

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2103

2007 SENATE JUDICIARY

SB 2103

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2103

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 10, 2007

Recorder Job Number: 855

Committee Clerk Signature *Mona L Solberg*

Minutes: Relating to the cost of forensic medical examinations for victims of sexual assault.

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. Stan Lyson – Williston (meter 0:05) Introduced the bill – Att. #1

Sen. Heckman, Dist. 23 (meter 5:40) Spoke in support of the bill.

Rep. Ron Carlisle, Dist. #30 (meter 3:55) Spoke in support of the bill.

ND Attorney General Wayne Stenehjem, (meter 7:16) Stated that there is no other crime where the victim has to pay for this process. With this release of burden to the Medical Insurance carriers I sense that they would contribute some funding into the "pot". We are in conversations at this time.

Bonnie Polecek, ND Council on Abused Women's Services Coalition Against Sexual Assault in ND (meter 10:00) Att. #2. She also stated that currently there is a good relationship between the Attorney General's office and the Crime Lab this legislation would be a good fit.

Kelly Moe Litke, Sex. Assault Prog. Coord. Abused Adult Resource Center-Bismarck (meter 23:26) Gave Testimony – Att. #3

Elizabeth Perius, Nurse (meter 29:29) Gave testimony Att. #4a and gave out the chart summary for a sexual assault forensic examination procedure Att #4b.

John Olson, Attorney representing Police Officers Assoc. (meter 30:05) Gave his support

Debra Ness, Bis. ND Police Chief (meter 35:29) Spoke of her support of the bill and the importance of the DNA is in this type of crime, how it can be used in current, past and future crimes. Otherwise the only proof we have are discussion.

Connie M. Hildebrand, Am. Assoc. of University Women (meter 37:00) Gave her testimony
Att. #5

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2103**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1292

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to the cost of forensic medical examinations for victims of sexual assault.

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

Sen. Olafson reviewed amendment prepared by Brad Wiederholt –Intern changing victim to alleged victim (page 1, line 2,9,13 and 19-page 2 line 1) and add an emergency clause.

Senator David Nething, Chairman closed the hearing

Sen. Lyson made the motion to Do Pass Amendment and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass SB 2103 as Amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

Date: 1-17-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2103

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend to change "Victim" to "Alleged Victim" + Emrg.

Motion Made By Sen. Lyson Seconded By Sen Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Date: 1-17-07
Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2103

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Lyson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Lyson

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

REPORT OF STANDING COMMITTEE

SB 2103: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2103 was placed on the Sixth order on the calendar.

Page 1, line 2, after "for" insert "alleged"

Page 1, line 3, remove "and" and after "appropriation" insert "; and to declare an emergency"

Page 1, line 9, replace the second "a" with "an alleged"

Page 1, line 13, after "the" insert "alleged"

Page 1, line 19, replace the first "a" with "an alleged" and after the second "the" insert "alleged"

Page 2, line 1, after "on" insert "alleged"

Page 2, after line 2, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2007 SENATE APPROPRIATIONS

SB 2103

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2103

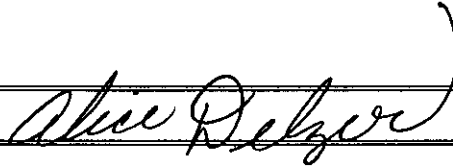
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01-26-07

Recorder Job Number: 2000

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on Engrossed SB 2103 at 9:00 am on January 26, 2007 relating to the cost of forensic medical examinations for alleged victims of sexual assault; to provide an appropriation; and to declare an emergency.

Senator Stanley W. Lyson, District 1, Williston, ND gave oral testimony in support of this bill and referred to Mercy Hospital in Williston and the concerns regarding the victims paying the expenses of the forensic medical examinations.

Chairman Holmberg referred to Senator's Krebsbach's home being burglarized, and she getting the bill for the investigation of that burglary, same analogy.

Senator Krebsbach is seeing the effective date is July 1, 2007; would there be anything wrong with putting an emergency clause on this so it goes into effect immediately?

