

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1216

2007 HOUSE JUDICIARY

HB 1216

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1216

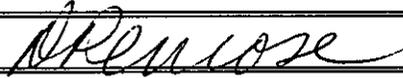
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/17/07

Recorder Job Number: 1242

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1216.

Ryan Bernstein, Legal Counsel for the Governor: (see attached testimony). On page 2, 3a a section was added, page 3, 3 added section, and page 4, 2 added section.

Chairman DeKrey: Thank you. Further testimony in support.

Wayne Stenehjem, AG: I support this bill. I want to thank the Governor for the tremendous efforts he's put forth as well as members of the legislature and the co-sponsors of this particular piece of legislation to ensure that ND remains the safest state in the Union. Very simply put, this bill will ensure that every offender who commits the most serious, violent sexual offenses gets a mandatory minimum sentence of 20 years in prison, followed by lifetime supervised probation. You, the legislature, have determined that the offense of Gross Sexual Imposition, where the defendant compels a victim by force or threat of imminent threat of death or serious bodily injury or kidnapping, should be treated as the most serious offense that we have, that is a class AA felony for which a maximum penalty is life in prison without parole and that is the current law. Yet the victims of these violent offenses are often are just dismayed that the perpetrator receives only a 5 or 10 year sentence and sometimes far less than that, then they go back out on the street. Victims have to deal with the devastation of

these crimes for years and years. The punishment needs to reflect the incalculable damage that these offenders cause. We need to send a message to anyone who would commit an offense of this nature before they commit the offense, that they are going to prison for 20 years and they will not be permitted to stand in front of the court and beg for the leniency they refused to provide for their victim and for the havoc that they caused. The public has made it clear to me, as I'm sure they have to you that these offenses need to meet with serious consequences. Jon Byers, who works in my office, alongside state's attorneys across the state of ND, who probably does more sex offense prosecutions in the state than anybody else. I am certainly proud to have him as part of our office in doing this very important work.

Chairman DeKrey: Thank you. Further testimony in support.

Jonathan Byers, Assistant Attorney General: (see attached testimony). There was some concern that a 20 year old that has consensual sex with a 14 year old would get hit with a 20 year prison sentence, that won't happen, because the prosecutor has discretion to charge this based upon age rather than force, which is what is necessary for the 20 year sentence.

Rep. Meyer: Would you describe the level 1, level 2 and level 3 of sexual offenses.

Jonathan Byers: In the year 2001, some legislation was passed that required all registered sex offenders to be assigned a risk level. A committee was appointed by the Attorney General to achieve that process. So every month, a committee of 9 entities meets and assigns risk levels, rather than calling them a 1, 2 or 3, we decided to use low, moderate and high, because the public never really understood which is high when using the numbers. A high risk sex offender, and this is primarily to assist law enforcement in knowing how much community notification to do when the offender is living out in the public. So for a high risk offender, they are going to do the maximum community notification, whether it be a community meeting, widespread media release, and those kinds of things. It also gives local law enforcement an

idea how much attention they should be paying to that sex offender. Should they visit him very frequently to make sure that they are still residing at their residence. Moderate risk offenders, when the committee assigns that, it does still require community notification, but to anybody that's in the same victim class as the previous victim of that offender. So if he is someone who has raped elderly ladies, the community notification will focus on notifying those segments of the public such as senior centers, nursing homes, etc. where somebody would have access to an elderly lady. If it is someone who preyed on kids in playgrounds and parks, the targeted notification would be to that segment of the public. If it is a low risk offender, and that's the largest group of the offenders, there is still registration that happens, but the notion is that if they are a low risk offender, there are some things that we can do with community notification that might make them more risky. The idea is not to do a lot of community notification because then they might lose their job, they might lose their place to live, they might lose their support system within the community, and then you have a sex offender who has a lot more time on his hands. I think this level system that we have established does have a meaningful purpose and helps law enforcement know how to deal with sex offenders.

Rep. Meyer: So with that on the website, are those levels all identified on the website.

Jonathan Byers: I believe the website does have an indication of what level they are. Right now, on the state website, our high risk offenders and any of the other offenders that are lifetime registrants (there might be some low and moderate risk that are a lifetime registrant because they've committed more than one offense) and they are identified by their risk level. In the printable list that you can get of all offenders, it's also indicated on there which level they are.

