

2009 SENATE JUDICIARY

SB 2210

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2210

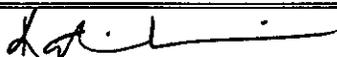
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7862

Committee Clerk Signature



Minutes:

**Senator Nething** opened the hearing on SB 2210, relating to law enforcement animals.

**Senator Nelson** introduced the bill (see attached testimony #1).

**David Green** testified in favor of the bill (see attached testimony #2).

**Cindy Feland**, Burleigh County State's Attorney's Office, handed out a proposed amendment (see attachment #3). This amendment goes in line with the criminal mischief style statutes as well as the harassment statutes that we currently have. There is language that specifically references on line 17, interferes with the individual handling the animal. Basically that is a specific direction placed in here so when law enforcement makes a request for someone, other than a law enforcement officer, who may have an animal that would be helpful to law enforcement to utilize that animal. If a person then interferes with the handling of that animal it gives us a mechanism to deal with those issues. When you look at the monetary values, not even of the annual up keep of the animal but, just of the cost of the initial training to get this animal into condition to where it can provide support to law enforcement, are a very expensive endeavor. Burleigh County has been very fortunate in that we have multiple animals that the law enforcement has utilized. These dogs do provide valuable assistance to law enforcement and we would like to see equities in the types of penalties that are provided.

**Senator Lyson** asks if there needs to be a change in language to cover airport dogs as well.

**Cindy Feland** replies as I look through subsection 3 line 18, I would have some concern that those animals may not be covered. I would say that based upon the language because I am not sure what authority they are currently under during their activities. If we want to bring those animals under this bill there would need to be an amendment made.

**Lyle Sinclair**, Bismarck Police Department, spoke in favor of the bill and presented a breakdown of the costs to maintain a police dog (see attachment #4).

**Jim Vanlith**, Dual Purpose K-9 Handler with Fargo Police Department, testified in favor of the bill. Like other law enforcement officers, my K-9 has to certify in both narcotics and patrol work every year. They are faced with the same stresses and their emotions go up just like ours do so they do have a shorter live span. A disadvantage to the K-9 team is before an officer is allowed to let the dog go to search for a bad guy they have to give a verbal warning. That allows the bad guy a chance to give up but it also allows them a chance to better arm themselves so they could harm or possibly kill the animal. My cause isn't about the monetary loss completely. It is also about the loss of a very valuable member of the police department and to the community.

**Senator Lyson** asked if Jim had any idea about the airport dogs.

**Jim Vanlith** replied we do that. TSA does not have dogs. The biggest K-9 agency in the country is Customs and Border so they supply a lot of the dogs. In our region around here if you see law enforcement dogs they are police dogs.

**Derik Zimmer**, Coordinator of the Police Service Dog Unit of the Grand Forks Police Department, testified in favor of the bill and amendment (see attached testimony #5).

**George Vinson**, Police Officer with Fargo Police Department, testified in favor of the bill and the amendment (see attached testimony #6).

**Senator Oehlke** I have been a member of the Search and Rescue team in Devils Lake since 1981. I own a Newfoundland dog and participate in search and rescues around North Dakota and on occasion Montana, South Dakota, and Minnesota. I have been a bit concerned with something adverse happening to my dog when we have been searching for someone or something that people don't want found. To purchase this breed of dog as a puppy would cost around \$1,500 and then you have to add on the costs of raising the dog and having it trained. A bill like this that would provide a penalty might keep some people from wanting to harm these animals.

**Senator Nething** asks if this happens quite often that there is a service animal that gets abused.

**Senator Oehlke** The one instance I gave from Grand Forks is the one factual one that I know of. I suspect that it probably happens more often with dogs involved in law enforcement.

**Senator Nething** closed the hearing on SB 2210.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2210

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7897

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Committee discusses the amendments offered

Motion to move the amendments

Verbal yes vote on amendments

**Senator Lyson** moves do pass as amended

**Senator Olafson** seconds

Vote – 5 yes, 1 absent

**Senator Olafson** will carry

PROPOSED AMENDMENTS TO SENATE BILL NO. 2210

Page 1, line, 8, replace "A misdemeanor" with "C felony"

Page 1, line 12, replace "B misdemeanor" with "A misdemeanor"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2210: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2210 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "A misdemeanor" and insert immediately thereafter "C felony"

Page 1, line 12, replace "B" with "A"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2210

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2210

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10680, 10681, 10684, 10690

Committee Clerk Signature

*D Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2210.

