

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE R. KLEMIN, CHAIR
MARCH 10, 2021**

**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
TRAVIS ENGELHARDT, DIRECTOR, HUMAN RESOURCES
PRESENTING TESTIMONY IN SUPPORT OF SENATE BILL 2107**

Mister Chairman Klemin and members of the Judiciary Committee, my name is Travis Engelhardt, and I am the Director of Human Resources for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of Senate Bill 2107, which enacts a new section to Chapter 54-23.3 of the North Dakota Century Code.

Senate Bill 2107 offers some confidentiality protection for a DOCR employee, victim, witness, or correctional confidential informant who participates in an internal investigation of alleged misconduct and/or criminal conduct if disclosure of the records or a portion of the records pursuant to an open records request would reveal the individual's identity and cause a credible threat of violence or other harm. The bill classifies internal investigation records under these circumstances as exempt, which means the DOCR has discretion whether to redact records when requested through an open records request.

The primary purpose of Senate Bill 2107 is safety. The DOCR can compel an employee to participate honestly and completely in an internal investigation or potentially face disciplinary action, up to and including termination of employment. But currently we cannot offer the employee any confidentiality with regard to the content of

the investigation, as internal investigation reports are open records under N.D.C.C. Subsection 44-04-18.1(6) when completed or after seventy-five days, whichever is sooner. Another employee or an inmate's family member or friend could request an investigation report and relay the information to an inmate or to connections outside the facility, which could put the employee who did their job and told the truth, at risk of harm or retaliation. There are existing laws that also are designed to protect safety, including criminal laws, retaliation protections, and facility rules. Most of the time these provide sufficient protection for victims, witnesses, employees and inmates participating in internal investigations. However, Senate Bill 2107 offers an additional layer of protection in an extreme situation where there is a credible threat of violence or other harm and preserves the DOCR's ability to investigate and find the truth about allegations of misconduct or criminal offenses.

The DOCR intends to withhold relevant parts of records under the new section created by Senate Bill 2107 only in rare situations in which the employee, victim, witness, or inmate providing information in an internal investigation has been threatened or believes her or his safety is in imminent danger due to participation in an internal investigation. Senate Bill 2107 is not intended to withhold records when they are requested by law enforcement, through a subpoena duces tecum, or pursuant to a court order. Instead, Senate Bill 2107 offers protection to employees, victims, witnesses, and inmates, who fear for their safety because of information provided to an investigator when the information is requested through an open records request. In the last four years, only two examples come to mind for which this exception likely would have been used.

The first example was an investigation into a DOCR employee's alleged misconduct from two years ago. While interviewing several employees, we learned through a third employee of an alleged sexual assault perpetrated by the employee being investigated against another employee. Both the employee telling us of the assault and the alleged victim, who was also an employee, were hesitant to provide information due to fear, based on the subject of the investigation's prior behavior and threats.

The second example was an employee who was interviewed regarding potential criminal activity by an inmate with connections to organized crime. The employee worked inside the facility and was concerned for her safety if the inmate found out about the information she provided. There also was credible evidence of the inmate's methods of communication and influence outside of the prison, so there was reasonable fear for the safety of the employee in the community.

Mister Chairman Klemin and members of the Judiciary Committee, I ask that you support Senate Bill 2107. I will now stand for questions.