

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2358

2007 SENATE JUDICIARY

SB 2358

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2358**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2145

Committee Clerk Signature *Maria L. Salby*

Minutes: Relating to court-ordered testing of a sexual offender for human immunodeficiency virus.

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 Bill:

Sen. Nelson, Dist. #21 Introduced the bill (meter :011) I was asked to submit this bill on behalf of the ND Council on Abused Women's Services, Bonnie Palecek.

Bonnie Palecek, ND Council on Abused Women's Services (meter 00:40) Gave Testimony – Att. #1 and Award Continuation Grant sheet – Att. #1b Spoke of Federal requirements and our state law

Sen. Fiebiger asked Bonnie what was currently happening (meter 7:48) No current 48 hour requirement.

Sen. Fiebiger asked Bonnie if she would be receptive the language "alleged" victim? No I do not have any problem with that. Discussion (meter 9:05) of who pays for the test.

Mary Dasovick, ND Dept of Health (meter 9:50) Gave Testimony Att. #2 and a copy of the Grants Policies for Program – Att. #2b

Aaron Burst, State Attorneys Assoc. (meter 14:04) spoke in support of the bill. Discussed federal requirements and submitted an amendment Att. #3

Sen. Nelson questioned line 12, how his amendment would work-the time line of the testing that also satisfies the Federal regulation.

Cynthia Fieland, Burleigh County Assistant Attorney's Office (meter 21:10) Upon of review of the original Federal language will allow us to make the changes in the proposed amendments. Discussion of an amendment "when presented" verses "when filed".

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Discussion of the fiscal note (meter 23:59) and the "grant" money should not trigger the bill to go to appropriation, unless it is not passed and they do not receive the grant money.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2358**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2436

Committee Clerk Signature *Maria L. Dolbey*

Minutes: Relating to court-ordered testing of a sexual offender for human immunodeficiency virus.

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

The committee reviewed the bill. Aeron Burst had submitted an amendment and Sen. Nething handed the committee a second amendment that combined both amendments— Att #1 (1/31) Bonnie Palecek was advised of the amendment and made sure it was compliant, and it is.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass amendment Att. #1 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass SB 2358 as amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

FISCAL NOTE

Requested by Legislative Council

01/29/2007

REVISION

Bill/Resolution No.: SB 2358

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows a victim of a sexual offence under chapter 12.1-20 to request a human immunodeficiency virus (HIV) test be administered to the defendant.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

It is estimated that if every defendant received an HIV test the department of health laboratory division would provide 843 additional tests per year. The costs for these tests would be minimal and would be absorbed in our budget. The department currently receives federal funds to provide HIV testing at no cost to recipients.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The department currently receives federal funds for a Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program. We have been notified that the department will received a 5% reduction in our funds if a law does not exist that requires testing of offenders within forty eight hours of the date the complaint or information is filed with the courts. This fiscal impact for the department would be a one time reduction in our federal grant of \$25,658. The department must be in compliance with this requirement by the end of the 2007 session.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/29/2007

FISCAL NOTE

Requested by Legislative Council

01/29/2007

REVISION

Bill/Resolution No.: SB 2358

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	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$25,658)		
Expenditures						
Appropriations						

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It is estimated that if every defendant received an HIV test the department of health laboratory division would provide 843 additional tests per year. The costs for these tests would be less than \$5,000 and would be absorbed in our budget. The department currently receives federal funds to provide HIV testing at no cost to recipients.

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Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/26/2007

FISCAL NOTE

Requested by Legislative Council

01/24/2007

Bill/Resolution No.: SB 2358

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/26/2007

REPORT OF STANDING COMMITTEE

SB 2358: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2358 was placed on the Sixth order on the calendar.

Page 2, line 5, after "the" insert "alleged"

Page 2, line 7, after the second "the" insert "alleged" and after the third "the" insert "alleged"

Page 2, line 10, after the first "the" insert "alleged"

Page 2, line 12, after "filed" insert "or after the defendant's initial appearance"

Page 2, line 14, after "requesting" insert "alleged"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2358

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2358

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4457

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2358.

