

2015 HOUSE JUDICIARY

HB 1338

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1338

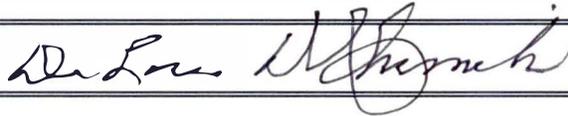
1/26/2015

22541

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to required disclosure of records to the domestic violence fatality review commission.

Minutes:

Testimony #1, 2

Chairman K.Koppelman: Opened the hearing with testimony in support.

Jonathan Byers, Behalf of the Attorney General: In favor of this bill. (See testimony #1) (:1:00-2:44)

Chairman K.Koppelman: I would note for the committee I see the prime sponsor, Rep. Thoreson is absent today attending former Rep. Clark's funeral.

Rep. D. Larson: The language says to report those records in respect to any death that has occurred as a result of domestic violence. How does the hospital find out that that is what caused the death? Is that something law enforcement looks into?

Jonathan Byers: I would read it broader than that; disclosure all records of that person with respect to any death that has occurred. Even if they had a number of events leading up to their death where they came in with a broken arm; then a black eye and things like that. If they did get taken to the hospital at the time of the fatal occasion that that record would be provided as well. The committee in their request would indicate back to the hospital we believe you may have records relating to a domestic violence death.

Rep. D. Larson: I am trying to picture how people would really know that this person that just died is a victim of domestic violence? How would you excess records to determine whose records you want to look for?

Jonathan Byers: We make a request to the hospital facility based upon a case by case basis.

Rep. Lois Delmore: Those records could be at another hospital from where someone died as well so that would also give you the authority if someone died in Bismarck, but there were questions about it that you could get the records from Minot or wherever they might be?

Jonathan Byers: Since this doesn't limit it to one hospital facility; as long as we were able to get any information that that person had records at a different facility that might be helpful to us we would be able to ask for a multiple facilities.

Rep. K. Wallman: Would these be for open or ongoing investigations that you would be able to request the medical records of the victim?

Jonathan Byers: By the time the Domestic Violence Fatality Review Commission looks at the case it is generally been when the investigation has been closed. The cases we have reviewed so far have been one or two years down the road. We don't want to use the commission to interfere with the possible prosecution either.

Rep. K. Wallman: So the review commission could reopen a case based on information that you would receive?

Jonathan Byers: The idea behind this is so we can find out the weak links behind the system; things that need to be fixed and how cases are handled; if we see something that law enforcement or persecutors might have done different it will help with future cases. It is pretty unlikely that we would find anything that would help with the current prosecution.

Rep. K. Wallman: Would this also include a perpetrator of domestic violence or only victims whose violence results in death?

Jonathan Byers: The investigation is supposed to be comprehensive so to give you an example of what the question you just asked we reviewed a case involving a domestic violence death in Bismarck. The perpetrator of that was convicted of a homicide crime and was in the state penitentiary so prior to the commission meeting I actually went to the pen and interviewed him on camera and the commission was able to watch what he had to say about it on camera.

Rep. K. Wallman: I was wondering if you could possible ever happen. Domestic violence that results in someone's death and no one is charged with a crime, but there is a suspicion based on investigations of the circumstances preceding the death of the victim you would be able to look for an gather mental health records on someone you thought might be the perpetrator and that information might lend an air of guilt you suspect might be the perpetrator. Could the records actually be used to influence incarcerating someone?

Jonathan Byers: I will not rule that out, but the information would still have to be gathered with full recognition of their constitutional rights as if law enforcement had gotten the record. As long as the person wasn't in custody or we don't have to violate their own confidentiality or privacy with their own consoler. It is not the intent of the commission, but I think if we did find information like that it would a shame to not use it.

Rep. K. Wallman: HB 1338 seems to take some of that confidentiality that you are saying.

Jonathan Byers: We are looking at the confidential records of the victim. We have reviewed one or two cases that were homicide suicide cases so there is even no perpetrator to charge anymore. It can be used to see why this happened and what the system could have done differently we need to have those records.

Rep. G. Paur: The HIPA is protecting the victim, but the people under your bill seem to be extremely wide and varying. You have a long list of them; would you open these records up for this review?

Jonathan Byers: They maybe members of the commission with the people you outlined, but I would point to the last sentence on Subpart 3 b of the bill and it says that the domestic violence fatality review commission and each member of the commission shall preserve the confidentiality of any records examined. So we did have a member of one of those entities come to the committee meeting that may be information that we wouldn't want to get out to their whole organization, but they are bound by that last sentence.

Rep. G. Paur: If they do disclose something; then what happens?

