

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1238

2007 HOUSE JUDICIARY

HB 1238

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1238

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/30/07

Recorder Job Number: 2295

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1238.

Rep. Delmore: I am a sponsor of this bill, gave background and explained the bill. We saw parts of this bill last session. It's one of the many factors that law enforcement takes into account in violent situations; things go gets hurt, who is the most violent. (see attached testimony).

Rep. Meyer: When we dealt with this bill before, can you refresh my memory on what happened.

Rep. Delmore: Portions of this are already in statute. This will put in specific language for predominant aggressor.

Rep. Koppelman: I have a question on self-defense. Predominant aggressor does that necessarily mean the one that uses the most or strongest force and if someone presents a threat and attacks you with a knife and you happen to have a gun, and you defend yourself, are you the predominant aggressor because you used the strongest force.

Rep. Delmore: Actually both people could be placed under arrest depending upon police determination. But if you look at page 2 of the bill, it says considering certain factors, including the comparative severity of injuries involved, likelihood of future harm, existence of

corroborating evidence, the party exhibiting the most fear, which one acted in self defense.

The officers would have all of that information to look at and they will have the training in place so they know what to look for and will determine based on those factors. It may not be that I've beaten you the worse that I'm arrested. It took a whole number of factors and variables to look at and make that determination.

Rep. Charging: With the bill we heard this morning, it might be hard to know what happened.

Rep. Delmore: I wanted to know the effect of that, and someone spoke to that later. It would be a very scary situation.

Rep. Charging: It is not always the male that is the predominant aggressor.

Rep. Delmore: It has never been in the best interests of any bill to make it gender biased.

That's one of the reasons that the factors are in there. It doesn't always necessarily mean the biggest person is the predominant aggressor.

Chairman DeKrey: Thank you. Further testimony in support.

Shelly Carlson, Criminal Justice Project Coordinator at ND Council on Abused Women's Services: (see attached testimony).

Rep. Koppelman: Just looking at the section that talks about having the existing law regarding self-defense on page 2, lines 17-20, it looks like that has been moved, was it moved somewhere else. Is there a shift in the definition.

Shelly Carlson: Actually the amended version would keep that in.

Chairman DeKrey: Thank you. Further testimony in support of HB 1238.

D. Joyce Kitson: (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Aaron Birst, ND Association of Counties, ND State's Attorneys Association: We support this bill. We weren't involved in drafting the amendment. We are assuming that the

page that has the one paragraph is what the final version of the bill looks like. We support that version. From my understanding from Ms. Carlson, the arrest procedures that were overstruck, and they put in the new language.

Chairman DeKrey: Thank you. Further testimony in support.

Keith Witt, Deputy Chief, Bismarck Police Dept.: I just want to say from a law enforcement perspective, I just want to say that I am in support of the amendments to this bill. I think it is a good thing. It is consistent with our current practices in law enforcement training. Basically we call the perpetrators the predominant aggressor, so that is consistent with how we do things in terms of training and writing police reports.

Rep. Koppelman: What do you see as the substantive change in the bill.

Keith Witt: I think this change clarifies what is being done. Police reports refer to the person being arrested as the predominant aggressor, and I think it does create some confusion, because if you look back to the Century Code, it uses different terminology, and it puts into law that officers shall take other things into consideration.

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

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1238a

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/30/07

Recorder Job Number: 2304

Committee Clerk Signature

A. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1238.

Rep. Delmore: I move the amendments (explained the amendments).

Rep. Koppelman: Second.

Rep. Klemin: These amendments don't specifically say so, but are they retaining the definition of predominant aggressor.

Rep. Koppelman: My understanding of the amendments addresses section 2, so what is in section 1 would stay which is the definition.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Wolf: I move a Do Pass as amended.

Rep. Meyer: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Kingsbury

House Amendments to HB 1238 (70516.0101) - Judiciary Committee 02/02/2007

Page 2, line 17, remove the overstrike over "~~acted in self defense as defined in section 12.1-05-03. If self defense is not~~"

Page 2, remove the overstrike over line 18

Page 2, line 19, remove the overstrike over "~~investigation, the officer~~", after "determine" insert "shall consider", and remove the overstrike over "~~which party~~"

Page 2, line 21, after "involved" insert ", any history of domestic violence, or any other violent acts that the officer can reasonably ascertain"

Page 2, line 22, remove ", the existence of corroborating evidence, the party"

Page 2, remove lines 23 through 28

Page 2, line 29, remove "response for a party who was not the predominant aggressor"

Renumber accordingly

Date: 1/30/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1238

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Wolf Seconded By Rep. Meyer

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. Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1238: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1238 was placed on the Sixth order on the calendar.