Senator Lyson stated there certainly wouldn't be any objections from me because we just had something like this happen in Grand Forks last week.

Wayne Stenejhem, Attorney General testified in support of the bill. This is the only situation where he can see where the victim of the crime is expected to pay any expenses of the investigation. As far as the financial aspect our office stands ready and eager to implement the program.

Senator Grindberg asked about the number of sexual assaults and the average cost of a forensic examination.

Discussion followed regarding a fiscal note, whether this item becomes a line item in the budget and when this budget is drawn up in consideration to the next biennium. It was requested of the Attorney General's office by **Senator Krauter** to provide financial information regarding this.

Senator Robinson inquired if victims are required to pay their expenses in other states. The Subcommittee will be given additional information regarding this inquiry.

Bonnie Palecek ND Council on Abused Women's Services/Coalition Against Sexual Assault provided written testimony (1) and gave oral testimony in support of the bill.

Senator Krebsbach requested information regarding the dollar amount reflected in testimony.

Senator Holmberg asked for a break-down for the Subcommittee.

Rebecca LaFave, Sexual Assault Nurse Examiner (SANE) presented written testimony of Elizabeth Perius (SANE) (2) and gave oral testimony in support of the bill. She explained the procedures that are followed by the nurse, the fact that all victims that come to the Bismarck Hospitals for this exam are referred to a SANE, and if there needs to be follow up because of injuries the victim is readmitted back to ER.

Senator Christmann had questions regarding insurance and payment of the bill for treatment.

Senator Kilzer asked if an OB Dr does any of these exams. He was informed these types of cases are referred back to SANE.

Chairman Holmberg inquired about how cases are handled outside of the Bismarck area and was informed that Rebecca did not have that information.

Senator Grindberg asked whether the OB Dr. avoid this because of legal proceedings and was informed that most physicians do not want to get involved with the legal system.

Kelly Moe Litke, Sexual Assault Program coordinator at the Abused Adult resource Center (AARC) in Bismarck presented written testimony (3) and gave oral testimony in support of the bill. She elaborated on the position she has in assisting victims and the assistance AARC offers to victims, and how they assist the victim in filling out any necessary paper work that may be required.

Senator Kilzer had questions regarding the Crime Victim's Compensation.

Chairman Holmberg closed the hearing on SB 2103.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2103


Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-08-07

Recorder Job Number: "Click here to type Digital Recorder Job #"

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2103. An amendment was introduced.

Senator Robinson did a **DO PASS** on the amendment, **Senator Wardner** seconded. All voted yes. **Senator Krebsbach** will carry the amendment to the Floor.

Senator Mathern moved a **DO PASS AS AMENDED ON THE BILL**, **Senator Fischer** seconded. A roll call vote was taken resulting in 11 yeas, 0 nays, 3 absent. The motion carried. The **Judicial Committee** will carry the bill.

The hearing on SB 2103 closed.

Date: 2-8-07.
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2103.

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment.

Motion Made By Robinson Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm			Senator Aaron Krauter		
Senator Bill Bowman, V Chrm			Senator Elroy N. Lindaas		
Senator Tony Grindberg, V Chrm			Senator Tim Mathern		
Senator Randel Christmann			Senator Larry J. Robinson		
Senator Tom Fischer			Senator Tom Seymour		
Senator Ralph L. Kilzer			Senator Harvey Tallackson		
Senator Karen K. Krebsbach					
Senator Rich Wardner					

Total (Yes) all No _____

Absent _____

Floor Assignment Krebsbach

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

Date: 2/8/07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2103

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as Amended.

Motion Made By Mathern Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 13 # No 0

Absent 1 ~~2~~

Floor Assignment Krebsbach com. Linder

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

REPORT OF STANDING COMMITTEE

SB 2103, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2103 was placed on the Sixth order on the calendar.

Page 1, line 21, replace "general" with "insurance regulatory trust"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 125 - Attorney General

SENATE - This amendment changes the source of the \$500,000 appropriation from the general fund to the insurance regulatory trust fund for reimbursing health care providers for the cost of performing forensic medical examinations on alleged victims of criminal sexual conduct.