Jonathan Byers: I don't have the whole statute in front of me so I am not aware of a penalty clause or not.

Rep. K. Hawken: I think when we were looking at this two years ago the idea was to try and help domestic violence victim's so they weren't bad and so we are taking it in a direction it was never meant to go. It is very difficult to get help in this body for shelters or consoling or anything else that has to do with domestic violence. This was one of those things to say let's see if this is a problem so we have this now to look. We know it is a problem but now they can actually prove that it is. We are not trying to get anybody else. We are trying to see why to see if we can fix parts of the system.

Rep. Mary Johnson: To Rep. Larson's point regarding that a death has occurred as a result of domestic violence. Somewhere else does it specifically state that it determines that it states the death was a result of domestic violence incident and therefore this come into effect. Otherwise it seems like this is going now where. I understand the confusion.

Jonathan Byers: I hadn't given that issue much thought. The cases we reviewed it is clear when the perpetrator has killed his spouse and shots himself. That is clearly domestic violence incident. This is in cases where it is not clear who did it and if it was domestic violence we may have to take a look at that.

Rep. Mary Johnson: I think it could alieved be any death that has occurred because of domestic violence as determined by the commission so then it takes it out of the doctors hands to say anything.

Jonathan Byers: That sounds like an easy and useful amendment.

Chairman K.Koppelman: Some of the commission's efforts not able to be completely fulfilled because of this restriction with HIPA. Can you give us some examples of how the commission is working and is the main objective to gather statistical data so that you can further inform future public policy discussions or future changes in the system that might be beneficial and if so how can it be beneficial?

Jonathan Byers: Static gather is one of the primary functions. Things that may not be a legislative fix is one of the things we ran into where there was a 911 call and they don't know whether to they think there is probable cause enough to enter the residence so we can't legislate what is probable cause, but we can go to the state radio dispatchers and asked them to try and get consent when you still have the 911 caller on the phone. Also to provide training to law enforcement on what things would constitute probable cause once they do get there.

Rep. D. Larson: I think what Rep. Hawken's said was quite helpful. I am getting it now. Here is what you are trying to do. Discussed the scenario where there was a 911 call and after the incident and this would give you a picture of how to be more preventative. Is this what the purpose of this is?

Jonathan Byers: That is exactly it. When we meet in the morning the commission gets a 3 ring binder of information that we have gathered and they review that. One of the first things we do then is take that information and try to create a timeline from when things started to look like they were going astray with this relationship.

Rep. Lois Delmore: On the first line of the bill I believe you have of of the; so you may want to change that as well.

Janelle Moos, Executive Director of CAWS ND: (See testimony #2) (20:48-24:00)

Rep. Karls: Do you ever get any push back from the families of these victims when you request these records or do they have no say in the matter?

Janelle Moos: No. I actually sat down with a homicide victim and she was actually open to the process. She welcomed a review because often time's family members don't understand why the violence is happening let alone why a homicide occurred so this potentially offers them at least some insight into it. This is ultimately looking at prevention.

Chairman K.Koppelman: You use the word homicide several times in your testimony. The commission is a fatality commission so do you find that most of the deaths that are involving domestic violence are actual murders or homicides or are they cases where a death occurs as a result of an unintentional action? What kind of data do you have on that?

Janelle Moos: The cases that we review it will indicate whether or not a weapon was used and if you look at most of our cases firearms are a big risk factor so we dig a little bit deeper. It is never by accident. We make sure we take the report that the Attorney General generates and make sure 1. It is domestic violence and 2. The case is closed and we can move forward with that case.

Chairman K.Koppelman: You don't have a lot of cases where there is an argument and a lot of pushing and shoving going on and somebody falls down a flight of stairs? It is usually more violent and intentional than that.

Janelle Moos: We rely on law enforcement and other folks that are investigating the crime to identify what were the cause of the death.

Chairman K.Koppelman: Are you seeing that most of the deaths are clear cut homicide cases?

Janelle Moos: Yes that is correct.

Opposition: None

Neutral: None

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1338
1/27/2015

22660
 Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Chairman K.Koppelman: Discussed HB 1338. This is the bill that deals with domestic violence and the fatality review commission Jonathan Byers testified on.

Do Pass Motion Made by Rep. Lois Delmore: Seconded by Rep. K. Hawken:

Rep. L. Klemin: I have in my notes there should be an amendment on this.

Chairman K.Koppelman: Would you withdraw your motion.

