

2023 SENATE JUDICIARY

SB 2216

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2216
1/25/2023

A bill relating to the confidentiality of defendant's contact information.

8:31 AM Chairman Larson opened the meeting.

Present are Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger.

Discussion Topics:

- Defendant's address and telephone numbers.
- Law Enforcement critical incidents.
- Internal investigations.
- Direct marketing.
- Information mining.

8:34 AM Senator Cleary introduced the bill to the committee. Senator Cleary stated he will have amendments to the bill. He also submitted written testimony #16493.

8:37 AM Jesse Walstad, North Dakota Association of Criminal Defense Lawyers, testified in favor of the bill with suggested amendments and provided written testimony #16592.

8:48 AM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill and provided written testimony #16529.

8:49 AM Blair Thorson, North Dakota Peace Officers Association, gave oral testimony in favor of the bill.

8:51 AM Mark Friese, Vogel Law Firm, testified in favor of the bill and provided written testimony #14775.

8:59 AM Luke Heck, criminal defense attorney in Fargo, testified in favor of the bill and provided written testimony #16198.

9:03 AM Mary Kay Kelsch, North Dakota Attorney General's Office testified neutral on the bill. (no written testimony)

9:07 AM Chairman Larson closed the public hearing.

Additional written testimony:

Jack McDonald provided written testimony #16619.

9:07AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2216
1/31/2023

A bill relating to the nondisclosure of a defendant's contact information and relating to the confidentiality of a law enforcement officer's contact information.

9:28 AM Chairman Larson called the meeting to order.

Chairman Larson and Senators Myrdal, Estenson, Sickler, Paulson and Braunberger were present.

Discussion Topics:

- Release of information
- Committee action

9:29 AM Senator Cleary spoke to the committee about proposed amendments to the bill.

9:31 AM Senator Sickler moved to approve proposed amendments LC 23.0763.01004. (#18122)

Seconded by Senator Myrdal.

9:32 AM Roll call vote taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

9:32 AM Motion passed 7-0-0.

9:32 AM Senator Braunberger moved to DO PASS the bill as amended.
Motion seconded by Senator Myrdal.

9:32 AM Roll call vote taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Braunberger will carry the bill.

This bill does not affect work force development.

9:32 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

January 30, 2023

AK
1-31-23
(1-2)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to the nondisclosure of a defendant's contact information; and to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to the confidentiality of a law enforcement officer's contact information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.

1. Except as provided in subsection 5, a telephone number and the home address of a prosecutor, supreme court justice, district court judge, judicial referee, juvenile court director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be disclosed to an inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation. Information contained in a personnel record of a law enforcement officer of a state or local law enforcement agency or in the personnel record of a correctional employee of a correctional facility subject to chapter 12-44.1 may not be disclosed to an inmate confined in a state correctional facility or correctional facility subject to chapter 12-44.1 unless authorized by the employing agency.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the

law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

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1-31-23
(2-2)*

5. A home address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually.
6. Except as otherwise provided by law, the identity and any contact information of a law enforcement officer involved in a critical incident is a confidential record until internal investigations are complete. As used in this subsection, "critical incident" means:
 - a. An on or off-duty officer-involved shooting;
 - b. An on-duty officer motor vehicle collision involving death or serious bodily injury; or
 - c. Any other on-duty officer incident resulting in death or serious bodily injury.

SECTION 2. A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

The home address and any telephone number of a criminal defendant is a confidential record while the defendant's case is pending trial or appeal. This subsection does not prohibit:

- a. The dissemination of a defendant's address and telephone number among law enforcement agencies and officers, or among governmental agencies and employees engaged in official government business;
- b. Releasing the name of the city and state in which a defendant resides; or
- c. Releasing the home address and any telephone number as authorized in writing by the defendant."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2216: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to the nondisclosure of a defendant's contact information; and to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to the confidentiality of a law enforcement officer's contact information.

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2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.
5. A home address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The

request will remain confidential for the remainder of a calendar year and must be renewed annually.

6. Except as otherwise provided by law, the identity and any contact information of a law enforcement officer involved in a critical incident is a confidential record until internal investigations are complete. As used in this subsection, "critical incident" means:
 - a. An on or off-duty officer-involved shooting;
 - b. An on-duty officer motor vehicle collision involving death or serious bodily injury; or
 - c. Any other on-duty officer incident resulting in death or serious bodily injury.