**Sen. Carolyn Nelson:** Sponsor, support, explained the bill (attachment). Also attached testimony from David Green and Mark Lykken, Fargo Police Dept.

**Rep. Delmore:** You said you changed it to animal from dog. Why?

**Sen. Carolyn Nelson:** Because in some parts across the state they are using horses.

**Rep. Koppelman:** I was looking at subsection 2b of the bill, I'm know if I'm looking at an officer who is working because they have a badge on, how do you know that a dog is on duty.

**Sen. Carolyn Nelson:** You will have to ask law enforcement that.

**Chairman DeKrey:** We will recess the hearing.

**Chairman DeKrey:** We will take further testimony in support of SB 2210.

**Sen. Dave Oehlke:** Co-sponsor, support. I have a service animal that has provided search and rescue services and have done that since 1990; in and around the state of ND, SD, MT and northern 2/3 of MN. For many years, we were about the only ones that had a water rescue dog. I'm thinking that perhaps because of some of our activities, other law enforcement people, although mine was never a law enforcement dog, it was strictly a volunteer effort, I do think that because of our efforts, some other folks have gotten the idea that this is a good

thing. Fortunately we haven't had to have as many calls in the last couple of years. For many years, we probably went on 12-16 calls a year to find a lost person. One of the fears I had in the past was that I wouldn't be able to find someone. There were a couple of cases where there was a shooting in Devils Lake and the law enforcement people asked me to go and help find the perpetrators with my dog. I was reluctant to do that because my dog wants to find people that want to be found. They're not used to someone hurting them, if there is a rescue attempt, but it happened to be similar weather to what we have today, very stormy and the only other crime dog, bloodhound, that could have done the job was located in Bismarck and they couldn't get there. So we had a duty to fulfill, and we went out and did the job. Law enforcement in my area told me not to worry because they would be right there. But I told them that they don't understand, they can't be right there, the dog needs to be out in front, I'm next in line because the dog knows me and then the law enforcement guys needs to be back there because you're going to just be in the way and disturb things. We don't need that happening. It worked out just fine, the dog helped catch the bad guys. In the process, we were able to find footprints and followed that to the back of a house, where they had been but had left to go to their car. We were able to find the tire tracks because it was fresh snow. Then later the vehicle was identified and the perpetrators were jailed. During that time, I kept thinking that my dog could get hurt. I didn't think about injury to myself until the event was over. Had my dog been injured, I know what would have happened the next day. Some little kid wouldn't have gotten lost in the snowstorm and I wouldn't have been able to perform that search and rescue service at that time. I think SB 2210 is a good bill and give it a Do Pass.

**Rep. Koppelman:** Do you know if there is a definition in law of what a law enforcement animal is. Your description is about your dog that they need for search and rescue. I know of other cases in ND where that was the case where a privately owned animal helps with law

enforcement. Does this only cover dogs trained by a police department or a law enforcement agency, or would it cover situations like this.

**Sen. Dave Oehlke:** I believe in #3 of the bill on the bottom of the page, it says for the purposes of this section, law enforcement animal means any animal used by or on behalf of a law enforcement officer. So if I know of an event that my dog might be good for, I can't go in there and help. I have to be asked by someone in a position that could use that service. Usually that's the sheriff, typically. Most of our searches are in rural areas, and in the city it would be the chief of police.

**Rep. Vig:** You're increasing the penalties from a misdemeanor to a felony. Is that too stiff for a service animal. Why the increase in penalties.

**Sen. Dave Oehlke:** When the bill came out, it wasn't as severe a penalty, but that was addressed in the Senate committee and changed then. I think it was based on the testimony; not mine in particular. Personally I don't have a dog in that fight.