Rep. Klemin: In the trial of this type of offense, is it typical for those persons charged with the crime of this nature, is the jury informed of the various penalties there are, that there are three

penalties under this law right, Class AA felony, Class A felony and Class C felony. Are they informed of what the penalties are and the consequences of a conviction.

Jonathan Byers: It's actually to the contrary. There is a standard pattern of ND jury instruction that instructs the jury that they're not to consider a level of penalty or punishment that's involved in the case. So many times they don't know what the person could be subject to. I think that is a good practice because their job is to be there to decide the facts and whether those facts indicate if the person is guilty. You don't want them sitting there and saying we think he's guilty but if we say that, it might cause this prison sentence. I'm glad to see that there is that jury instruction.

Rep. Klemin: In closing argument by the defense counsel, are they able to inform the jury of what these penalties are.

Jonathan Byers: They are not supposed to, but I have had that happen in a number of different trials, even though the defense counsel knows that they aren't supposed to put that in front of the jury.

Rep. Klemin: What about lesser offenses that are charged, along with Gross Sexual imposition, or assault, for instance, that the jury could find that.

Jonathan Byers: That does happen sometimes. There may be a situation where you want the charge as a forcible crime because you believe the facts justify a AA felony and a mandatory 20 year prison sentence, but if you're not sure that the jury will find that element of proof of force, you can also charge it based upon the victim's age, which might be a lesser offense. Then the jury would have the option to see and make a decision that there was force, or they could say we don't think there was force, but we still think it's against the law because the victim was such an age to make it a statutory rape.

Rep. Klemin: So unless the charge is made that would include a lesser offense, the jury is not free to find the person guilty of a lesser offense.

Jonathan Byers: The jury couldn't do that on their own, but the defense or the prosecution can ask for a lesser included offense.

Rep. Klemin: So there is still some discretion that's going to be inherent in the jury system.

Jonathan Byers: There is still some discretion that will occur and I think that is a good thing. I was kind of an outspoken opponent of a total mandatory 20 year sentence that gave prosecutors no discretion; nobody within the system any discretion. I think this is narrowly tailored enough to provide for the kind of serious penalty that some offenders deserve, but to allow some leeway for people who may have committed a "consensual" crime against a child which is a lesser age than the age of consent.

Rep. Griffin: Can you briefly explain a little further the concerns regarding the age.

Jonathan Byers: Subsequent to the Dru Sjodin case and of course, the Joe Duncan case, all of these cases we have been considering, the public by rights is demanding more serious treatment of sex offenders. The ones they think about most are the ones that there has been a lot of media attention. The reality is that most sex offenses are not committed by an Alfonso Rodriguez or Joe Duncans, they are committed by a family member or somebody that the victim knows. So when we're putting a bulls-eye on certain offenders and demanding serious treatment, we want to make sure that we are hitting the right target with that and there isn't some unfortunate consequence that results along with that, such as a 21 year old that's now facing some kind of a mandatory sentence because he had sex with a 14 year old, which does deserve criminal sanction but does that mean that he's going to serve 20 years. I wanted to make sure that the bulls-eye was on the right part.

Rep. Griffin: Does this bill just give the prosecutor the discretion not to charge the mandatory, but still the ability to charge a sentence which would carry the mandatory now.

Jonathan Byers: It does give the prosecutor discretion on what he charges it with, and also some discretion if it is charged as a forcible crime, to amend that, as part of a plea negotiation if it appears that, based upon gathering more information about this particular offender, that a 20 year sentence might not be warranted. They could amend it to charge by age rather than force. It also, again, would give the jury an option to consider a lesser included offense if either of the parties asked for that.

Rep. Dahl: In your experience with prosecuting these types of crimes, have you come across, or is it common for these AA felonies to get these sentences.

Jonathan Byers: I would have to say that I have not seen a great deal of very egregious kind of sentences occur in ND. Of course, the national media are now drawing more attention to it across the nation situations where it looks like judges haven't done what they should have done in certain circumstances. We just want to make sure that we're not one of those states that treats an offender much more lightly than they should have. Because of that, this will create a situation where if it is somebody that really deserves a sentence like that, it's going to indicate to the judge that the legislature has said we expect this person is going to get this kind of sentence.

Rep. Charging: Can you tell me what lifetime probation is.