Bonnie Palacek, ND Council on Abused Women's Services: (see attached testimony).

Rep. Wolf: How long does it take to get the test results.

Bonnie Palacek: I don't know if there is anyone here that knows that.

Kirby Kruger, Director, Division of Disease Control: There are two types of tests that could be run. If the hospital has a rapid test, the results could be available within hours. If you do not have a rapid test, generally speaking it would be 24-48 hours for results.

Rep. Delmore: How accurate would the tests be. Sometimes the science is there, but how accurate.

Kirby Kruger: The testing that is done and recommended, is that they do an initial screening test that has to be repeated positive twice, before they would run a confirmatory test, and if that confirmatory test is positive, the individual is considered to be positive. However, there are window periods for HIV because the test measures antibodies that is made by the person who is infected. That antibody response takes time, so there would be a period of time after the infection until the appearance of measurable antibodies. There would be a window of about six weeks or so, where a test could be negative in an infected person.

Rep. Wolf: Bonnie in her testimony said the Dept. of Health prepares for 1800 tests per year. Does that mean you do 1800 tests or how many tests do you do; are those for all in the state or just for sexual offenders.

Kirby Kruger: That 1800 would represent the total testing in ND for individuals who may feel at risk or people who are incarcerated for two weeks or greater, or for whatever reason.

Rep. Wolf: Why are the test results given to the victim's physician, not the victim themselves.

Kirby Kruger: I don't know the philosophy behind that, but from our point of view, normal medical procedures are to release test results to a physician, because it is the physician that needs to interpret the test results.

Chairman DeKrey: Thank you. Further testimony in support.

Aaron Birst, ND State's Attorneys Association: Support. We did have some concerns initially on the Senate side, but I believe that was taken care of. I can go into that if the committee wishes.

Chairman DeKrey: Thank you. Further testimony in support.

Mary Dasovick, Director, Division of Injury Prevention & Control, Manager of Domestic Violence/Rape Crisis Program, ND Dept of Health: (see attached testimony).

Rep. Delmore: Do we have adequate resources to cover the cost that would give us accurate results for the victims, I ask the question because I know some of the results can be skewed and get two positives, do we accurately test so that the victim can be assured that that has been screened and the victim is not victimized once again.

Mary Dasovick: I would agree that we would, but Kirby is the Director for Disease Control and really handles that screening and making sure that we are up to code with everything. I think we would be able to manage that.

Chairman DeKrey: Thank you. Further testimony in support.

Kirby Kruger: You are concerned about a false negative or false positive for the test. The two test testing method where you use a very sensitive test initially, followed by more specific test, and the test is repeatedly positive is very accurate. The false positive rate is less than 5%, false negative rate is also less than 5%. It's the best that we have.

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

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2358

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4586

Committee Clerk Signature *D. Penrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2358.

Rep. Delmore: I move a Do Pass.

Rep. Wolf: Second.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Delmore

Date: 3/7
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2358

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP *[Signature]*

Motion Made By *del* Seconded By *Wolf*

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) 13 No 0

Absent 1

Floor Assignment *Del*

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

REPORT OF STANDING COMMITTEE (410)
March 9, 2007 3:08 p.m.

Module No: HR-45-4899
Carrier: Delmore
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2358, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2358 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2358

HTT # 1
1-29-07

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

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

Senator David Nething
Chair, Senate Judiciary Committee
January 29, 2007
Re: Testimony on SB2358

Senator Nething and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the North Dakota Council on Abused Women's Services in support of SB2358.

As you have heard previously, the reauthorization of the Violence Against Women's Act (VAWA) last fall resulted in new requirements by the federal government in order for states to continue to qualify for various projects authorized under the Act.