SECTION 2. A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

The home address and any telephone number of a criminal defendant is a confidential record while the defendant's case is pending trial or appeal. This subsection does not prohibit:

- a. The dissemination of a defendant's address and telephone number among law enforcement agencies and officers, or among governmental agencies and employees engaged in official government business;
- b. Releasing the name of the city and state in which a defendant resides; or
- c. Releasing the home address and any telephone number as authorized in writing by the defendant."

Renumber accordingly

2023 HOUSE JUDICIARY

SB 2216

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2216
3/13/2023

Relating to the confidentiality of a law enforcement officer's contact information.

11:00 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Exploitation for Data
- Officer's Private Information
- Retribution to Officer

Senator Cleary: Introduced the bill. Testimony #23989

Travis Finck, Executive Director, NDCLCI: Testimony #24008

Jack McDonald, ND Newspapers & Broadcasters Association: Testimony # 24058

Additional written testimony:

Amy Dalrymple, The Bismarck Tribune: Testimony #23964

The hearing closed at 11:32 AM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2216
3/13/2023

Relating to the confidentiality of a law enforcement officer's contact information.

2:50 PM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Bahl

Discussion Topics:

- Committee Action.

Rep. VanWinkle moved a Do Not Pass;
Seconded by Rep. Rios

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	N
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 3 No 1 Absent Motion carried.
Carrier: Rep. Vetter

The meeting closed at 3:04 PM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2216, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2216 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2216



Phone: 701.237.6983
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mfriese@vogellaw.com

January 20, 2023

The Honorable Diane Larson
Chair, ND Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in support of SB 2216

Dear Chairman Larson and members of the Senate Judiciary Committee,

I write individually in support of SB2216. I am an attorney in private practice in Fargo. I am a lifelong North Dakota resident. I have lived in Legislative District 45 for twenty years. Prior to law school, I served as a Bismarck Police officer. I served in the North Dakota Army National Guard for twenty-four years.

I am perhaps in a unique position to offer input on this bill because I regularly represent both police officers and criminal defendants. This bill would provide long overdue temporary privacy protections for both. I respectfully ask the Committee to make minor amendments, and thereafter recommend “do pass” for SB2216.

As a lawyer, I have represented dozens of police officers following critical incidents. I have represented hundreds of individuals charged with violations of criminal statutes and ordinances. In both categories of representation, my clients have been targeted by unscrupulous businesses attempting to take advantage of the circumstances, and by outspoken critics who seek to harass, annoy, embarrass, or intimidate individuals and officers. I have asked individual officers to write in support of this proposal and to outline examples.

Sadly, the ability for individuals and businesses to engage in these tactics is because they can harvest identity and contact information from public records prepared at public expense. While this bill may not eliminate this type of conduct, it will undoubtedly reduce it. And it will provide assurances to our citizens and our police officers that unwanted solicitation and harassment is not the result of mining data contained in public records. Accordingly, rather

than limiting protection from only correctional facility records, I am urging the Committee to amend the bill to extend protection in all public records, amending the proposed bill as follows:

2. The address and telephone number of a criminal defendant ~~which is in the possession of a correctional facility or correctional facility staff~~ is a confidential record while the defendant's case is pending trial or appeal.

and to thereafter recommend “do pass.”

As outlined in the bill, the proposed confidentiality protections would not prohibit governmental entities or employees from sharing the protected information. Identity of police involved in critical incidents and contact information for citizens accused of crimes would instead receive protection from public intrusion and exploitation.

This type of protection is not new. Federal law already requires similar protections for information contained in records held by state motor vehicle departments. *See* Driver’s Privacy Protection Act (“DPPA”) of 1994, 18 U.S.C. § 2721 et seq. Under this federal law, state motor vehicle departments cannot release personal information to include name, address, telephone number, driver identification number, social security number, or even photograph. North Dakota law already protects as confidential the home address and telephone number for law enforcement officers (as well as judges, prosecutors, and others). N.D.C.C. § 44-04-18.3(1) and (5). This bill is much less restrictive than federal law or existing statute, precluding only the release of a defendant’s address and telephone number, and preventing the release of the identity of a police officer involved in a critical incident until the incident investigation is complete.

Based on an approved ballot measure known as Marsy’s Law, a crime victim has the constitutional right to restrict access to their identity and personal identifying information. Many police officers can readily be classified as victims in critical incidents. Notwithstanding, multiple police agencies have refused to extend these constitutional rights to police officers. This bill would remedy that disparity.