**Rep. Kretschmar:** On the open market, what does one of these dogs cost, what is it worth.

**Sen. Dave Oehlke:** If I was going to buy a puppy, the breed that I use at this point would cost me \$1500, and that is untrained. The level of training that these dogs go through, and law enforcement many times buys the dog that has already been trained. After you have a year or two of good training into them, I think about \$5,000 would be the minimum and probably go up to \$10-15,000 for a dog has done some performance and trained.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Cynthia Feland, Assistant State's Attorney, Burleigh County:** Support. The question Rep. Vig had concerning the class C felony penalty. That was a request that was made by the state's attorney's office, and the State's Attorneys Association, as a compilation of the risk for law enforcement. Basically what we're looking at here is a value issue. When we look at any

other type of destruction of property, whether it be criminal mischief, which is what most people look at as a vandalism or theft of property. Those are then graded based upon the value of the property. In this case, there isn't a dog out there that would have a value of less than \$500, so when we look in the statute the threshold for a minimum for a felony level is \$500. We were looking at making it comparable with other statutes. From a victim's perspective, looking at theft of property or criminal mischief, there is a damage issue, rather than citing the specific statute just because of the available penalty and the ability to look at a more appropriate restitution issue when it came to the actual criminal offense. So we made that request. To give you an idea of what it costs just for upkeep, training, etc. every year, Office Sinclair is here to give you that information. They are very expensive to maintain but at the same time they are very important to law enforcement in their fight against crime. We feel very strongly about this and working with law enforcement we felt compelled to come and say this is a case where the penalty levels as originally brought forward were really not appropriate given the nature of what we're dealing with. The same holds true for SB 2211. We made the request for both bills.

**Rep. Koppelman:** I'm looking at subsection 1 of the current law, except for the penalty change, and subsection 2, and some of the definitions in subsection 1 I understand that we're talking about killing an animal is a class C felony and a class A misdemeanor for some of the other things that you've been talking about, harassing and so on. One of the things it talks about in earlier section of current law, is tormenting one of these dogs; then it talks about harassing and taunting in the next section. If you were in the situation where you were charging a case like this, how do you determine the difference. Aren't those definitions pretty close to each other.

**Cynthia Feland:** Typically if I were looking at this, I would look at what the particular conduct is and what definition is the most accurate. When you look at subsection 2, they talk about harass, torment, and provoke. That tends to be a non-contact type of issue between the person and the dog; whereas when you look at torture or torment, those definitions are usually used when actual contact of some form has occurred between the perpetrator and the animal.

**Rep. Dahl:** What about the definition of interferes. Could that be as broad as to be petting an animal, when they are doing some kind of rescue.

**Cynthia Feland:** I wouldn't view it that way. Interferes would be people who are potentially trying to prevent the dog from doing its duty. In those cases, someone coming up to pet the dog, even if the dog was out in the field, I think the officer could give you more information about that. In most of those situations, the officer would tell the person that the dog was working. A person who petted the dog wouldn't be looking at criminal charges. This is very similar to other criminal statutes where a person interferes with law enforcement officer while the officer is on duty and doing their investigation. It kind of tracks that same language and intended to keep that consistency where the animal is the officer.

**Rep. Klemin:** In subsection 1 on the class C felony, the standard is willfully and unjustifiably, whereas in subsection 2 it's just willfully. What could be the reason for having unjustifiably in there, and I notice it also has been put in on SB 2011.

**Cynthia Feland:** Unfortunately I can't answer that question, because it's already part of the current law. I wasn't part of that when the original law was implemented. I'm not sure what the discussion was for implementing that. In looking at it, I would say that they are just trying to verify that this is in a self-defense situation.

**Rep. Klemin:** Do you think that unjustifiably should be in there, or is willfully sufficient.

**Cynthia Feland:** If you are torturing someone in my mind, it would always be unjustifiable, but I don't see a necessity for the word, I'm not sure why it was placed in there. Willfully is the type of culpability that we would typically look at in bringing charges.

**Rep. Koppelman:** When I heard the word, it struck me as being, as you've indicated, a situation where maybe someone is threatened by an animal, not the person the animal is chasing and they kick him away for fear of being bitten; that would be willful, but may also be justifiable in self-defense. Would you agree.

**Cynthia Feland:** That's basically how I interpreted when I read it. Again, it's current language so there really hasn't been any discussion of these definitions among the association when my discussions with law enforcement took place.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Sgt. Lyle Sinclair, Bismarck Police Department:** Support (attachment).

**Rep. Koppelman:** How do you know if a dog is working.

**Sgt. Lyle Sinclair:** The handler makes decisions for the team, he doesn't search for something unless I tell him to or unless there is a very strong odor that he smells. I have to be working with him, we are a certified team.

**Rep. Koppelman:** How would the public know if someone went up to him and pet him. This law makes it a criminal offense to do certain things when the dog is working; but presumably not if the dog isn't working. I assume he doesn't wear a badge, so how do you know.