One area in which North Dakota was not in compliance was the area of forensic medical exam payments for sexual assault victims, of which you are well aware. A second is the issue you have before you this morning in SB2358. We were only very recently made aware of our non-compliance in this regard, and we are very grateful to Senator Carolyn Nelson for agreeing to sponsor this bill at the last moment.

This requirement came out as a special condition on three Violence Against Women Act grants in N.D. In response to that requirement, SB2358 changes our current law relating to the request of victims of sexual assault for HIV testing of offenders by adding a time limit.

We already meet the spirit of the law. The spirit acknowledges that a victim of sexual assault may justifiably fear that she/he may have been exposed to the HIV virus in addition to suffering other damages as the result of a sexual assault. In section 1 of 23-07.7.7-01, our law currently allows a test to be ordered by a court upon probable cause with the results to be released to the offender's and victim's physicians. The intent, obviously, is to let the victim know immediately if she/he needs to pursue prophylactic treatment if she/he has indeed been exposed. In North Dakota, nearly 900 victims of sexual assault seek services each year and so if even a small percentage of those victims face contracting HIV, it is significant in terms of numbers. The ND Department of Health prepares for 1800 HIV tests per year; however, we are not able to track how many of those tests are related to sexual assault.

There is only one aspect of our law regarding testing which is not in compliance with VAWA, and that is the requirement that the test be administered "not later than 48 hours after the date on which the information or indictment is presented." The court is currently

required to order the test, based on probable cause, but there is no time limit within which the test must occur.

Determining how we might best meet the federal mandate has not been easy because the federal language is open to interpretation. We sought guidance from the Assistant Attorney General assigned to the Health Department and the Department of Justice attorney who oversees the grants specifically at issue right now; those grants are a State Health Department grant, a grant to the Burleigh County State's Attorney's Office, and a grant to the Grand Forks City Attorney's Office, all under the Grants to Encourage Arrest Discretionary Grant Program.

The steps involved in ordering the testing include the following: 1) charges are filed based on the victim's complaint 2) an arrest warrant or summons is issued 3) a preliminary hearing, which includes a probable cause determination, is held 4) the "information" (charging document) is filed. The federal law requires the test to be administered within 48 hours of the filing of this document, which under our state law doesn't occur until after the first appearance.

In this scenario, when the test was ordered, the defendant would be in court, or in communication with the court, and, as I understand it, the court would procedurally set up a process for a test within 48 hours after the first appearance. Of course it is possible the defendant could flee, but in most cases at this stage that would not be the case. In the event of flight, however, when the alleged assailant was caught and incarcerated for two weeks, another North Dakota law would require HIV testing at the end of that time period, and so even if the 48 hour timeframe could not be met, the opportunity to test would not be lost.

I am not an attorney. This is my layperson's understanding of SB2358. If changes in the bill before you are necessary, we are certainly open to them as long as they adhere to both the spirit and letter of the federal law.

Thank you for your consideration.



Department of Justice
Office on Violence Against
Women

**AWARD CONTINUATION
SHEET
Grant**

PAGE 4 OF 4

PROJECT NUMBER 2004-WE-AX-0051

AWARD DATE 08/28/2006

SPECIAL CONDITIONS

- 18. The grantee agrees that project activities supporting the proposed safety audit shall be developed and implemented in partnership with victim services, law enforcement, prosecution, and court partners, as applicable. In addition, the recipient is required to obtain technical assistance on safety audits from an OVW- designated technical assistance provider.
- 19. The recipient may not obligate, expend, or draw down funds until the audit report for the period ending 6/30/05 has been submitted to the Federal Audit Clearinghouse, the program office has been notified, and a Grant Adjustment Notice has been issued removing this special condition. This special condition can also be removed if the grantee certifies to the OVW program office in writing that it expended less than \$500,000 in Federal funds (from all sources) in the fiscal year(s) for which an audit report was not filed.
- 20. All contracts under this award should be competitively awarded unless circumstances preclude competition. When a contract amount exceeds \$100,000 and there has been no competition for the award, the recipient must comply with rules governing sole source procurement found in the current edition of the OJP Financial Guide.
- 21. Pursuant to 42 USC 3796hh(d), the grantee understands that it may not obligate, expend or drawdown 5% of this award unless the State or unit of local government --