Page 2, line 17, remove the overstrike over "~~acted in self defense as defined in section 12-1-05-03. If self defense is not~~"

Page 2, remove the overstrike over line 18

Page 2, line 19, remove the overstrike over "~~investigation, the officer~~", after "determine" insert "shall consider", and remove the overstrike over "~~which party~~"

Page 2, line 21, after "involved" insert ", any history of domestic violence, or any other violent acts that the officer can reasonably ascertain"

Page 2, line 22, remove ", the existence of corroborating evidence, the party"

Page 2, remove lines 23 through 28

Page 2, line 29, remove "response for a party who was not the predominant aggressor"

Renumber accordingly

2007 SENATE JUDICIARY

HB 1238

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1238**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3995

Committee Clerk Signature

Mona L. Salby

Minutes: Relating to law enforcement procedures in crimes involving domestic violence.

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

Testimony in Favor of the Bill:

Shelly Carlson, ND Council on Abused Women's Services – Introduced the bill – Att. #1

Sen. Fiebiger asked if predominate aggressor was used in other states. They discussed the confusion of using the "primary" was conscrewed as 1st aggressor. **Sen. Nelson** discussed the bill from the last session. **Sen. Olafson** questioned if prior history can be considered and the committee spoke of an incident. They also discussed the language "domestic violence", the ability to use information other than law enforcements information; for example, neighbors, history of a perpetrator from a prior relationship.

Sen. Lyson stated that this is an investigative process and would require "man hours" to obtain all this information should there not be a fiscal note with the bill.

Rep. Delmore, Dist. #43, also introduced the bill (meter 16:30) stating that this is not new to the legislators and that domestic violence is the number 1 hazard in our state. She gave a

history of the legislation introduced last session and how now all parties are on board with this bill.

John Olson, Lobbyist for ND Police officers Assoc., stated that they are also in support of the bill.

Sen. Lyson asked him if he had concerns of civil suits being filed against law enforcement because of this type of labeling. Mr. Olson responded that there is always the risk of civil liability. This will expand on probable cause and that would lead to support the officer. They spoke of a scenario. This bill may add support to the for officer's decision.

Bonnie Polachek – ND Abused Women Resources spoke of states in the system that allow officers acting in good faith. She referred to the “Full Faith and Credit Statue”

The committee discussed there concerns of a law suit. This bill is only a tool combined with current law there is adequate protection. The comment was said that this language would probably help in a lawsuit.

Sen. Nelson (meter 29:16) and Bonnie spoke to what the problem was in the bill last session.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

Sen. Olafson made the motion to Do Pass HB 1238 and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
February 27, 2007 1:32 p.m.

Module No: SR-37-4022
Carrier: Olafson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1238, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1238 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1238

Talking Points: Most Immediately Significant Aggressor

HISTORY:

In the 1980's mandatory arrest laws were implemented. Officers, feeling their hands had been tied by these "mandatory" laws, starting following the strict letter of the law and arresting both parties, deciding to "let the courts figure it out." Soon, officers and advocates realized victims were being arrested. This led to practitioners attempting to determine a framework to assist officers in determining who to arrest in situations where both parties may have used violence. Soon the term "predominant aggressor" emerged. It seeks to help officers sort out "who was doing what to whom with what impact."

This concept was added to the ND DV code last session – and was intended to be "predominant aggressor"; however, the language was changed from "predominant aggressor" to "most immediately significant aggressor".

The current terminology in ND law is confusing to law enforcement and makes it extremely difficult to provide training on how to investigate in situations where this issue arises. NDCAWS has provided model law enforcement domestic violence policy adaptation technical assistance to fourteen areas throughout the state and each time this issue has had to be addressed.