I have been contacted by dozens if not hundreds of individuals charged with crimes who have received direct mail solicitations from unscrupulous and misleading companies. Most prevalent are solicitations with official looking letters attempting to sell ignition interlock devices to those accused of impaired driving. The solicitations are misleading, claiming to authorize driving privileges for enrollment. But North Dakota courts and the NDDOT do not use interlock devices; they use the 24/7 Sobriety Program, administered by the Attorney General under statutory authority. Presumptively innocent citizens have spent thousands of dollars having been duped by shady companies who get the contact information for citizens from court, police, and correctional agency records.

Sadly, even my own profession is becoming characterized by unwanted direct solicitation. While the conduct of directly soliciting clients by mail is lawful, it is distasteful. But if lawyers choose to engage in this behavior, our citizens should be assured that the contact information

for solicitors to reach them has not been generated by mining records held by our public entities.

I have witnessed firsthand bullying, intimidation, threats, and criticisms of police and accused citizens by community members who are most often wrong about the events leading up to the critical incident or arrest. This behavior feeds on itself, and others often join in the banter with mob-like behaviors. It is an indictment on our current social climate.

Every police officer who serves our state and its communities deserves the limited protection of withholding disclosure of his or her identity in the immediate aftermath of a critical incident. When the investigation is complete, and when police leaders can engage in meaningful and extended dialogue regarding the event and its investigation, those involved should be identified. But not before.

Likewise, presumptively innocent citizens accused of offenses should not be subjected to unwanted, unseemly, and misleading solicitation. Stalking, threats, harassment, and even assaults are directed at police and accused citizens. Those who engage in this type of behavior should not be permitted to obtain the information to do it from government records.

I respectfully urge the Committee to amend the proposal to provide protections from harvesting this limited personal data from all governmental records, and thereafter recommend “do pass.”

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

MAF:hs

cc: Sen. Ronald Sorvaag, *via email only*
Rep. Carrie McLeod, *via email only*
Rep. Scott Wagner, *via email only*

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Fargo, ND 58107-1389
lheck@vogellaw.com

January 24, 2023

VIA ELECTRONIC SUBMISSION ONLY

The Honorable Diane Larson
Chair, ND Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Testimony in Support of SB 2216

Dear Chairman Larson and members of the Senate Judiciary Committee:

My name is Luke Heck, and I am a criminal defense attorney in Fargo, ND, and other than during law school, a lifelong North Dakotan. I submit this written testimony in full support to SB2216. Put simply, SB2216 is “no brainer” legislation that supports and protects the privacy of those arrested and accused, but not convicted, of a crime, as well as protects those law enforcement who placed themselves in peril during a critical incident. SB2216 protects both classes of individuals, the arrestee and the arrestor, from disclosure of their personal contact information, which continues to be harvested by third parties, while they are struggling through difficult times in their lives and/or careers.

As a defense attorney, my clients are often arrested for an alleged offense. Over the course of the last few years, these arrests have led to clients receiving harassing, misrepresentative letters from third party vendors seeking financial benefit from their misfortunes. One example is a third party ignition interlock company, which provides services for “blow-and-go” breath testing devices to install in vehicles. While ignition interlock is utilized in many states, the NDDOT does not acknowledge ignition interlock devices for those suffering a DUI license suspension or revocation, nor does the North Dakota court system utilize interlock for any purpose. Instead, clients are confused, and are being bamboozled by entities such as this who attempt to get North Dakotans to pay for services they do not need and cannot use.

Another example is the utilization of arrest records and citation information being used by my own profession. It is now commonplace for potential clients to come in with direct solicitation letters from some select defense lawyers. While letter solicitation is “ethical” under the North Dakota Rules of Professional Conduct, I have reviewed some of these letters, and have found misstatements of North Dakota DUI law being provided to individuals. This occurs because there are no protections in place to make an accused’s contact information, such as phone number and mailing address, confidential prior to an individual being convicted.

January 24, 2023

Page 2

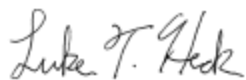
There simply is no legitimate purpose for an arrestee's address and phone number to be public record or accessible to data harvesting. These are individuals who have a constitutional right to the presumption of innocence, not the presumption that they will receive a half dozen direct mailings about paying for services they cannot utilize.