**Sgt. Lyle Sinclair:** If someone comes up to me or my dog, he should ask permission to pet the dog. When we're working, you can tell that by the way I am acting. He is trained to protect me and he may misinterpret your actions and bite the person.

**Rep. Vig:** What kind of dog food do you buy?

**Sgt. Lyle Sinclair:** We currently feed the dog some high energy 25-30 lb bag. That is usually good for one month supply. We buy it at KT Animal Supply.

**Rep. Vig:** Where do you buy it.

**Sgt. Lyle Sinclair:** KT Animal Supply, we buy it each month, so that it is fresh.

**Rep. Kretschmar:** How many times is the dog used in a typical month for police work.

**Sgt. Lyle Sinclair:** It varies. The dog can be used anywhere from 60-100 times a year. We have used the service dog three times; two for narcotics and once for a building search. We had someone break into a large building, then the police dog went in and made sure it was safe for the officers to come in. It varies between 2x/mo to 10x/month on the average.

**Rep. Hatlestad:** How long does a police dog work.

**Sgt. Lyle Sinclair:** That's difficult to answer. It depends on how hard the dog works and what kind of work the dog does. Some dogs retired after 3-4 years and some after 8-10 years. It depends on a variety of factors, such as health issues, etc.

**Rep. Hatlestad:** Does it make a difference whether it is a dual purpose dog or a single purpose dog, such as narcotics.

**Sgt. Lyle Sinclair:** The stress on a dual purpose dog is more than the stress on a single purpose dog. Usually the dual purpose dog will retire before a single purpose dog.

**Rep. Delmore:** Does the dog reside with you.

**Sgt. Lyle Sinclair:** Yes.

**Rep. Delmore:** And this law would apply only when the dog is working.

**Sgt. Lyle Sinclair:** Yes, the dog is always working. The only time he's not working is if he is sick or injured, which does happen, they are animals; or if it is extremely hot.

**Rep. Delmore:** Are you aware of similar laws in other states and whether those states needed to reduce the penalty and how often they were charged.

**Sgt. Lyle Sinclair:** I believe that ND is only one of two or three states that doesn't have felony status for the service dog.

**Rep. Koppelman:** You said the dog came from the Czech Republic. Are these dogs not available in the U.S. Why do we go to Europe.

**Sgt. Lyle Sinclair:** The reason is two-fold; one – before you can work with a service dog, you need at least one year of training, the cost of raising, testing, fly to Europe, test 10-12 dogs, and bring back the ones you wanted. They also have a lifetime guarantee where you can get your dog replaced.

**Rep. Koppelman:** Has this law been used enough to put it in place, have you ever had to charge someone with this, is this a frequent thing, or is this just preventative.

**Sgt. Lyle Sinclair:** I haven't had to use it.

**Rep. Vig:** How many canines are in ND.

**Sgt. Lyle Sinclair:** Last May there were around 30 teams in the state, with 3 teams in Bismarck.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Pat Heinert, Sheriff, Burleigh County:** Support (attachment). We have a single purpose dog for search and rescue. I was going to bring our 10 month old dog, but he isn't trained enough yet for crowds. We obtained him through a special grant last summer. He's not quite ready to come out in public. I am here this morning to support the bill. We're not only dealing with police service dogs like you typically think about, the German Shepherd, etc. Our dog is specifically trained for search. The only time we use him is for search. That's a little different than the other kinds of law enforcement police dogs.

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

**(Reopened later in the session.)**

**Chairman DeKrey:** We will take a look at SB 2210. What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**9 YES 1 NO 3 ABSENT**

**DO PASS**

**CARRIER: Rep. Wolf**

Date: 3/11/09

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. 2210**

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee      LC Amendment # \_\_\_\_\_

Action:     DP       DP / As Amended       & Rerefer to Approp.  
              DNP       DNP / As Amended

Motion Made By Rep. Delmore      Seconded By Rep. Wolf

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    |     |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        |     | ✓  |
| Rep. Dahl       |     |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     |     |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
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Total (Yes) 9      (No) 1      (Absent) 3

Floor Carrier: Rep. Wolf

Vote is amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2210, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (9 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). Engrossed SB 2210 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2210

Attachment 1  
SB 2210

SB 2210

Senator Carolyn Nelson  
District 21

This bill is similar to SB 2211 except that it deals with animals used in law enforcement. These animals can be "owned" by law enforcement or "used in conjunction" with law enforcement such as Senator Oehlke's dog, Tasha. Tasha is a water search and rescue dog (and a cuddly rug too)

The addition to this section is Section, subsection 2 – the willful penalty.