Jonathan Byers: Lifetime probation would require that a representative of the Dept of Corrections be watching this offender for the rest of his life. Now that doesn't always mean that the lifetime probation is going to have GPS electronic monitoring for the rest of his life, but it does mean that they will be on some kind of supervised probation, that the Dept of Corrections has trained individuals, sex offender specialists, that will make a determination of

how often they need to meet with that offender, how often they need to go check his residence to see what kind of suspicious things are going on. So the lifetime supervised probation could be as frequent as meeting with this person and checking up on him every few days or if they've been supervised for 15 years and things look like they are going good, they may back off of that and require that they be seen once a month, once every two months, whatever their trained professionals decide is the appropriate amount of supervision.

Rep. Charging: Do we presently have lifetime probation.

Jonathan Byers: The maximum amount of supervision that we have right now for any offense, is a 10 year supervision, that was originally five years, several sessions ago it was bumped up to 10 years as long as it included sex offender treatment as part of the additional probation and right now it can be 10 years even without the treatment.

Rep. Boehning: With the lifetime supervision probation, is this going to be a hindrance on someone in the nursing home. Are they going to have a hard time finding a place in a nursing home for these people.

Jonathan Byers: The issue of residency for sex offenders is something we are kind of grappling with all the time. Not just for people in a nursing home, but just to be able to find a place where they can live now, it gets more difficult. They are dealing with that already. I don't think this lifetime supervision will really affect that. Like I said, if somebody is in a nursing home, and are elderly, parole and probation may decide that they don't need to meet with them on a frequent basis.

Rep. Boehning: Are nursing homes allowed to take these people. If you put a parent in a nursing home, do people have access to records of sex offenders who might be in the nursing home.

Jonathan Byers: It's up to the individual discretion of the nursing home administrator. Some won't accept sex offenders at all; some will with the knowledge that law enforcement may come into the nursing home to do some kind of notification to staff and other residents. It's up to the discretion of the administration.

Rep. Wolf: If on lifetime probation, can they leave the state.

Jonathan Byers: There is a compact that we've entered into with all the other states, called the Interstate Compact for Probation Supervision. If the person leaves the state, their list of probation conditions that they are supposed to follow will travel with them. As part of entering into this compact, the other states have agreed to accept our probationers and then supervise them with the conditions that were in place on them. If the person does violate it in the state of MS, if they move there, then it gets referred back to ND courts to determine whether that probation should be revoked and the person brought back and put in our prison system.

Rep. Wolf: Who pays the cost of that.

Jonathan Byers: The cost of the supervision will be in the state that they go to. That's part of the compact. We bear the cost of their probationers coming here, and they bear the cost of probationers going there.

Chairman DeKrey: Thank you. Further testimony in support.

Bonnie Palacek, ND Council on Abused Women's Services/Coalition against Sexual Assault in ND: (see attached testimony from Jessica McSparron-Bien). We are in support of this bill. We did have discussions early on about mandatory minimum sentences, and from the victim's perspective we are concerned because we are keenly aware of the fact that most of the victims that come to sexual assault centers in ND and elsewhere, are being victimized or have been victimized by people they know. So one of the things that centers like ours are watching around the country, is what impact laws like mandatory minimum sentences

might have on victim's willingness to report. Similar to what a jury might feel, except more intensified. We were glad to see the discretion, in terms of charging, in case there would be younger offenders and we were also glad to see the possibility of lesser included offenses.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1216

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/24/07

Recorder Job Number: 1777

Committee Clerk Signature *D Penrose*

Minutes:

Chairman DeKrey: We will take a look at HB 1216. What are the committee's wishes.

Rep. Dahl: I move a Do Pass.

Rep. Koppelman: Seconded.

Rep. Charging: There was a question regarding "lifetime of supervised probation". What consists of lifetime, even if in nursing home.

Chairman DeKrey: Any further discussion of the bill. Clerk will call the roll.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Delmore

Date: 1-24-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1216

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Dahl Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Delmore

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

REPORT OF STANDING COMMITTEE

HB 1216: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1216 was placed on the
Eleventh order on the calendar.

2007 SENATE JUDICIARY

HB 1216

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1216

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3359

Committee Clerk Signature *m. J. Selby*

Minutes: Relating to sentencing and probation supervision of sexual offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony in Support of the Bill:

Sen. Hacker, Dist. #42 Introduced the bill stating his support.

Ryan Bernstein, Legal Counsel for the Governor (meter 1:54) Gave Testimony – Att. #1a and also presented an amendment – Att. #1b

Sen. Fiebiger asked (meter 6:03) in the proposed amendment (Att. #1b) the second part of it, page 7, line 9 & 10, he was concerned why you would take this out of the judges hands. Have the judges not provided the type of sentences for these type of crimes? I can not be specific, but crimes have occurred in the past that has brought this to our attention. We think that the heinousness of the crime it self warrants this type of sentence.