2007 HOUSE JUDICIARY

SB 2103

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2103

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4459, 4485

Committee Clerk Signature

A. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2103.

Sen. Stan Lyson: Sponsor, it is a simple bill, this bill is brought forward by me after I was contacted by the Ethics committee at the Mercy Hospital in Williston. I didn't know, even though I was in law enforcement for nearly 40 years that young women who came into the hospital after a sexual attack and abuse and the examination was done, they charged the poor young ladies with the cost of the examination. When then happened with the college aged girls, was that the hospital would ask them if they had the money to pay for it, or wanted to put it on their insurance. The college girls were mostly under their parents' insurance and if it had happened to one of my daughters, it would never have gone on to the insurance. They were afraid of what that might do. So that's exactly what was happening to these girls, they were either walking out of the hospital or the hospital did the examination and paid the costs of it; which for many times that did happen and the sheriff's department sometimes then paid for the cost. This bill simply says that the state will pick up the cost and it's been changed from the first time I testified and the amendments put it under the Insurance Commissioner, and that's where the funds are going to go from the state. They will make an application to the AG's office and the monies will be kept in the Insurance Department and will be paid from there.

That's simply what it is. These young women that are coming in, already feel that this is a horrendous situation and they were victimized terribly, and now we are victimizing them more by saying you have to pay for your examination; even though we are going to use that exam to convict the person that assaulted you. It's kind of like if you take a murder victim, doing an autopsy and charging that back to his estate. There's not a lot of difference. This is something that has been needed in ND for a long time.

Rep. Griffin: Why put \$500,000 appropriation in there, when it says "or so much of the sum as may be necessary". Why don't we say "the sum as necessary".

Sen. Lyson: One of the things that you do in state government, you have to budget. That's why the \$500,000 is there, it may not be that much, but that is the amount to be appropriated to make sure the amount is there for it.

Rep. Klemin: I know when a health care provider submits a bill to a company like BC/BS, they always have this provider discount that's given and other companies might have the same deal. Is it possible under this to get a provider discount so maybe it doesn't cost us this much.

Sen. Lyson: I can tell you that the AG has been working very hard on this, and the insurance companies, from what I've been told, they will be chipping in to build up the fund in the Insurance Commissioner's office and I see the Blues are sitting there and shaking their head. They probably know more about that than I.

Rep. Klemin: If there is insurance to cover it, would that be the first place you go or is this the first place.

Sen. Lyson: First of all, these young ladies aren't going to let you do that. They are going to walk out of the examination room, because they don't want it on their folk's insurance. That's exactly why this bill is before you. When a young lady finds out that it would be charged to her insurance, she says she's leaving. That happens.

Rep. Onstad: Are the different facilities, are they working on agreements for uniform costs.

Sen. Lyson: That's a good question, because there is a cost to this. It is approximately \$450 for a test/exam. Some costs are different from place to place. That was the figure we came up after contacting medical places in ND.

Rep. Wolf: Is there a way that the defendant can be made to pay for these expenses if the person is convicted.

Sen. Lyson: It's not that maybe they'll be charged, it will be. That amount would be charged on the criminal judgment, I'm almost positive of that. The problem is that the hospital won't get their money paid because the inmate won't be able to pay.

Rep. Wolf: Eventually the defendant will pay back the money owed on the judgment.

Sen. Lyson: Right, anything they earn or receive in there, can be taken out of their account to pay that judgment during that time. A lot of money will come back, but there's always a deadbeat out there that you're not going to get anything from.

Chairman DeKrey: Thank you. Further testimony in support.