Again, the term "dog" is changed to "animal" to be more inclusive.

Co-sponsors will first speak, followed by David Green and representatives of the Fargo Canine unit.

**David C. Green**  
523 University Drive South  
Fargo, North Dakota  
58103-2647  
[Lurrik@hotmail.com](mailto:Lurrik@hotmail.com)

**Senate Bill No. 2210**

Chairman and Senators,

Let me begin by providing some background on myself. I was born and raised in Southern California. I then served in the U.S. Navy aboard submarines as a sonar technician during the mid-80s. After my military service I worked at Naval Air Station North Island as a Department of Defense Police Officer. I was a trained traffic ascendant investigator and worked closely with local law enforcement agencies including the U.S. Border Patrol. I also served as the chief steward for the union local and was the lead negotiator for the labor contract while I was there. I was placed on a disability retirement in 1995. I then lived in Seattle for a year and a half before moving to Fargo to be closer and be able to help my parents.

After moving to Fargo I attended the Fargo Police Citizens Academy to help familiarize myself with where I bought a house. During the academy I learned about North Dakota's law for police animals (Century Code 12.1 - 17 - 09) and its deficiencies. Both in my time as a police officer and in the military I have come to respect and value the animals used to aid in our jobs. But when we take and train an animal to serve us in what can be a very dangerous environment, we have an obligation to protect them to the best of our ability. We do this by train and special equipment, but also by providing them special recognition under the law. The recognition is not only to allow access, but includes the ability to punish those who would hinder or harm these animals.

I learned all too well the value of having K9 unit around to clear large hangars or warehouses when I was working as a police officer. They were an invaluable asset in bomb and drug detection when I was an officer. I also learn the threat they can come under when local drug cartels place \$100,000 bounty on some of the drugs dogs that

worked the border. And while North Dakota seems far removed from this, drugs here have a connection to the southern border and its problems.

Both Dogs and Horses serve in various law enforcement and emergency services, including search and rescue, and tracking. We all have had pets in our lives and know the connection we have with them. But that only begins to compare to the connection an officer has with their K9 partner. In Fargo, the police even take the dog home with them. If someone were to target a police dog, that could bring the officer's family into harms way.

The other major consideration is the simple dollar value involved. The animals covered under these changes all require specialized training to perform their duties. It can cost an estimated \$14,000 (ND Highway Patrol) to put a police K9 on the street. The substantial time and monetary investment in service animals warrants the special protection that is sought in the changes to the current law. An officer and K9 are certified together. The loss of the K9 partner removes the team from protecting the public. The time and investment in replacing that team can be considerable. As such the punishment for such crimes needs to be corresponding high.

In addition to the use of dogs, horses are another asset that law enforcement makes use of, normally in undeveloped areas. They are ideal transportation for certain terrain and have served well through most of history. They can become a target as easily as their rider, more so if the shooter thinks that wounding the horse is only a minor offense.

Emergency services also make use of privately owned animals that have special training. These privately owned animals could be invaluable assets that cannot afford to have these animals as a regular part of their force. Yet they can be put into harms way and have similar expense to regular police animals. As such, these animals as well need and deserve the special recognition and protection under this law.

In closing let me say that Protection these animals is a mater of personal responsibility and economic necessity.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2210

Page 1, line, 8, replace "A misdemeanor" with "C felony"

Page 1, line 12, replace "B misdemeanor" with "A misdemeanor"

Renumber accordingly

Testimony in support of Senate Bill 2210

*Same given  
to House.*

January 27, 2009

Good morning Mr. Chairman and members of the Judiciary Committee. My name is Lyle Sinclair and I work for the Bismarck Police Department. I have been with Bismarck since 1993. In 2003 I was selected to become a Canine Handler. In 2004 I was promoted to the rank of Sergeant. In 2005 I took over the K9 program for the city of Bismarck. The K9 partner I have is a German Shepherd Dog trained in Patrol Work and Narcotics. He is an imported K9 from the Czech Republic who was specifically bred for Police Work. His name is Nick.