Rep. Lois Delmore moved to withdrawn her motion and the seconded by Rep. K. Hawken

Rep. Mary Johnson: (not on mike) **Motion Made to amend HB 1338 by Rep. Mary Johnson: Seconded by Rep. D. Larson**

Chairman K.Koppelman: So the motion is to remove the second of on line 1 and after the word violence on line 19 to add, as determined by the commission.

Discussion: None

Voice vote passed.

Motion Made to Do Pass As Amended by Rep. Lois Delmore: Seconded by Rep. K. Hawken

Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Lois Delmore:

sk
1-27-15

January 27, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1338

Page 1, line 1, remove the second "of"

Page 1, line 19, after "violence" insert ", as determined by the commission"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1338**

House JUDICIARY Committee

- Subcommittee Conference Committee

Amendment LC# or Description: 15.8175.01001.02000

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Mary Johnson: Seconded By Rep. D. Larson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment: _____

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

Voice Vote Carried

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL NO. HB 1338**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.8175.01001.02000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Lois Delmore: Seconded By Rep. K. Hawken:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	----				
Rep. Paur	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment: Rep. Lois Delmore:

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

REPORT OF STANDING COMMITTEE

HB 1338: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1338 was placed on the Sixth order on the calendar.

Page 1, line 1, remove the second "of"

Page 1, line 19, after "violence" insert ", as determined by the commission"

Renumber accordingly

2015 SENATE JUDICIARY

HB 1338

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Fort Lincoln Room, State Capitol

HB 1338
3/18/2015
25052

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1,2

Ch. Hogue: We will open the hearing on HB 1338.

Ken Sorenson, Attorney General's Office: Support (see attached #1). He read the testimony of Jonathan Byers.

Ch. Hogue: What is the number of cases the Commission looked at in the last couple of years?

Ken Sorenson: We reviewed five cases.

Ch. Hogue: Thank you. Further testimony in support.

Janelle Moos, Exec. Dir. CAWS, FUSE: Support (see attached #2). Did not appear but her testimony was distributed to the committee.

Rep. Blair Thoreson: Sponsor, support. I was planning to introduce the bill and have the AG's office explain it. I was contacted by the AG's office on this issue several months ago, and agreed to sponsor this piece of legislation. As the previous speaker said, one case is too many. I would ask the committee for a Do Pass motion.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are the committee's wishes for HB 1338?

Sen. Grabinger: I move a Do Pass.

Sen. Armstrong: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Armstrong

Date: 3/18/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1338

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

REPORT OF STANDING COMMITTEE

HB 1338, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1338 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1338

HOUSE BILL 1338 TESTIMONY
HOUSE JUDICIARY COMMITTEE
JANUARY 26TH, 2015
PRAIRIE ROOM

#1
HB 1338
1-26-15
Pg 1

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 1338.

Four years ago, an Act passed by the 62nd Legislative Assembly tasked the Attorney General with creating a domestic violence fatality review commission to investigate and review the facts and circumstances of all deaths that occur in the state as a result of domestic violence. The early work of the commission brings me back to address two issues.

The first issue that arose is providing the commission access to hospital records relating to the domestic violence medical history and death. HIPPA prohibits disclosure of such records, even to law enforcement, unless state law authorizes the disclosure. HB 1338 provides that authorization.

The second problem that we identified is the timing of the reports from the commission back to the attorney general. Since the report is supposed to address the work of the committee throughout the entire year, a December thirty-first deadline

#1
HB1338
1-26-15
Pg 2

leaves no time for the data to be analyzed and a report prepared. HB 1338 moves that deadline to March 31st of the following year.

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



ending sexual and domestic violence

Testimony on HB 1338

House Judiciary Committee

January 26, 2015

#2
HB1338
1-26-15
pg 1

525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
www.ndcaws.org • facebook.com/NDCAWS • Twitter @NDCAWS

Chair Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf to provide you an overview of HB 1338 and to urge your support of the bill.

According to the Office of Attorney General, in North Dakota, between 1992 and 2012, 51% of homicide deaths involved domestic violence. In response, the Domestic Violence Fatality Review (DVFR) Commission was created by the 62nd Legislative Assembly and established within the Office of Attorney General. N.D.C.C. § 14-07.1-20. The Commission is charged with reviewing domestic violence deaths that have occurred in the state, recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence. I currently Co-Chair the DVFR Commission with Assistant Attorney General Jon Byers. Other Commission members include law enforcement, victim advocates, state agencies, health professionals, and prosecution.

To date, the DVFR Commission has reviewed four cases and produced three reports summarizing the work and recommendations. Several factors that were common in all the cases reviewed by the Commission include:

- There was a history of prior domestic violence incidents in the relationship, the majority of which generated a response from law enforcement;
- Alcohol use by the offender only, or by both offender and victim, was a contributing factor in the previous domestic violence incidents and also in the events on the night of the murder.
- In all of the cases reviewed, the offender, the victim, or both, had a history of treatment for a mental illness.