Arnold Thomas, President of ND Healthcare Association: I will tell you a story about Mary, who is the victim of an assault and she presents to the ER. That does two things, there is both a medical response and a potential of a legal action involved. The bill before you today focused exclusively on the non-medical side of that person's condition. There is nothing in this bill that takes the hospital, nor are we desirous of anything in this bill to compensate the hospital for any medical services that are rendered to Mary upon her presentation in these circumstances. We are here attempting to figure out a way to pay for the costs associated with providing the information to law enforcement should Mary need to take legal action with law enforcement agencies. The cost that is built into this bill, approximately \$500,000 is based on known cases that have presented in ND over a defined period of time, with an average

expense associated with the administration of the kit necessary to obtain information that could be used in a legal proceeding. It is not our intent to come back and ask for medical coverage relative to this particular issue. The reason the bill is in the AG's office, is because we're not sure exactly how this is going to be administered across the state, and we believe that this would be the appropriate place to put this particular responsibility until next session, when we have further experience with its implementation. It is at that time that it would be my expectation that the AG's office would come forth, in terms of if there is a reassignment of responsibility for this particular function where that reassignment is to be considered by you on the policy side. My reason for being here today is we have hospitals across the state that are in various stages of capacity to do this test, who are committed to ensuring that there be a minimal amount of competency at each of the facilities, whether they directly provide the test or they engage in a very, very formal referral activity, to ensure that Mary, who presents is not left hanging because of system inadequacies. This is not a good topic, in terms of it's one that is friendly to have discussions about, it's a horrible reflection upon the way we treat each other, that we are here to make this work.

Rep. Wolf: If this bill just covers the \$450 test expenses, who pays the rest of her expenses as far as if there are other medical related expenses, such as medication, etc. This covers all that.

Arnold Thomas: Currently, there is no change in that. Currently, we will endeavor to see if there is a third party carrier that would cover the medical dimensions of cases presented. That is part of the difficulty we have right now, is that some individuals are walking away from being tested simply because the cost of the kit triggers a third party being notified that this is being done. For example, if you are a 18 year old female college student, who's insurance is by the parents, and something happens, and you do not wish to have them involved as you are going

through this assessment, you present at my hospital and the first thing that someone in the hospital does, because we treat everyone the same, do you have a means of coverage, who is the third party, even for the administration of the test. We will bill that service, not on the law enforcement theme but on the medical theme to a third party that would have financial responsibility for them. A number of people are walking out of the ER room because of that. This is not a perfect solution to the problem that we have, that is, treating everybody the same when they present, and then if there is third party insurance coverage, how is that billed. That is another whole set of issues that are attendant to this. We are trying to make sure that the cost of the test is not a burden to the person who presents, who rightfully ought to be tested for a lot of different reasons, not the least of which is sexually transmitted diseases, which would be for the person's well being.

Rep. Wolf: Testing for STD's does not qualify for something that is used in court, correct.

Arnold Thomas: That would be one of the benefits of being able to go through this testing.

Rep. Wolf: So that \$450 for the exam is more than just for what they use in court, also for things that she needs to be aware of as well. Is that amount enough?

Arnold Thomas: We believe it is enough in terms of what we are attempting to accomplish. You're not going to be focused primarily on STD's that would be one aspect of the lab work that comes back. For example, if you do a swab, the product of that swab can be assessed in a lot of different ways in the lab, and one of the things that would be tested for would be the presence of a sexually transmitted disease. It's not a specific test for that, it's all based on the one specimen. There are others that can speak to that.

Rep. Wolf: Where do you decide what you are going to pay for, or not. How do you decide how much will be covered and what won't.

Arnold Thomas: On the extreme side, the person who has the need for medical attention that would not be covered under this. We will have to figure out how that will be covered. There are other bills that deal with parental notification, etc. and we are dealing with that right now. This is another aspect of that. Do you notify a parent or not and that's something that we're asking to have greater decision making in the ER room relative to that. That's very contentious, we understand that. On the other hand, there are some people that don't need to be notified simply because their notification is going to add to the condition that is presented rather than help in that situation. That's one measure. This bill here, if you have third party coverage, you needed sutures, things of that sort because of the assault that would be billed as a medical service to you rather than included as part of a sexual assault presentation. It would not be coded that way, as a sexual assault, that's the difference.

