

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1363

2001 HOUSE JUDICIARY

HB 1363

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363

House Judiciary Committee

Conference Committee

Hearing Date 01-30-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		1819 to 6247
TAPE I		x	01 to 2199
TAPE I		x	4223 to 6247
TAPE II	x		01 to 983
Committee Clerk Signature <i>Juan P. [Signature]</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1363. Relating to a mandatory assessment process for simple assault in domestic violence cases, relating to the penalty for assault in a domestic violence case and to provide a penalty.

Rep Delmore: District 43 of Grand Forks, south west part of the city. I am here in support of HB 1363. In North Dakota, domestic violence is becoming our most serious violent crime. Over fifty per cent of our homicides are domestic violence. Goes on to give static's on different categories of domestic violence. This bill will do three things. number 1, it will create an identifiable climate of domestic violence in North Dakota, number 2 it will enhance the penalty for domestic violence from a class B to a class A misdemeanor and number 3, it will require judges, when possible, to sentence the offender to risk assessment and counseling for the offender.

Rep Mahoney: District 33, Mercer, Olive and part of Dunn County. Here to testify in favor of HB 1363. Gave some examples on violence on children. Was in favor of a higher penalty.

Rep Eckre: What is the minimum/ maximum for a class A misdemeanor?

Rep Mahoney: A class A misdemeanor is up to a year in prison and \$2,00.00.

Rep Eckre: Is there a minimum too?

Rep Mahoney: NO. A class B misdemeanor is 30 days and \$1,000.00. There is no minimum or either of those.

Lynne Tally: Executive Director of S.A.F.E. Shelter in Jamestown, North Dakota and Vice President of the North Dakota Council on Abused Women's Services (see attached testimony)

Chairman DeKrey: Are there any questions, if not thank you for appearing.

Hasse Roberdeau: I live and work here in Bismarek. Was asked to speak on assessment and group treatment for batters. Background, worked in domestic violence for 10 years in assessment and treatment for victims. She does four groups a week for victims and one group for batters. She reads into testimony a letter from the co-leader of the batters group Dennis Larkin. The letter was in support of HB 1363. At LSS Dennis conducts all the assessments of clients. The assessment process takes one to two hours which includes an interview, a written questionnaire and check list which helps in making a determination. He determines if it is domestic violence and what form of treatment is recommended. Usually group is the form of treatment. The assessment cost is \$65.00. Group therapy consists of two hours once a week for a minimum of twenty four weeks, we encourage them to go fifty-two weeks. They come either volunteer or court ordered. The longer they stay in treatment the more likely they will change. There is a policy that batters should pay a portion of their treatment. Treatment is available in all eight regions of the state. Suggested amendments - on page 2 line 1 provide professional services
On page one line three - after domestic violence insert offender treatment.

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Rep Klemm: Would you clarify the amendments? Delete the reference to professional services on page 2 line 1??

Hasse Roberdeau: That would be correct.

Rep Klemm: Starting on line 23, page one with the words assessment and counseling with a domestic violence program unless the court makes a written finding. Remove or other agency that.

Hasse Roberdeau: That would be correct.

Rep Delmore: If we do that will it limit the treatment or services?

Hasse Roberdeau: Would it limit the folks in rural areas, that is a possibility.

Chairman DeKrey: If there are no further questions, thank you for appearing.

Mark Boening: Assistant States Attorneys of Cass County. Spoke in support of HB 1363.(see attached testimony).

Rep Klemm: Supervised probation, I don't understand where in this bill it requires supervised probation.

Mark Boening: It doesn't, it gives the court the option where it doesn't have it now.

Rep Klemm: If it was a class A misdemeanor, you would have supervised probation?

Mark Boening: It becomes an option for the judge. Judges are against any thing that restricts their freedom to sentence.

TAPE 1 SIDE B

Mark Boening testimony continues.

Rep Klemm: The key to this thing is the court had the option to have supervised probation. A class B misdemeanor doesn't require that but a class A would require.

Mark Boening: that would be better than nothing.

Rep Klemin: There is opposition to raising this to a class A.

Mark Boening: That is true, it is the collateral consequence of being prosecuted in district court as opposed to municipal court. Gives several examples.

Chairman DeKrey: Seeing no further questions, thank you for appearing.

Kari Sage: testified in favor of HB 1363, appearing as police officer from the City of Minot.

Chairman DeKrey: Is there anyone here wishing to testify in opposition of HB 1363?

Ladd Erickson: Morton States Attorney Office, we are opposed to the bill as written. Do not want the Legislature to take away simple assault. Bismarck had some 800 simple assault calls. Also would like the committee to look at the repeated offender and possibly have the penalty raised.

Chairman DeKrey: Did I hear you say the States Attorneys were against this.

Ladd Erickson: Mr Mattson is here, and he can talk about that.

Rep Delmore: The teeth of the bill is to make it a real penalty. States Attorneys were in on the writing of the bill and were on board.

Ladd Erickson: The first time the Association was made aware of the bill was last Friday. Domestic violence create protections problems.

Rep Delmore: Domestic violence is not just female or male, it is much broader than that.

Ladd Erickson: The most typical cases is the dominant male against a female, but there are others.

Rep Mahoney: I am troubled by the suggestion that some aren't so bad we still have to have tools to sort this out, perhaps we could narrow it down. Could this bill be amended to make it work.

Ladd Erickson: I don't see the distinction, why not make it so it is an A misdemeanor or the repeater and first offense Class B. I don't know what the problem is with reporting, we don't have any in Cass.

Rep Mahoney: There are some victims, who have a hard time coming forward, the repeat offender sort of thing, sometimes you are lucky to get one offense You would have to prove the offense before you but also the ones before that also.