The same is true with law enforcement. Law enforcement officers who are involved in "critical incidents," as defined in SB2216, deserve to be protected from the dissemination of their identity and personal contact information just as well. These individuals either directly placed themselves in danger serving their community, or otherwise were involved in a very serious investigation, often times involving death. These law enforcement professionals unfortunately, as the adage goes, take their work home with them when critical incidents occur. Officers deserve to be able to be with their families, and get whatever professional assistance necessary after dealing with traumatic incidents in their careers. They deserve that without harassment, and without their names and personal information being made public prior to the matter's investigation being completed.

SB2216 does not bar the disclosure of contact information in perpetuity. Instead, the bill acknowledges the inherent public policy and privacy interests in protecting our police after critical incidents, and ensures those accused of crimes are free from harassing, misleading communications while they still enjoy the presumption of innocence. In other words, the information sought to be protected under SB2216 is only confidential for specific periods of time, until an accused has been convicted and until a critical incident investigation has been completed. SB2216 provides practical protections for those who should already have such protections.

I respectfully ask this Committee to recommend a "do pass" of SB2216, with the amended language striking "correctional facilities" from the section in question. Please do not hesitate to contact me if you have any questions.

Very truly yours,



Luke T. Heck

LTH:lh

Senate Bill 2216 Bill Introduction

Madam Chair Larson, Members of the Senate Judiciary Committee,

I am here today to introduce SB 2216 and ask for your favorable consideration.

Senate Bill 2216 is a bill designed to improve the personal privacy of criminal defendants while they await trial and law enforcement officers during the investigation of a “critical incident.”

It does this in two separate ways:

For criminal defendants:

- Their address and telephone number is a confidential record while the their case is pending trial or appeal
- This does not prohibit sharing their info among law enforcement or other government agencies from sharing the info for official business
- **Goal:** This was done to protect the privacy of citizens accused of offenses and so they are not subjected to unwanted solicitation.

For law enforcement officers involved in a critical incident:

- Except as otherwise provided by law, their identity and contact information is confidential until the internal investigation is complete
- Critical incident includes on or off-duty officer-involved shooting, on-duty car accident that results in death or serious injury, or any other on-duty incident resulting in death.
- **Goal:** This was done to protect the privacy and safety of officers during internal investigations involving serious situations.

In the online testimony, you will find more in-depth explanations behind both privacy provisions in this bill.

Amendments:

- I have submitted an amendment to make a few minor adjustments to clarify the location of the confidential records for the criminal defendants and that the police information is confidential during an *internal* investigation.
- After feedback from the Attorney General’s office, I am preparing another amendment to make sure the changes proposed in this bill are in the correct portions of the NDCC.

I am grateful for your consideration of this bill.

Respectfully,

Senator Sean Cleary
District 35, Bismarck

SB 2216
68th Legislative Assembly
Senate Judiciary Committee
January 25, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of SB 2216.

The Commission represents individuals charged with a crime when there is a constitutional, statutory or rule based right to counsel. Many of the times our attorneys are appointed to represent defendants who are involved in the “critical incidents” this bill addresses. The Commission supports keeping the defendant’s address and telephone number confidential. The only interest in obtaining this information is potential retribution. The Commission’s attorneys have a duty to safeguard their client to the best of their ability and this bill is a move in the right direction.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

January 24, 2023

Testimony to the **Senate Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of S.B. 2216**

Chairmen and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports S.B. 2216** and recommends a **DO PASS** from the Senate Judiciary Committee.

As the members of this Committee are well aware privacy protection is increasingly important in the digital age. Unsurprisingly, as more of our personal information and governmental functions have moved into the digital realm opportunists have identified new ways to seek out and monetize personal information. Our justice system has not been immune to the prying eyes of target marketers and others in search of personal identifying information for their use and benefit. One prominent example is ignition interlock marketers who access DUI defendant addresses and phone numbers to market expensive devices and services to vulnerable individuals on false promises of shorter suspensions, limited restrictions, and other criminal and administrative penalty reductions that may be available in other States but are not recognized under our law.