Wayne Stenehjem – ND Attorney General (meter 7:40) Thanked all involved with there hard work. He reviewed the mandatory sentence. This is to be treated as the most serious of crimes in ND, as requested by the ND legislation. He stated that Gross Sexual Imposition by

force or threat of eminent death, serious bodily injury or kid napping treated as the most serious. This crime treated as a Class AA Felony- maximum penalty life in prison with out parole. Currently the perpetrator only received a 5-10 year sentence; and sometime even less and are back on the street. Spoke of the victims of these crimes. How the penalty needs to reflect the damage they do. We need to send a message to anyone who may commit the crime, before the crime is committed, what the sentence will be. He referred to **Sen. Fiebiger's** question (meter 9:45) Spoke of his agreement with the judges to make the determination; on occasion the need arises to make the statement, before the offence is committed, reflecting to the courts before they get to a judge the minimum 20 years before they start trying to minimize a sentence. Spoke of his web sites and the people out of prison, the question is why are they out! Spoke to the amendments being an "escape hatch" if the courts feel there is a "manifest of justice" and spoke of past history of using this. Sometimes justice demands this.

Sen Lyson (meter 12:41) questioned one of the amendments he was referring to are not in front of them? They will be presented later.

Sen. Fiebiger asked (Meter 13:01) last page provision of not being contested to be to expensive? They had discussion of this-spoke of expense and the diminishing expense.

Cynthia Fieland, Asst. Burleigh Co. State Attorney since 1991 (meter 13:52) proposed and amendment – Att. #2. These crimes are in rural and cities alike. Spoke of the frustrations in trying these types of cases. Not all cases rise to this level. She spoke of the problems with the victims and compared "acceptable treatment" verses "incarceration". Spoke of the process of the amendments and not having to many amendments that it weakens the law; age limits and minors.

Sen. Nething questioned why are we reviewing these amendments, this bill is about gross sexual imposition. What do these have to do with the penalty? She replied that the

amendments have to do with the weakening of the law. (meter 21:03) Spoke of the situations that are not being brought forth to court due to "holes" in the law in the sex crime arena.

Spoke of the changes in the law last session and how they weakened the law.

Sen. Nothing asked if there was anything in her amendments that talk about the bill? Yes spoke of one part. He also stated the confession as to why the new parts, amendments, were not brought forth on the house side? (meter 27:59) She spoke of the history of last session but did not answer the question. Started to work on it at the beginning of session and it took longer then they thought it would, so they looked for a bill they could attach it too. Again **Sen. Nothing** asked, why did you not put this in a bill at the beginning of session? (meter 28:40) you had up until the 20th? We wanted to but upon our conversations with Mr. Byers in the A.G.'s office decided to put it into this one. He replied that its own bill would have given it more attention.

Sen. Lyson and Sen. Lyson asked if after page 1, line 4, is the insert a new section (meter 29:46) wanted clarification of how the amendments would fit into the bill and the relationship of it to the bill.

Sen. Fiebiger questioned the amendment (meter 33:00) page 2, line 11 the court deviation language is confusing is it "either" or "or" when it is a manifestation of justice? Asked for clarification if it. He has concerns for the judicial discretions of the judges, and the taking away of this. She replied that certain judges are not giving harsh enough sentences and spoke of the seriousness of the crime and struggle with the victim.

Sen. Nothing stated that he would like to speak on the bill alone and we would come back to the amendments.

Warren Emmer , Director of the Dept of Corrections and Rehabilitation (meter 37:41) - Att. #3

Jonathans Byers, Assistant Attorney General (meter 28:30) gave his testimony – Att #1

Spoke of “Jessica’s Law” a Federal law that has been passed, this is ND version of it.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the bill:

None

Sen. Nething, then asked for testimony on the Amendments

Testimony in support of the amendment:

Rosa Larson, Ward County Assistant State Attorney for 10 years (meter 39:50) Spoke of 12.1-20-03 and the amendment page 2, line 3 and reviewed the amendment. She spoke of an incident in Ward County.