(1) certifies that it has a law or regulation that requires -

(A) the State or unit of local government at the request of a victim to administer to a defendant, against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, testing for the immunodeficiency virus (HIV) not later than 48 hours after the date on which the information or indictment is presented;

(B) as soon as practicable notification to the victim, or parent and guardian of the victim, and defendant of the testing results; and

(C) follow-up tests for HIV as may be medically appropriate, and that as soon as practicable after each such test the results be made available in accordance with subparagraph (B);

or

(2) gives the Attorney General assurances that its laws and regulations will be in compliance with requirements of paragraph (1) within the later of --

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years (January 5, 2008).

The "next session of the State legislature" means the next session after the date on which the award is made. If the grantee submits a certification or letter of assurance in compliance with 42 USC 3796hh(d)(1), a Grant Adjustment Notice (GAN) will be issued, and the funds will become available for drawdown.

If the grantee is an Indian Tribe, it should contact OVW to determine whether it falls within the definition of "unit of local government" as defined by 42 USC § 3791. If it does not, a GAN will be issued and the condition will be removed.

HH #2
1-29-07

Testimony

Senate Bill 2358

Senate Judiciary Committee

Same testimony to House

Monday, January 29, 2007; 10:30 a.m.

North Dakota Department of Health

Good morning, Chairman Nething and members of the Judiciary Committee. My name is Mary Dasovick, and I am director of the Division of Injury Prevention and Control and manager of the Domestic Violence/Rape Crisis Program for the North Dakota Department of Health. I am here to provide information on the impact of Senate Bill 2358 to the North Dakota Department of Health's Grants to Encourage Arrest (Arrest Grant).

Senate Bill 2358 requires defendants charged with a sexual offense under chapter 12.1-20 to be tested for the human immunodeficiency virus (HIV) within 48 hours of the victim requesting such a test of the defendant.

The Arrest Grant is part of the federal Violence Against Women Act that was recently reauthorized and that included various new requirements to the numerous grants funded from the act. The Arrest Grant was awarded to the North Dakota Department of Health from September 1, 2006, through August 31, 2008, for \$513,165. The purpose of the grant is to recognize domestic violence as a crime that requires the criminal justice system to hold offenders accountable for their actions through investigation, arrest and prosecution. I have attached additional information as to how these funds will be utilized by the North Dakota Department of Health to address domestic violence on a statewide basis.

The Arrest Grant includes a new special condition that requires: " the State or unit of local government at the request of a victim to administer to a defendant, against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, testing for immunodeficiency virus (HIV) not later than 48 hours after the date on which the information or indictment is presented..." This new requirement must be met by the end of this legislative session or the North Dakota Department of Health will lose 5 percent of the Arrest Grant appropriation, or \$25,658

The Assistant Attorney General assigned to the North Dakota Department of Health and the U.S. Department of Justice attorney assigned to the Arrest Grant both

concluded the current NDCC 23-07.7-01 is missing the 48-hour time period necessary to meet the new federal requirement.

The North Dakota Assistance Attorney General explained that the indictment or information occurs after the defendant has had a preliminary examination, and the preliminary examination includes a finding of probable cause. That finding of probable cause would trigger the court to order testing.

In more detail, the steps are (1) charges are filed, (2) an arrest warrant or summons is issued, (3) a preliminary examination, which includes a probable cause determination, is held, and (4) the indictment or information is filed. Since the probable cause determination means that there is probable cause to believe the sexual assault occurred, the court will not have to hold another hearing and find that same determination again after the indictment or information has been issued. And when the request for testing comes in, it should just be signed by the judge without further hearings or evidence needed.