PRIMARY PROVISIONS:

1. **How does the "predominant aggressor" concept assist law enforcement?** *The concept of predominant aggressor provides law enforcement with a framework to determine – in situations where both parties may have used violence – which party should be subject to arrest.*
2. **Does "most immediately significant aggressor" really mean "predominant aggressor"?** *Yes – but that is not how the legislature chose to write the law.*
3. **Does "immediate" mean "first" aggressor?** *No – it does not necessarily mean the person who struck first. A good predominant aggressor investigation considers this only as a factor in ascertaining probable cause.*
4. **Does significant aggressor mean the one who perpetrated the most violence?** *Not necessarily. An in-depth predominant aggressor investigation considers this only as a factor in ascertaining probable cause*
5. **NDCC 14-07.1-10(2) specifically states "comparative severity of injuries – doesn't this mean the person who perpetrated the most violence? This is intended to be one factor for law enforcement to look at during their investigation – not the only factor.**

6. **How does law enforcement provide training on predominant aggressor when our law says "most immediately significant aggressor"?** *Law enforcement has interpreted "the most immediately significant aggressor" to mean "predominant aggressor" and are providing training based on this interpretation. Across the nation, this is the language utilized by law enforcement – North Dakota is not an exception. ND law should reflect current practice and procedure.*
7. **Does this law prohibit dual arrest?** *No. If during their investigation officers determine probable cause for an arrest for each party, they are still able to make a dual arrest; however, historically when officers understand how to conduct a predominant aggressor investigation, dual arrests go down due to the fact officers are no longer arresting both the victim and the batterer. A department should never have more than 5-7% dual arrests. If it does, it indicates a need for training.*

IMPACT ON VICTIMS:

When officers are trained to investigate and determine which subject is the predominant aggressor, the appropriate person is arrested – the batterer. When not properly trained, the wrong person – the victim – is more often arrested. There are many consequences to arresting the victim:

1. Batterers are not held accountable and are rewarded for manipulating the system – they feel invincible.
2. Victims think twice before calling the police and continue to live their lives in fear.
3. Children learn to distrust the police. And, in cases where both the batterer and the victim are arrested, children associate the presence of police with the breakup of the family.
4. Victims are not protected and as a result are increasingly unwilling to seek help anywhere.
5. Victims tend to plead guilty immediately (versus batterers who plead not guilty and typically end up getting a reduced sentence). The criminal record the victim then has leads to issues concerning dependency, child custody, housing immigration and other consequences.

The above points were taken from an article entitle - "She hit me, too! - Identifying the Primary Aggressor: A prosecutor's perspective." Page 5. Written by, Gael B. Strack – San Diego Assistant City Attorney

OTHER STATES:

Twenty-nine other states have a predominant aggressor type of statute.

Chairperson DeKrey and Members of the House Judiciary Committee

Re: Testimony in support of an HB 1238 (Amended version – attached)

Date: Tuesday, January 30, 2007

For the record, my name is Shelly Carlson and I am the Criminal Justice Project Coordinator at the ND Council on Abused Women's Services, hereinafter referred to as CAWS. I am here to provide testimony in support HB 1238.

For 12 years prior to my current position at CAWS, I worked with domestic violence victims in victim/witness roles, as a domestic violence program advocate, and as a legal advocate. During the last 2 ½ years at CAWS, I have worked with ND law enforcement to develop a model domestic violence policy for law enforcement in North Dakota and have provided technical assistance in 14 locations throughout the state to aid law enforcement agencies in adapting the model policy to meet the individual needs of their communities. I also conduct trainings across the nation for the Federal Law Enforcement Training Center on the subject of domestic violence and have recently been recruited to conduct similar trainings for the National Sheriff's Association.

As a state and national trainer on the issue of domestic violence and also as the coordinator of the CAWS criminal justice project, I have had the opportunity to discuss the concept of predominant aggressor at length with law enforcement, advocates, and prosecution. One example of the type of situation of which we are talking about today comes from a case in ND.

Imagine, if you will, being an officer responding to a domestic violence incident. When you arrive, the male party (John) has absconded and the female party (Jane) is at her sister-in-law's residence. Once Jane is located, you observe that she is shaking, crying and bleeding. You request an ambulance be dispatched to take her to the ER.