Ladd Erickson, McLean Co. States Attorney (meter 44:15) spoke of why this did not become a bill in itself and took the responsibility of the amendments. We were doing the amendments in the house but the house “kicked” out the bill before it could be done. Spoke of the Judges in relationship to the State Attorneys. Spoke of the interim study on sex crimes. The process of the bills that failed in the house

Sen. Fiebiger asked with (meter 47:27) the language on the bill, with out the amendments there would not be more trials anyway? I think that there will be very few cases that fall under the AA. Cases will be under prosecuted. He gave an example (meter 48:00) of kids in playground fights being on the sexual offenders list.

Sen. Nething stated that he understands that there is a problem (meter 48:52) but with some of the amendments appearing in this way does not allow the opposing side a fair hearing-it is called “Due Process”.

Aeron Bursts, States Attorney Assoc. (meter 49:32) spoke to sect. 1 to 3 helps prosecutors and the last section.

Jonathon Byers, Attorney Generals office (meter 50:54) stated that if the committee thought of who the "arrow" (bill) is to hit, these amendments are the "ripples" that it effects.

Birch Burdick, Cass County Attorney (meter 51:44) spoke to the amendments and its history starting with 2005's legislation. Stated the "relief" valve and gave a situation in the case of a child witness.

Peter Welte, Grand Forks State Attorney (mete 54:28) spoke in support of the Amendment.

Sen. Nething asked the **Attorney General** if he had any problems with the amendments (meter 54:40)? No, I do not think the amendments are a problem and I am for the

"manifestation of justice" portion. Spoke of Sen. Lyson's amendment

Ryan Bernstien, Governors office requested time to review the amendments spoke of the parts he liked and did not like.

Testimony in Opposition of the Amendments:

None

Testimony Neutral to the Amendments:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1216

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4887

Committee Clerk Signature *Maria L. Salberg*

Minutes: Relating to sentencing and probation supervision of sexual offenders.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen Feibiger stated that he has a problem with "mandating". After Ms. Fieland's testimony they could not recall her stating there was an actual issue.

Sen. Olafson made the motion to do pass states attorney's amendment and **Sen. Nelson** seconds the motion.

The committee took a ten minute recess and then continued with general discussion:

Sen. Feibiger does not like the bill itself.

Sen. Lyson stated that "life time" probation is ridiculous. If a person is bedridden of in a nursing home why are they still being monitored. I also do not like mandates. They discuss Subsection 36 39-01-01 in section 36-39 manifests in justice definition and how it fits in with the bill. Most seem to agree with not liking the "lifetime" parole, the deviation portion as being a threefold issue. They had concerns of people confessing to a crime for a lesser sentence.

Spoke of setting a time frame giving them the latitude of putting the probation on at any time. Discussion of when the court has the authority. They spoke of taking out the word "life time" and allowing the probation/supervision to follow. The amendment with the deviation instead of saying "when that" and say "and that", after 39-09 put "when". They discussed the amendment.

The committee reviewed the amendment so to not conflict and how this would enable them to not take out the "life time" portion to the first agreed amendment, discussion of this.

Sen. Nething reviewed the amendment presented from the governors office to the committee and they discussed (meter 23:20)

Sen. Lyson made the motion to Do Pass Amendment from the Governors office and **Sen.**

Fiebiger seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass HB 1216 as amended and **Sen. Olafson** seconded the motion. All members were in favor except for **Sen. Fiebiger** and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1216

Page 1, line 1, after "reenact" insert "subsection 3 of section 12.1-20-01," and after "12.1-20-03," insert "subsection 1 of section 12.1-20 -03.1,"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

- 3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least ~~four~~ three years older than the minor."

Page 2, after line 3, insert:

- "c. That person knows that the victim is unaware that sexual contact is being committed on him or her,

Page 2, line 7, overstrike "more than five years" and insert immediately thereafter "at least 22 years of age"

Page 2, line 8, overstrike "older than the victim"

Page 2, line 11, after "incarceration." insert "The court may deviate from the mandatory sentence only if the court finds that the sentence would impose a manifest injustice as defined in subsection 36 of section 39-01-01 and that the defendant has accepted responsibility for the crime or cooperated with law enforcement. Under no circumstances shall a defendant convicted of a AA felony under this section be sentenced to serve less than five years of incarceration."

Take out when pro

Page 2, overstrike lines 12 through 15

Page 2, line 16, overstrike "c." and insert immediately thereafter "b."