To be clear, the NDACDL, and myself on a personal level, are committed to open courts and public justice. However, criminal defendants are innocent until proven guilty. The mere occurrence of being charged with an alleged violation of an ordinance or law does not deprive individuals of their reasonable expectation of privacy and should not subject our presumptively innocent citizens to direct contact with target marketers and other opportunists who lack a need to know. All individuals, criminal defendants included, have the right to protect their personal information from unreasonable and unwanted intrusion. Many make active efforts to limit public access to their residential address, phone number, and other personal information. Clearly, one must surrender identifying information to the State for a variety of reasons, including the traditional “booking information” following arrest. And in that context, and many others, the State has a legitimate interest in the information and requires it for a variety of core governmental functions. However, there is no legitimate interest in the public posting and dissemination of such information to individuals who have no need to know or legitimate interest.

S.B. 2216 provides a reasonable approach to making the information available only to those individuals within the justice system with a need to know while preventing unreasonable spillage of that information to others. That said, I respectfully urge the Committee to amend the bill to eliminate confusion and extend this protection to all public records, not just those in the possession of correctional facilities. Accordingly, the NDCDLA would recommend a DO PASS with the following amendment:

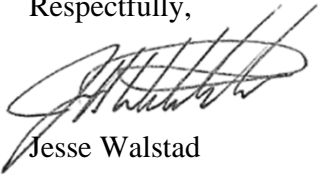
The address and telephone number of a criminal defendant ~~which is in the possession of a correctional facility or correctional facility staff~~ is a confidential record while the defendant's case is pending trial or appeal.

Additionally, myself and many in the defense bar proudly offer legal counsel to our brave men and women in law enforcement through programs such as the Fraternal Order of Police and the Professional Law Enforcement Association. Many of us, myself included, often represent officers in the wake of critical incidents including use of force investigations, deadly car accidents, homicide investigations, and officer involved shootings. Despite the extreme bravery with which our law enforcement professionals carry out their

duty, these events are traumatic and often very personal. It is also not uncommon for continued investigation following an initial charge. The integrity of investigations, and the safety of our law enforcement officers, may be unreasonably jeopardized by the public dissemination of law enforcement officer's personal information. S.B. 2216 provides a reasonable approach to protecting that information in the critical months before trial when investigations are completed and our law enforcement officers process these traumatic events.

For the aforementioned reasons, the NDACDL urges a **DO PASS** on S.B. 2216 with the above amendment.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse Walstad", written in a cursive style.

Jesse Walstad

January 25, 2023

Senate Judiciary Committee SB 2216

CHAIRMAN LARSON AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm submitting this written testimony on behalf of the North Dakota Newspaper and Broadcasters Associations. I have an unfortunate conflict involving testimony before another committee and cannot appear in person.

We understand the reasons behind this bill and, while not agreeing with all of them, would appreciate working with the committee and the sponsors on any proposed amendments.

I note that Mr. Friese is proposing some amendments, and that other amendments may be needed for some drafting errors.

One of our proposals would be to allow the hometown of the defendants to be identified. The specific street address, telephone number, etc. can be protected, but it is important in our news stories to know, for example, that defendant Jack McDonald is from Washburn, and not Jack McDonald from Bismarck. This is to avoid confusion and possible libel suits. This is already provided in other provisions of the open records law. We also object to this exemption going to all records and not just those of correctional officers or facilities.

We would respectfully suggest that Mr. Friese's proposed amendment be amended to read:

2. The street number address, but not the hometown, and the telephone number of a criminal defendant which is in the possession of a correctional facility or a correctional facility staff is a confidential record while the defendant's case is pending trial or appeal.

Thank you for your time and consideration. I would be happy to work with the committee on amendments.

23.0763.01004
Title.

Prepared by the Legislative Council staff for
Senator Cleary
January 30, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to the nondisclosure of a defendant's contact information; and to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to the confidentiality of a law enforcement officer's contact information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.

1. Except as provided in subsection 5, a telephone number and the home address of a prosecutor, supreme court justice, district court judge, judicial referee, juvenile court director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be disclosed to an inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation. Information contained in a personnel record of a law enforcement officer of a state or local law enforcement agency or in the personnel record of a correctional employee of a correctional facility subject to chapter 12-44.1 may not be disclosed to an inmate confined in a state correctional facility or correctional facility subject to chapter 12-44.1 unless authorized by the employing agency.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the

law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

5. A home address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually.
6. Except as otherwise provided by law, the identity and any contact information of a law enforcement officer involved in a critical incident is a confidential record until internal investigations are complete. As used in this subsection, "critical incident" means:
 - a. An on or off-duty officer-involved shooting;
 - b. An on-duty officer motor vehicle collision involving death or serious bodily injury; or
 - c. Any other on-duty officer incident resulting in death or serious bodily injury.