No other state or federal funds are available to replace the \$25,658 if the 48-hour requirement is not included in state law. Lack of this funding will impact the North Dakota Department of Health's ability to provide training and technical assistance on keeping officers and victims safe, be victim sensitive, and hold offenders accountable by providing prosecutors with necessary evidence through a thorough and proper investigation of these crimes. This requirement will continue to be a part of the federal grant, and the Department of Health would like to seek funding in the future to address domestic and sexual violence issues in North Dakota.

This concludes my testimony. I am happy to answer any questions you may have.

ATTACHMENT

Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program

Federal Grantor Agency: U.S. Department of Justice, Office on Violence Against Women

Federal Award FY06-08: \$513,165 – awarded to North Dakota Department of Health

Grant Purpose: To recognize domestic violence is a crime that requires the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution.

State Plan: The North Dakota Council on Abused Women's Services (NDCAWS) (state domestic violence/sexual assault coalition) has been contracted to oversee management of the project. NDCAWS will collaborate with Minot State University's Rural Crime and Justice Center and the Northern Plains Tribal Judicial Training Institute, four local domestic violence/rape crisis agencies, and a multidisciplinary advisory team from local law enforcement, domestic violence/rape crisis, tribal, and prosecution agencies to assist in implementing the grant goals.

Funded Agencies: North Dakota Council on Abused Women's Services

Subgrantees: Minot State University's Rural Crime and Justice Center; UND's Northern Plains Tribal Judicial Training Institute; SAFE Alternatives for Abused Families – Devils Lake serving Harvey area; Domestic Violence Crisis Center – Minot; Tri-County Crisis Intervention – Grafton; Three Rivers Crisis Center – Wahpeton

Funded Activities:

Grant Goals

- Implement the model law enforcement domestic violence policies created for North Dakota through the 2004 Arrest Grant.
- Utilize the assistance of Rural Crime and Justice Center to replicate its 2003 comparative analysis to determine if the number of law enforcement agencies with domestic violence policies has increased and if the content of those policies is in line with the best practices documented throughout the model policies.
- Utilize the pool of officers who were trained in the 2004 Arrest Grant to continue to provide technical assistance and training resources for local law enforcement agencies and community response teams on adapting the model policies.
- Develop safety and accountability audit teams in four North Dakota communities to analyze and make recommendations to improve dispatch, law enforcement and domestic violence advocacy response to victims of domestic violence in accordance with the model policy.
- Collect recommendations from safety and accountability audit teams and compile into a "Best Practices" manual for statewide distribution.
- Utilize the assistance of Tribal Justice Institute to provide consultation through roundtable discussions on issues of cross-deputization and enforcement of Full Faith and Credit provisions within North Dakota's four Tribal Nations.
- Provide one statewide training on implementation of the state policy.
- Enhance or develop coordinated community response teams statewide.

Accomplishments

2004 –2006 Arrest grant:

NDCC 14.07.1-14 states "Every law enforcement agency shall develop and implement ... specific operational guidelines for arrest policies and procedures in crimes involving domestic violence." The law was passed in 1989.

A survey was completed on 120 law enforcement agencies with 108 responding. It found 65 percent of those agencies did not have a policy.

Accomplishments:

Developed a model law enforcement domestic violence policy for North Dakota.

Developed a model law enforcement involved domestic violence policy.

Two statewide trainings and two tribal trainings were held in October of year two of the Arrest grant. These trainings involved more than 160 law enforcement officers and other professionals representing 31 out of North Dakota's 53 counties and all four tribes.

Att # 3
1-29-07

PROPOSED AMENDMENTS TO SENATE BILL 2358

Page 2, line 12, delete the period and insert "or after the defendant's initial appearance."