Page 2, after line 19, insert:

"SECTION 3. AMENDMENT. Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- 1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period

of three or more months. The offense is a AA felony if the actor was ~~more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. ~~The offense is a class C felony if the actor was at least four but not more than five years older than the victim at the time of the offense.~~ Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

Page 4, line 12, after "section" insert ", unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in subsection 36 of section 39-01-01."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1216

Page 3, line 7, insert after five years: "up to a maximum of ten years"

Page 7, line 9-10, delete: "The court may impose an additional period of supervised probation not to exceed five years."

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1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1216

Page 1, line 1, replace "sections" with "subsection 3 of section 12.1-20-01, section", after the first comma insert "subsection 1 of section 12.1-20-03.1, and sections", and remove the second comma

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least four three years older than the minor."

Page 2, line 1, overstrike "or"

Page 2, line 3, after "being" insert "; or

- c. That person knows that the victim is unaware that sexual contact is being committed on the victim"

Page 2, line 7, overstrike "more than five years"

Page 2, line 8, overstrike "older than the victim" and insert immediately thereafter "at least twenty-two years of age"

Page 2, line 10, remove "lifetime"

Page 2, line 11, after the underscored period insert "The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a AA felony under this section may not be sentenced to serve less than five years of incarceration."

Page 2, line 12, overstrike "An offense under this section is a class C felony if the actor's conduct violates"

Page 2, overstrike lines 13 through 15

Page 2, line 16, overstrike "c."

Page 2, after line 19, insert:

"SECTION 3. AMENDMENT. Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was ~~more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years~~

2.12

~~elder than the victim~~ at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence."

Page 3, line 7, overstrike "a", replace "minimum of" with "at least", and after "years" insert "but not more than ten years"

Page 3, overstrike line 9

Page 3, line 10, overstrike "five years."

Page 4, line 12, after "section" insert ", unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in section 39-01-01"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1216: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1216 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections" with "subsection 3 of section 12.1-20-01, section", after the first comma insert "subsection 1 of section 12.1-20-03.1, and sections", and remove the second comma

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least ~~four~~ three years older than the minor."

Page 2, line 1, overstrike "or"

Page 2, line 3, after "being" insert "; or

- c. That person knows that the victim is unaware that sexual contact is being committed on the victim"

Page 2, line 7, overstrike "more than five years"

Page 2, line 8, overstrike "older than the victim" and insert immediately thereafter "at least twenty-two years of age"

Page 2, line 10, remove "lifetime"

Page 2, line 11, after the underscored period insert "The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a AA felony under this section may not be sentenced to serve less than five years of incarceration."

Page 2, line 12, overstrike "An offense under this section is a class C felony if the actor's conduct violates"

Page 2, overstrike lines 13 through 15

Page 2, line 16, overstrike "c."

Page 2, after line 19, insert:

"SECTION 3. AMENDMENT. Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was ~~more than five years older than the victim at the time of the offense. The offense is a~~

~~class C felony if the actor was at least four but not more than five years
older than the victim at least twenty-two years of age at the time of the
offense. Otherwise, the offense is a class A felony. The court may not
defer imposition of sentence."~~

Page 3, line 7, overstrike "a", replace "minimum of" with "at least", and after "years" insert "but
not more than ten years"

Page 3, overstrike line 9

Page 3, line 10, overstrike "five years."

Page 4, line 12, after "section" insert ", unless the court finds after at least eight years of
supervised probation that further supervision would impose a manifest injustice as
defined in section 39-01-01"

Renumber accordingly

2007 TESTIMONY

HB 1216

HB 1216

House Judiciary

January, 16, 2007

Mr. Chairman, members of the committee. My name is Ryan Bernstein, and I am Legal Counsel for the Governor.

I am here to testify in support of House Bill 1216. This proposed legislation will further strengthen North Dakota laws dealing with sexual offenders.

This bill would impose a minimum mandatory sentence of twenty years' imprisonment, with lifetime probation supervision to follow the incarceration for criminals that compel their victims to submit by force or threat of imminent death, serious bodily injury, or kidnapping to a sexual act. This would include first-time violent sexual offenders. It is unjust to the victim that the perpetrator of such a horrible crime could be back on the street within a few years, because of right now, there is no minimum sentence a violent sexual offender must serve. We need to make sure that anyone who commits a violent sexual crime in North Dakota receives a sentence that fits the crime and protects the public.

The bill also allows the court to impose lifetime supervised probation on a person that has pled or been found guilty of a class AA felony sexual offense. The person also would not be eligible for early termination of probation. This would make it easier to track those individuals in our community after they are released and help reduce the risk of the person re-offending.

