge – He relates a case that he had sentenced relating to incest and committing the offender to the State Hospital guilty of incest. The Supreme Court reversed his decision because incest was not in the definition of sexually predatory conduct. He changed is wording and the man was committed to the State Hospital. He says this bill makes incest included in the definition of sexually predatory conduct because it is sexually predatory conduct.

Jonathan Byers – Assistant Attorney General – See written testimony.

Opposition – 0

Neutral – 0

Close the hearing on 1464



# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1464  
3/22/11  
Job #15837

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to retention of sexual offender case files and records and the definition of sexually predatory conduct.

**Minutes:**

## **Senator Nething – Chairman**

Committee work

Committee discusses this is a definition of incest and makes it clearly defined in statute.

**Senator Sitte** moves a do pass  
**Senator Olafson** seconds

Roll call vote  
6-0  
Motion carries

**Senator Nelson** will carry

Date: 3/22/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1464

Senate 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 Senator Sitte Seconded By Senator Olafson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Nelson

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

**REPORT OF STANDING COMMITTEE**

**HB 1464: Judiciary Committee (Sen. Nething, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1464 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1464

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**HOUSE BILL 1464 TESTIMONY  
HOUSE JUDICIARY COMMITTEE  
FEBRUARY 1<sup>ST</sup>, 2011  
PRAIRIE ROOM**

**By Paul Emerson, Assistant Attorney General**

Chairman DeKrey, Members of the Committee:

My name is Paul Emerson and I am an assistant attorney general. I wish to testify in favor of House Bill 1464.

The Attorney General drafted this bill at the request of Judge Robert Wefald, who presided over a sexual predator commitment case and developed a firm belief that the crime of adult incest should be counted as sexually predatory conduct under NDCC Chapter 25-03.3. He may be present to explain those circumstances.

In addition to adding incest to the definition of sexually predatory conduct, page 1 lines 13-15 amends the definition of sexual imposition to conform to the language of NDCC 12.1-20-04, which was amended in the 2009 legislative session.

Finally, the last paragraph of the bill expands the types of sex offender files that must be retained for 50 years. In its current form, section 25-03.3-04 only requires the files pertaining to the "sexually predatory" offenses to be kept for 50 years. However, case files for all sex offenses, whether they are "predatory" or not, still enter into the pictures when the psychologists are making determinations as to whether there is a

sexual disorder, personality disorder, or other disorder, and also whether the individual is likely to engage in further acts of sexually predatory conduct.

The language on line 23 will require agencies to maintain records for 50 years on all sex crimes (including incest) in chapter 12.1-20, and in chapter 12.1-27.2, which is the child pornography statute.

The Attorney General asks for a due pass on House Bill 1464. I would be happy to answer any questions.

HOUSE BILL 1464 TESTIMONY  
SENATE JUDICIARY COMMITTEE  
MARCH 14<sup>TH</sup>, 2011  
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

Chairman Nething, Members of the Committee:

My name is Jonathan Byers and I am an assistant attorney general. I wish to testify in favor of House Bill 1464.

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