SECTION 2. A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

The home address and any telephone number of a criminal defendant is a confidential record while the defendant's case is pending trial or appeal. This subsection does not prohibit:

- a. The dissemination of a defendant's address and telephone number among law enforcement agencies and officers, or among governmental agencies and employees engaged in official government business;
- b. Releasing the name of the city and state in which a defendant resides; or
- c. Releasing the home address and any telephone number as authorized in writing by the defendant."

Renumber accordingly

March 12, 2023

House Judiciary Committee
Senate Bill 2216

Chair Klemin and Committee Members,

My name is Amy Dalrymple and I'm editor of The Bismarck Tribune and past president of the North Dakota Newspaper Association.

I would like to voice my opposition to Senate Bill 2216. However, I only object to two words in the bill and I urge committee members to consider amending it.

I am in favor of protecting people's privacy, which is the primary objective of this bill. But as an advocate for open records, I believe there needs to be a balance between protecting privacy and preserving transparency and accountability.

I urge the committee to remove the words "the identity" from Page 2, Line 20. I do not see a public benefit in making the name of a police officer involved in a shooting or other critical incident a confidential record. The name would be a confidential record until the end of an internal investigation, which could take an unknown length of time.

I respectfully ask for an amendment on Senate Bill 2216 to remove those two words. Without an amendment, I would urge a Do Not Pass recommendation. I am unable to attend your hearing, but would be happy to answer questions at amy.dalrymple@bismarcktribune.com.

Thank you.

Amy Dalrymple
Past President, North Dakota Newspaper Association
Editor, Bismarck Tribune

Testimony in Support of SB 2216 — Privacy
House Judiciary Committee
Sean Cleary, District 35 — Bismarck, North Dakota Senate

Chairman Klemin and Members of the House Judiciary Committee,

I am here to introduce SB 2216 is a bill designed to improve the personal privacy of criminal defendants while they await trial and law enforcement officers during the investigation of a “critical incident.”

It does this in two separate ways:

For criminal defendants:

- Their address and telephone number is a confidential record while the their case is pending trial or appeal
- This does not prohibit sharing their info among law enforcement or other government agencies from sharing the info for official business
- **Purpose:** This was done to protect the privacy of citizens accused of offenses and so they are not subjected to unwanted solicitation.

For law enforcement officers involved in a critical incident:

- Except as otherwise provided by law, their identity and contact information is confidential until the internal investigation is complete
- Critical incident includes on or off-duty officer-involved shooting, on-duty car accident that results in death or serious injury, or any other on-duty incident resulting in death.
- **Purpose:** This was done to protect the privacy and safety of officers during internal investigations involving serious situations.

In the online testimony, you will find more in-depth explanations behind both privacy provisions in this bill.

Thank you for your time and consideration. I am available to answer any questions.

Respectfully,

Sean Cleary
North Dakota Senate
District 35 — Bismarck

SB 2216
68th Legislative Assembly
House Judiciary Committee
March 13, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of SB 2216.

The Commission represents individuals charged with a crime when there is a constitutional, statutory or rule based right to counsel. Many of the times our attorneys are appointed to represent defendants who are involved in the “critical incidents” this bill addresses. The Commission supports keeping the defendant’s address and telephone number confidential. The only interest in obtaining this information is potential retribution or exploitation. The Commission’s attorneys have a duty to safeguard their client to the best of their ability and this bill is a move in the right direction.

Mr. Chairman, members of the Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

March 13, 2023

House Judiciary Committee SB 2216

CHAIRMAN KLEMIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing this morning on behalf of the North Dakota Newspaper and Broadcasters Associations. I have also filed this testimony online so it should be in your magic machines.

We understand the reasons behind this bill, but believe it goes too far in hiding the names of law enforcement officers involved in these critical incidents.

These are public employees performing their public duties, and their identity should be available to the public as it is now. One of the reasons given for doing this is to protect the officers from being swamped with questions. They can always refuse to answer these questions. They do now.

Therefore, we are proposing just one tiny amendment that we believe will make the bill better. It's listed below and essentially would make the names of the officers public, but would keep their contact information confidential. We think this is the main intent of the bill. .

We would respectfully suggest the amendment below. Thank you for your time and consideration. I would be happy to work with the committee on amendments.

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2216

Page 2, line 20, remove "the identity and"

Renumber accordingly