Since the John is not longer at the scene and Jane is at the hospital, you interview Jane's sister-in-law, Sue, who discloses she went to the residence of the involved parties. Sue states John and Jane were arguing...again. She observed both John and Jane swinging their arms at one another and observed John push Jane down on the bed several times. Sue states she tried to separate the parties and at one point, John left the residence and Jane locked the doors. She then states she observed Jane throwing the John's clothes out the back door. Soon, though, Sue tells you she saw John reappear and grab Jane by the throat and push her back into the residence. She then said she observed John take Jane's left arm, hold it in place and, using his right arm, proceed to punch Jane in the face. Sue said It was at this time she left to call 911.

After you interview Sue you proceed to the ER to interview Jane. Jane states the argument was about John cheating on her. She states that during the course of the argument, she took the children to Sue's and then went back to the residence to pick up more belongings. However, the argument continued when she got back. She states she tried to calm down John, but it wasn't working so she told him to get his stuff and leave. She stated she tried to pull on his shirt to get him to leave the residence. Jane states that was when John turned around, hit her, and went back to the bedroom to retrieve some belongings. She said she attempted to get in front of him so he couldn't take certain items; he picked her up and threw her down to the floor. Jane said during this time, she stated she tried to grab the phone, but he knocked it away.

Jane tells you that the argument continued into the kitchen where, where John pushed her again and she ended up putting her hand through a window. Jane states she then told John to leave and told him she would pack his belongings. When John left, she said she began to throw his things outside. When he returned, she stated he grabbed her by the throat and slammed her head against the wall and started hitting her in the face. While he was assaulting her, she stated that she kicked him in the face with her foot.

You observe that Jane has cuts on her hand, a bruise on her knee, a scrape on her upper arm that is approx. 2 inches by 3 inches, a bruise on her bottom jaw, and a bruised left eye. The hospital also reports that Jane's nose and floor plate are cracked and her eye

clavicle is sunken. At the scene you had observed blood spots on the floor in the bedroom, kitchen, entry way, and front porch.

When you locate John he confirms that he and Jane had been arguing. He states Jane grabbed his cell phone from him and wouldn't return it. He states he left the residence to call his mother to come get him and when he returned to the trailer, Jane started to push, kick, and bite him. He stated he pushed her away and that is when her hand went through the window. He stated he went back to the bedroom to gather his clothes, but Jane followed him and started to bite him. He states that is the reason why he pushed her on the bed. He stated he went outside again and tried to come back into the house to get more things. He said when he tried to go back again, Jane started swinging at him, stuck her finger in his mouth and scraped the inside with her fingernail, and started to punch and kick him. He said he did not hit her and only pushed her off in order to grab his belongings and leave. He stated when he left the residence, Jane ran out and tripped down the outside stairs.

You observe the suspect has two bite marks on him – one on his chest and one on his shoulder. You also observe the inside of his lip is scraped. However, you did observe that the victim has short nails.

What are the responding officer's to do in this situation? The officers seemingly have probable cause on both parties. Do they arrest the both? If they do, what are the consequences of this course of action? For Jane, as an ongoing victim of domestic violence? For the state, which has to decide whether to prosecute one or both parties?

This is where law enforcement's investigation expertise is challenged and where the Century Code can provide clarity on how to proceed in these situations. Law enforcement, and others, need to be concerned with long-term issues, such as future

violence, and ensure North Dakota holds offenders accountable while keeping victims safe.

The concept of predominant aggressor attempts to provide law enforcement officers with a framework to determine – in a situation where both parties have used violence – which party should be subject to state action. In general it does this by encompassing a series of questions which guide the analysis.

First – what is the comparative severity of injuries? John has bite marks and a scratch in his mouth - Jane has a cut on her hand, a bruise on her knee, a 2 x 3 inch scrape on her upper arm, a bruise on her bottom jaw, and a bruised left eye. The hospital also confirmed that Jane's nose and floor plate are cracked and her eye clavicle is sunken. Also, both Jane and Sue report that Jane has been beaten about the head which may indicate there are further injuries not visible to the naked eye and the officer should probably investigate further to determine the full extent of her injuries.

Second – is there a history of domestic violence or any other violence acts that an officer can reasonably ascertain? The sister-in-law in the above case indicated the parties had argued like this before. Also, the officer could check to see if law enforcement has previously been to this residence and whether either party has a history of domestic violence.