The Governor is committed to building upon our position as the safest state in the country and keeping our state a safe place to live, work, and to raise a family.

The passage of this bill will help accomplish this we hope you vote do pass.

Mr. Chairman, members of the committee, thank you for your time.

HOUSE BILL 1216 TESTIMONY
HOUSE JUDICIARY COMMITTEE
JANUARY 17TH, 2007
PRAIRIE ROOM

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1216.

The bill is a narrowly tailored version of legislation more commonly known as "Jessica's Law," named after Jessica Lunsford, a nine-yr-old Florida girl that was abducted, raped, and murdered in 2005 by a convicted sex offender. One of the provisions of Florida's subsequent "Jessica's Law" legislation is a lengthy mandatory prison sentence for serious sexual crimes, followed by lifetime probation supervision.

On page two, House Bill 1216 provides for a twenty year mandatory prison sentence for violent sexual offenses, with lifetime supervision to follow the incarceration. In order to make the lifetime probation supervision possible, it is necessary to change the maximum allowable probation in a separate section of the Century Code. That amendment is set forth on page three of the bill. Finally, to prohibit the early termination of probation for the targeted sex offenders, an amendment to the early termination provisions is set forth on page four.

The Attorney General asks for a do pass. I would be happy to answer any questions.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson DeKray
Members of the House Judiciary Committee

January 16, 2007

Testimony in Support of HB 1216

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND. I am providing written testimony in support of HB 1216 related to sentencing and probation supervision of sexual offenders.

Gross sexual imposition,,that is the legal term used in North Dakota law for the most heinous of sex crimes. For this bill we are considering circumstances of abduction, fear of death, or serious bodily injury. This victim is being raped with no choice but to allow this act to happen or face death. Most victims of sexual assault will tell you that one of the main reasons they do not fight back is because they are afraid for their life.

Mandatory minimum sentences are always an issue to ponder. When it comes to sexual assault, we see a wide variety and very little consistency in sentencing of sex offenders. That makes mandatory minimums attractive. On the other hand, there is discussion about the impact such a long sentence may have on a victim's willingness to report. And one can always point to compelling exception to the rule. What we do know is that victims of sexual assault are affected by this crime for the rest of their lives. This bill imposes supervised probation for life on the most violent sex offender. It is a small step in the direction of imposing sentences that fit the crime and in providing community safety through mandatory on-going supervision of offenders.

Please support HB 1216. Thank you.

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
JANUARY 17, 2007**

**WARREN R. EMMER, DIRECTOR
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
FIELD SERVICES DIVISION,
PRESENTING TESTIMONY RE: HB 1216**

Good morning Mr. Chairman and members of the committee. For the record, my name is Warren Emmer. I am the director of the ND Department of Corrections, Field Services Division. Field Services staff manages all adult offenders placed on parole and probation supervision.

The Field Services Division is currently supervising 300 sex-offenders. As you know, field services officers, as well as our law enforcement partners, take the job of supervising sex offenders very seriously.

Enactment of H.B. 1216 will cause sex-offenders to be supervised for longer periods of time. In fact, House Bill 1216 anticipates that some offenders will be placed on life time probation supervision, following a mandatory period of incarceration. It also anticipates that a person convicted of Gross Sexual Imposition under subdivision a, of subsection 1, of section 12.1-20-03, will not be entitled to early termination of probation.

The Department of Corrections supports House Bill 1216.

AH # 1a
2-12

HB 1216

Senate Judiciary

February, 12, 2007

Mr. Chairman, members of the committee. My name is Ryan Bernstein, and I am Legal Counsel for the Governor.

I am here to testify in support of House Bill 1216. This proposed legislation was introduced in cooperation with Attorney General Wayne Stenehjem and several legislators to help further strengthen North Dakota laws dealing with sexual offenders. I would like to thank them for their help on this bill.

HB 1216 would impose a minimum mandatory sentence of twenty years' imprisonment, with lifetime probation supervision to follow the incarceration for criminals that compel their victims to submit by force or threat of imminent death, serious bodily injury, or kidnapping to as sexual act. This would include first-time violent sexual offenders. It is unjust to the victim that the perpetrator of such a horrible crime could be back on the street within a few years, because of right now, there is no minimum sentence a violent sexual offender must serve. We need to make sure that anyone who commits a violent sexual crime in North Dakota receives a sentence that fits the crime and protects the public.