Rep. Wolf: But when the piece of paper comes from BC/BS in the explanation of benefits, I know they come to the parent's house in that child's name, even though she is a college student. If a person would happen to open it up or question the bill that you have, even though it doesn't say rape kit, it may say sutures, isn't that still going to raise a flag.

Arnold Thomas: This does not address nor solve that particular problem. We still have that problem.

Rep. Boehning: You talked about the HIPAA laws. How does this fit into the HIPAA regulations.

Arnold Thomas: We aren't changing HIPAA at all, what we're doing is saying that there is a certain financial element attached to testing for law enforcement purposes. This bill is a funding mechanism to cover, on average, the cost of the kits that are used to test for assault.

That is all this bill is about. It does not get into the area that Rep. Wolf appropriately is questioning and that is what about all the attendant medical dynamics that are attendant with a

presentation of assault and the notification that we are not changing in terms of third parties. That is still an issue that we are attempting to address. It is not in the provisions of SB 2301.

Rep. Boehning: With the HIPAA laws, the minor doesn't have, the insurance company can't tell the parent without the child's consent to see the records about what happened.

Arnold Thomas: I think in terms of the third party role, such as insurance, there should be somebody from the third party addressing that rather than somebody on the side of billing.

Chairman DeKrey: Thank you. Further testimony in support.

Bonnie Palacek, ND Council on Abused Women's Services/Coalition Against Sexual

Assault in ND: I can come back in this afternoon. I want to introduce Julie Landsiedel.

Chairman DeKrey: Thank you. Further testimony in support.

Julie Landsiedel, Sexual Assault Nurse Examiner: (see attached testimony).

Rep. Koppelman: You mentioned the Crime Victims Compensation. Does that cover a high percentage of these cases.

Julie Landsiedel: The financial part of it I can't answer. I am the forensic part.

Chairman DeKrey: Thank you. Further testimony in support.

Kelly Moe Litke, Sexual Assault Program Coordinator at AARC: (see attached testimony).

The question about charging these costs to the attacker. Very few of these cases go to trial and fewer are convicted. I don't know how much help that is going to be. I think it is an important idea, but I don't know if that will have an impact on the dollar amount. Also, they don't do testing for STD as part of the exam. They treat with antibiotics for that. There's no testing for STI's done as part of the examination. Also to clarify Crime Victim Compensation, that is any medical concerns that do come out as a part of this exam are referred back to the emergency department and those would then be billed to Crime Victims Compensation. So that is where those costs would be billed.

Rep. Meyer: If you're the victim of a rape, and you come into the hospital and you don't have insurance, can all of this be denied under current law right now. When you come into a hospital and have symptoms, and according to the bill we're looking at here, the victim is charged for this. Let's say you have no means to pay. What happens then.

Kelly Moe Litke: We are a community based program, not a hospital based program, so our expenses in that case could be billed directly to Crime Victims Compensation because there is no insurance to bill that to. But then ultimately the hospital costs I would assume, would fall back, if they don't have insurance, on the victim. Even if they don't have money, that bill will still come.

Rep. Meyer: In those cases, then that would be turned over to a collection agency, I would assume yes.

Kelly Moe Litke: Yes.

Chairman DeKrey: Thank you. We will recess the hearing.

Chairman DeKrey: We will open the recessed hearing. Further testimony in support.

Bonnie Palacek, ND Council on Abused Women's Services/Coalition Against Sexual

Assault in ND: (see attached testimony). We have tried to think how this system would work and we think perhaps it will be a two tiered system, one flat rate payment which is what the AG has alluded to that he would like, as simplified as possible. One flat rate payments for those exams that don't require the colposcope and another higher rate for those who do require the colposcope. Some hospitals don't have the equipment. Another question raised is can these costs be negotiated. I would say that is another thing that we will have to work out of this in the next two years. The Crime Victims Compensation reimbursement is already negotiated with hospitals and others at 80% of their costs. I would speculate that this might be something that they've proven already that they are amenable to. Couldn't Victims