Ladd Erickson: I don't know how it would play out across the board.

Rep Maragos: Your positions regarding your ability to prosecute, wouldn't the same problem be there for class B to class A. How is that effected by the level of the charge?

Ladd Erickson: The reason is that a B misdemeanor is a 6 person jury and an A is 12 persons, but Municipal Court is a bench trial.

Rep Klemin: If you had higher penalty, that doesn't mean you are required to charge at that penalty.

Ladd Erickson: There is that possibility.

Rep Klemin: Discussed was that there is no option for the court to order supervised probation for domestic violence, but would be if it was a Class A.

Ladd Erickson: That is not an issue for us, I don't know across the state.

Rep Maragos: What gives you the ability and others can't or won't do it.

Ladd Erickson: We have a contract with a private contractor that came through a grant.

Chairman DeKrey: We will be in recess until 3:00 pm.

Chairman DeKrey calls the committee back to order and takes up HB 1363, with the opposition.

John Olson: North Dakota states Attorney Association and North Dakota Peace Officers

Association my opposition is trying to design a system that is efficient and capable of handling these kinds of cases. My opposition to the bill is the fact that there will be a large shift of first time simple assault from municipal court to district court. Section two is fine but we urge to keep the simple assault.

Rep Delmore: I'm not convinced there is a problem. I don't think you have to go to this section of the code for simple assault.

John Olson: Charlie Whitman says there is a large number that are charged with simple assault in municipal court. We may have to charge with disorderly conduct and we don't think that is appropriate.

Rep Delmore: That is the teeth of the bill, this penalty is totally where it should be.

John Olson: Looking at the statute, you are not going to get the penalty on the first offense.

Rep Delmore: The bill does not mandate that.

John Olson: No, it doesn't, but it does mandate a shift.

Rep Delmore: I have a problem with how they are handled now.

John Olson: I know that happens.

Rep Mahoney: The first time offender, what level of penalty, are we losing sight, are we doing convenience?

John Olson: I don't think we are saying that, first time offenders are more officialty handled in municipal court.

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Rep Mahoney: A lot of cases, they will get a suspended or deferred imposition of sentence, when we look at these things we try to find something that is going to be appropriate. A suspended sentence has jail time over their head, isn't that a consideration too.

John Olson: I think it is. The system right now is designed to handle simple assault, leave it that way.

Rep Onstad: Currently, any domestic violence, do you classify as a Class B?

John Olson: Domestic violence is not a crime, what we are talking about the effect.

Rep Onstad: If this becomes a Class B, do you mandate any kind of a domestic violence offender program?

John Olson: Yes.

Rep Onstad: Are they followed up?

John Olson: I don't know.

Rep Klemin: Would there be any problem with adding language for supervised probation?

John Olson: In rural counties they don't have those programs. I don't believe having a second provision in would help. Cities are not equipped with staff to handle right now.

Rep Klemin: Looking at aggregated assault as a Class B felony.

John Olson: In order to elevate the charge you have to show serious body injury.

TAPE II SIDE A

Rep Klemin: Talking still about a stage in between class A and class B?

John Olson: There is .

Rep Klemin: Would it not be up to the States Attorney to decide?

John Olson: Doug Mattson can better answer that question.

Rep Klemm: We would have three stages of assault?

John Olson: Yes.

Doug Mattson: Ward County, Co-Chairman States Attorney Legislative Committee. There are three forms of assault 1) simple assault; 2) assault; 3) aggregated assault. A bench warrant is a form of supervised probation. We would urge you to keep simple assault, because it moves through the system faster. We want to get the first time offenders into counseling. Section two is a good point in the bill.

Chairman DeKrey: The problems is the morning after, they switch sides, if we raise the level of the crime, are they more or less likely to charge the offender?

Doug Mattson: A charge of a charge. Goes on to give examples. He pointed out that a bench trial goes through in a month or two in municipal court, but district court there can be a delay of up to six or eight months.

Rep Delmore: How many times, is the charge really the first time?

Doug Mattson: It would be speculation on his part.

Rep Delmore: This bill doesn't say anything about mandated supervised probation. Wouldn't there be a pretty good fiscal note, if we mandated everything?

Doug Mattson: In terms of treatment, we want it mandated, but we need the conviction first then the court order treatment.

Chairman DeKrey: If there are no further questions, we will close the hearing on HB 1363.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363a

House Judiciary Committee

Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE 1		x	2557 to 3001
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1363. Rep

Delmore explains the amendments.

DISCUSSION

Chairman DeKrey The amendments are through line 2 of page 2 down to section 3. Rep

Mahoney moved the amendments, seconded by rep Maragos. The amendments were voted on by voice vote. Amendments carry.

Chairman DeKrey: HB 1363 has been amended and we will hold this for a committee action.

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BILL/RESOLUTION NO. Hb 1363b

House Judiciary Committee

Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		5670 to 6240
TAPE II		x	01 to 574
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman DeKrey called the committee to order and we will take up HB 1363.

Charles Placek: DOCR was called in to explain the amendments, and after the amendments were approved the fiscal note would go away.

DISCUSSION

TAPE II SIDE B DISCUSSION CONTINUES

COMMITTEE ACTION

Rep Delmore moved to further amend HB 1363, Rep Mahoney seconded the amendments.

Voice vote was taken on HB 1363 and the amendment passed.

Chairman DeKrey: What are the wishes of the committee. Rep Maragos moved a DO PASS us amend, Rep Onstad seconded the motion. The clerk will call the roll on a DO PASS as amend on HB 1363. The motion passes with 13 YES, 1 NO and 1 ABSENT. Carrier Chairman DeKrey