Third – What is the likelihood of future injury to each party? In this case, if the officer ascertains Jane has been abused in the past, and consider the extent of her current

injuries, then they should also believe that she is probably more at risk for future harm than John.

Given these factors, it would then appear John should be arrest^{ed}, at minimum, for simple assault based on an investigation utilizing the predominant aggressor concept.

Due to situations like this, that law enforcement encounter across North Dakota, we are asking for two changes within the simple assault statute: First, changing the wording of "the most immediately significant aggressor" to "predominant aggressor" which is the language utilized by law enforcement across the state in trainings and in investigative practice. The Federal Law Enforcement Training Academy, the International Association of Chiefs of Police and the National Sheriff's Association all utilize this terminology when training officers on investigation strategies in domestic violence cases.

Second, add "any history of domestic violence or any other violent acts that the officer can reasonably ascertain." This added language provides clarity and additional direction to a responding officer when conducting an investigation that involves two parties who present injuries. This third prong of investigation is missing in our statute and needs to be added to provide complete language in statute to assist law enforcement to meet their goals of deterring dangerous offenders, as well as providing long-term safety for domestic violence victims.

We strongly believe, with these simple changes, law enforcement will be provided with useful tools needed to decipher through these heinous crimes.

Please note, it is my understanding this amended version of HB 1238 was presented to the ND States Attorney's Association and the NDPOA on Friday, January 26, 2007.

Clarification of "the most immediately significant aggressor" language was also discussed and endorsed by the Grants to Encourage Arrest statewide advisory committee which is comprised of 20 law enforcement officers from across the state, 5 prosecutors, 2 judges, 8 advocates, and 2 dispatchers.

Chairperson DeKrey and Members of the House Judiciary Committee

Re: Testimony in support of an HB 1238 (Amended version – see below)

Date: Tuesday, January 30, 2007

N.D.C.C. § 14-07.1-10. Arrest procedures

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer ~~may determine~~ shall consider which party has engaged in the most immediately significant aggression is the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm. ~~The existence of corroborating evidence, the party exhibiting the most fear, and whether one party acted in self defense as defined in section 12.1-05-03 while considering the intent of the law is to protect victims of domestic violence from continuing abuse. The officer shall look at the totality of the incident to determine whether to arrest, pursue further investigation, or seek an arrest warrant. Arrest is the preferred response only with respect to the predominant aggressor. The officer shall presume that arrest is not the appropriate response for a party who was not the predominant aggressor.~~

Section 2

The proposed law would read as follows:

Section 2
2

A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer shall consider which party is the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm.

1 + 3 stay same -

HOUSE BILL NO. 1238

January 30, 2007

Representatives Delmore, DeKrey, Koppleman
Senators Fischer, Lyson, Nelson
House Representatives

Chairman DeKrey,

My name is D. Joyce Kitson; I am a mother and volunteer advocate on behalf ^{of} Native American vulnerable adults who live in Bismarck/Mandan area.

I am in support of HB-1238 to change the wording of "the most immediately significant aggressor" to "PREDOMINATE AGGRESSOR" and to add "Any history of domestic violence or any other violent acts that officers can reasonably ascertain to include the safe treatment and precautions related to the safety of our "Vulnerable Adults" whether intoxicated or drugged.

My examples are the failure of our States Law Enforcement, Human Services, States Attorney, Sheriff Officials, Social Services to recognize and honor my legal Guardian Status which, resulted in the severe beating of my 30 year old son, who is considered a vulnerable adult under the Century Code. Lack of concern and communication for my son's safety resulted further ^(injury) to himself and the possibility of the life of a child. I was not listened to.

For your information the violent offender was a female and wife of my son, who gave a false report to Law Enforcement under another name she was never charged until five months later when it was discovered that the name she gave was a real person who did not know about the beating. There were witnesses in this violent crime and she got away with it with a slap on the hand. There are other cases too numerous to mention here that we need to be concerned about the way Law Enforcement handle our loved. We need a Native American Peace Officer who understands us.

I agree these simple changes, Law Enforcement will be provided with useful tools needed to decipher these heinous crimes in our communities. Thank you for your listening to us in support of HB 1238 Amendment.