The bill also allows the court to impose lifetime supervised probation on a person that has pled or been found guilty of a class AA felony sexual offense. The person also would not be eligible for early termination of probation. This would make it easier to track those individuals in our community after they are released and help reduce the risk of the person re-offending.

The Governor is committed to building upon our position as the safest state in the country and keeping our state a safe place to live, work, and to raise a family.

The passage of this bill will help accomplish this we hope you vote do pass.

Mr. Chairman, members of the committee, thank you for your time.

**SENATE JUDICIARY COMMITTEE
SENATOR DAVE NETHING, CHAIRMAN
FEBRUARY 12, 2007**

**WARREN R. EMMER, DIRECTOR
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
FIELD SERVICES DIVISION,
PRESENTING TESTIMONY RE: HB 1216**

Good morning Mr. Chairman and members of the committee. For the record, my name is Warren Emmer. I am the director of the ND Department of Corrections, Field Services Division. Field Services staff manages all adult offenders place on parole and probation supervision.

The Field Services Division is currently supervising 300 sex-offenders. As you know, field services officers, as well as our law enforcement partners, take the job of supervising sex offenders very seriously.

Enactment of H.B. 1216 will cause sex-offenders to be supervised for longer periods of time. In fact, House Bill 1216 anticipates that some offenders will be placed on life time probation supervision, following a mandatory period of incarceration. It also anticipates that a person convicted of Gross Sexual Imposition under subdivision a, of subsection 1, of section 12.1-20-03, will not be entitled to early termination of probation.

The Department of Corrections supports House Bill 1216.

HH # 4
2-12-07

HOUSE BILL 1216 TESTIMONY
SENATE JUDICIARY COMMITTEE
FEBRUARY 12TH, 2007
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1216.

The bill is a narrowly tailored version of legislation more commonly known as "Jessica's Law," named after Jessica Lunsford, a nine-yr-old Florida girl that was abducted, raped, and murdered in 2005 by a convicted sex offender. One of the provisions of Florida's subsequent "Jessica's Law" legislation is a lengthy mandatory prison sentence for serious sexual crimes, followed by lifetime probation supervision.

On page two, House Bill 1216 provides for a twenty year mandatory prison sentence for violent sexual offenses, with lifetime supervision to follow the incarceration. In order to make the lifetime probation supervision possible, it is necessary to change the maximum allowable probation in a separate section of the Century Code. That amendment is set forth on page three of the bill. Finally, to prohibit the early termination of probation for the targeted sex offenders, an amendment to the early termination provisions is set forth on page four.

The Attorney General asks for a do pass. I would be happy to answer any questions.

Sexual Offense		Before 2005 session	Current law	HB 1216 w/ proposed amendments
12.1-20-03	GSI (victim dies)	20 years	Life	Life
12.1-20-03	GSI (force or threat)	0-20 years	0-life	20-life +Lifetime probation 20-life*** +lifetime probation***
	GSI (intoxicants without victim's knowledge)	0-10 years	0-20 years	0-20 years
	GSI (victim unaware)	0-10 years	0-20 years	0-20 years
	GSI (victim < 15) Actor more than 5 years older	0-20 years	0-life	0-life 0-life (actor at least 22 yrs old)
	GSI (victim suffers from mental disease or defect)	0-10 years	0-20 years	0-20 years
	GSI (only 4-5 yrs older than victim)	0-20 years	0-5 years	0-5 years 0-20 years (if actor < 22)
	GSI (less than four years older than victim)	0-20 years	No Crime	No Crime 0-20 years
	GSI (sexual contact)	10 years	20 years	20 years adds victim unaware category
12.1-20-03.1	Continuous Sexual Abuse	0-20 years	0-life	0-life 0-life (If actor at least 22 yrs old)
	Continuous Sexual Abuse (only 4-5 yrs older than victim)	0-20 yrs	0-5 yrs	0-5 years 0-20 years if actor < 22
12.1 20-05 12.1-20-07	Corruption & Solicitation and Sexual assault Actor ≥ 22	0-5 years	0-5 years	0-5 years
12.1-20-05 12.1-20-07	Corruption & Solicitation and Sexual Assault Actor < 22	0-1 year	0-1 year	0-1 year
12.1-20-05 12.1-20-07	Corruption & Solicitation and Sexual Assault Actor < 22	0-1 year	No Crime	No Crime 0-1 year if at least 3 years older

*** court allowed to deviate for manifest injustice