To read the full reports you can go to <http://www.ag.nd.gov/Reports/2013DVFR.pdf>

The work of the DVFR Commission is dependent on receiving documents, case history, photos, etc. that help the Commission recreate the relationship by building a timeline and identifying

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1-24-15
Pg 2

points in time that if someone would have intervened the homicide. But sadly because homicide did occur the DVFR Commission's goal is to learn from other cases in order to make policy recommendations, offer training and create tools that may prevent future homicides.

As you can see from HB 1338, two small changes are proposed. Since we began case review, the staff at the Attorney General's office has had difficulty obtaining medical records of both the offender and the victim for case review despite several making several requests. Medical records, if not included, have left holes in the timeline and left Commission members with questions about other red flags in the case. By having the records the Commission will be able to study the entire care and make more sound conclusions about our findings. All of the information obtained by the DVFR Commission is confidential and is destroyed once the review is complete.

The other change is in the reporting deadline. Currently, a report outlining the findings of the DVFR Commission is due by December 31st of each year. Since most statistics aren't compiled or submitted to a reporting agency by the end of the year moving the due date for the report would allow for the inclusion of a full year of statistics on domestic violence and homicide each year.

The DVFR Commission has proven to be a very important tool in aiding the state respond to and prevent domestic violence therefore we urge a DO PASS on HB 1338.

Thank you.

1-1

ENGROSSED HOUSE BILL 1338 TESTIMONY
SENATE JUDICIARY COMMITTEE
MARCH 18TH, 2015
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 Engrossed House Bill 1338.

Four years ago, an Act passed by the 62nd Legislative Assembly tasked the Attorney General with creating a domestic violence fatality review commission to investigate and review the facts and circumstances of all deaths that occur in the state as a result of domestic violence. The early work of the commission brings me back to address two issues.

The first issue that arose is providing the commission access to hospital records relating to the domestic violence medical history and death. HIPPA prohibits disclosure of such records, even to law enforcement, unless state law authorizes the disclosure. HB 1338 provides that authorization.

The second problem that we identified is the timing of the reports from the commission back to the attorney general. Since the report is supposed to address the work of the committee throughout the entire year, a December thirty-first deadline

leaves no time for the data to be analyzed and a report prepared. HB 1338 moves
that deadline to March 31st of the following year.

1-2
3/18/15

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



2-1

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Testimony on HB 1338
Senate Judiciary Committee
March 18, 2015

Chairman Hogue and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf to provide you an overview of HB 1338 and to urge your support of the bill.

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To date, the DVFR Commission has reviewed four cases and produced three reports summarizing the work and recommendations. Several factors that were common in all the cases reviewed by the Commission include:

- There was a history of prior domestic violence incidents in the relationship, the majority of which generated a response from law enforcement;
- Alcohol use by the offender only, or by both offender and victim, was a contributing factor in the previous domestic violence incidents and also in the events on the night of the murder.
- In all of the cases reviewed, the offender, the victim, or both, had a history of treatment for a mental illness.

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3/8/15

The work of the DVFR Commission is dependent on receiving documents, case history, photos, etc. that help the Commission recreate the relationship by building a timeline and identifying points in time that if someone would have intervened the homicide. But sadly because homicide did occur the DVFR Commission's goal is to learn from other cases in order to make policy recommendations, offer training and create tools that may prevent future homicides.

As you can see from the original version of HB 1338, two small changes are proposed. Since we began case review, the staff at the Attorney General's office has had difficulty obtaining medical records of both the offender and the victim for case review despite several making several requests. Medical records, if not included, have left holes in the timeline and left Commission members with questions about other red flags in the case. By having the records the Commission will be able to study the entire care and make more sound conclusions about our findings. All of the information obtained by the DVFR Commission is confidential and is destroyed once the review is complete. The engrossed version of the bill included one small change on line 19 that clarifies that the Commission makes the determination of what cases will be reviewed and which records will be requested in deaths resulting from domestic violence.

The other change is in the reporting deadline. Currently, a report outlining the findings of the DVFR Commission is due by December 31st of each year. Since most statistics aren't compiled or submitted to a reporting agency by the end of the year moving the due date for the report would allow for the inclusion of a full year of statistics on domestic violence and homicide each year.

The DVFR Commission has proven to be a very important tool in aiding the state respond to and prevent domestic violence therefore we urge a DO PASS on Engrossed HB 1338.

Thank you.