1-31-07
Att #1

PROPOSED AMENDMENTS TO SENATE BILL 2358

Page 2, line 6, before "victim" insert "alleged"

Page 2, line 7, after the phrases "inform the" and "that the" insert "alleged"

Page 2, line 10, after "If the" insert "alleged"

Page 2, line 12, delete the period and insert "or after the defendant's initial appearance."

**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

Representative Duane DeKrey
Chair, House Judiciary Committee
March 6, 2007
Re: Testimony on SB2358

Representative Dekrey and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the North Dakota Council on Abused Women's Services in support of SB2358, as amended.

As a context for this bill, it is important to know that the reauthorization of the Violence Against Women's Act (VAWA) last fall resulted in new requirements by the federal government in order for states to continue to qualify for various projects authorized under the Act and funded by what are known as STOP funds.

One area in which North Dakota was not in compliance was the area of forensic medical exam payments for sexual assault victims, which you will be hearing about later this morning. A second is the issue you have before you in SB2358. We were only very recently made aware of our non-compliance in this regard, and we are very grateful to Senator Carolyn Nelson for agreeing to sponsor this bill at the last moment.

This requirement came out as a special condition on three Violence Against Women Act grants in N.D. In response to that requirement, SB2358 changes our current law relating to the request of victims of sexual assault for HIV testing of offenders by adding a time limit for the court to act on the request.

We already meet the spirit of the law. The spirit acknowledges that a victim of sexual assault may justifiably fear that she/he may have been exposed to the HIV virus in addition to suffering other damages as the result of a sexual assault. In section 1 of 23-07.7.7-01, our law currently allows a test to be ordered by a court upon probable cause with the results to be released to the offender's and victim's physicians. The intent, obviously, is to let the victim know immediately if she/he needs to pursue prophylactic treatment if she/he has indeed been exposed. In North Dakota, over 900 victims of sexual assault seek services each year and so if even a small percentage of those victims face contracting HIV, it is significant in terms of numbers. The ND Department of Health prepares for 1800 HIV tests per year; however, we are not able to track how many of those tests are related to sexual assault.

There is only one aspect of our law regarding testing which is not in compliance with VAWA, and that is the requirement that the test be administered "not later than 48 hours after the date on which the information or indictment is presented." The court is currently

after the date on which the information or indictment is presented." The court is currently required to order the test, based on probable cause, but there is no time limit within which the test must occur.

Determining how we might best meet the federal mandate has not been easy because the federal language is open to interpretation. We sought guidance from the Assistant Attorney General assigned to North Dakota's Health Department and the federal Department of Justice attorney who oversees the grants specifically at issue right now; those grants are a State Health Department grant, a grant to the Burleigh County State's Attorney's Office, and a grant to the Grand Forks City Attorney's Office, all under the Grants to Encourage Arrest Discretionary Grant Program.

The steps involved in ordering the testing include the following: 1) charges are filed based on the victim's complaint 2) an arrest warrant or summons is issued 3) a preliminary hearing, which includes a probable cause determination, is held 4) the "information" (charging document) is filed. The federal law requires the test to be administered within 48 hours of the filing of this document, which under our state law doesn't occur until after the first appearance.

In this scenario, when the test was ordered, the defendant would be in court, or in communication with the court, and, as I understand it, the court would procedurally set up a process for a test within 48 hours after the first appearance. Of course it is possible the defendant could flee, but in most cases at this stage that would not be the case. In the event of flight, however, when the alleged assailant was caught and incarcerated for two weeks, another North Dakota law would require HIV testing at the end of that time period, and so even if the 48 hour timeframe could not be met, the opportunity to test would not be lost.

During the Senate hearing, the ND State's Attorneys' Association raised concerns about the defendant's being available for testing if the "filing of the document" did not coincide with a court appearance. Adding the language about the "defendant's initial appearance" (p2 113) is intended to alleviate this fear. This language was accepted by the Department of Justice attorney overseeing the grants in question as putting North Dakota in compliance with the new federal mandate.

Thank you for your favorable consideration of Engrossed SB 2358.