I will try to break down the costs of a Police Service Dog as it relates to my Partner Nick.

- Nick's initial cost (he was purchased from a vendor who sells European Dogs) in 2003 was \$3,500.
- 16 week school in St. Paul MN with hotel and per diem combined \$100/day was about \$8,000
- Cost of the class (Paid to St. Paul PD K9) \$1,500
- Gas to drive to and from St Paul was at least \$700
- My salary for 16 weeks of school \$12,000

This totals approximately \$35,000 for one dual purpose K9 team. This does not include the cost of a specially equipped squad car, kennel, and vet bills for the K9 in 2003.

In addition to the up front costs of a Police Service Dog there are yearly costs to maintain the team at a certain level of proficiency. This includes training time with the team, vet fees, food for the K9, and costs associated with certifications.

For Bismarck Police the average cost per year for a Police Service Dog, Narcotic Detection, Patrol Work or Dual Purpose (Narcotic and Patrol) is broken down:

|                         |        |
|-------------------------|--------|
| Food for K9:            | \$300  |
| Vet Bills:              | \$300  |
| Certification:          | \$500  |
| K9 Handler compensation | \$3600 |

Food and vet bills are self explanatory. The certification costs include the cost to drive to and from the Certification; lodging and meals; actual costs of certification. The US Supreme Court has set case law that the officer must be compensated for "at home care" of the dog. Bismarck uses ½ hour per day of compensation to the handler.

To summarize, it cost Bismarck over \$35,000 to purchase and train a dual purpose K9 team. On average it costs over \$4,700 per year to maintain a K9 team.

If you look at ND Century code under theft of property 12.1-23-02 with a value of \$500 to \$10,000 it is a C Felony. If the value is in excess of \$10,000 is a B Felony. Criminal Mischief 12.1-21-05 with a value of \$2,000 to \$10,000 it is a C Felony. Over \$10,000 is B Felony. If you take out the emotional factor for the K9 and look at them as a piece of equipment; the costs would easily exceed the dollar amount for a Felony. That is why I am asking your support of senate bill 2210.

Respectfully submitted,

Lyle Sinclair

Mr. Chairman and members of the Committee; my name is Sgt. Derik Zimmer, Coordinator of the Police Service Dog Unit of the Grand Forks Police Department. I would like to voice my support of this bill, as well as the amendment proposed today.

The provision added in Paragraph 2 of this bill will help us in our efforts to protect the public. It provides a tool for law enforcement to take enforcement action before a situation escalates, thereby protecting the police service animal, the officer, and the instigator. It is a provision that is necessary, and just makes sense.

Of equal or greater importance, to me, is the amendment proposed here this morning. If I have an issue with this bill, it is that Paragraph 1 remains unchanged, allowing only a Misdemeanor-level offense for killing, shooting, torturing, beating, mutilating or disabling a police service animal. With this law, as it currently reads, I believe we do a great disservice to the service these animals provide to the citizens of North Dakota.

In preparation for this appearance, I researched applicable laws within the United States regarding this specific topic. 40 states currently mandate a Felony-level offense for killing a police service animal or equivalent act. Of the 10 remaining states that limit such an act to Misdemeanor status, 8 do not make a special provision for actions against a police service animal, and the equivalent offense is simply included within that state's Cruelty to Animal statutes. Only 2 states specify that killing a police service animal is only a Misdemeanor offense. Sadly, North Dakota is one of those 2 states.

In the year 2000, the Federal Government enacted the Federal Law Enforcement Animal Protection Act. This act specifies not only a Felony-level offense for committing such an act on a Federal police service animal, but also allows for a sentence of up to 10-years imprisonment. In support of this Act, co-sponsor Senator Jon Kyl of Arizona said; "Animals that serve in Law Enforcement shouldn't be treated as mere property."

I couldn't agree more.

Police service animals provide a variety of services to the citizens of this state. They may assist in crowd control, riot control, arson investigations, narcotic detection, bomb detection, and criminal apprehension, as well as various types of searches, including those for lost children, cadavers, search and rescue, evidence and criminals. Their versatility is limitless. They protect our officers on a daily basis through various patrol duties, including simple deterrence, as well as criminal searches and apprehensions. Any person injuring or killing a police service animal under such circumstances would certainly be willing to injure or kill a law enforcement officer as well. Any injury to that officer would result in a Felony-level offense. When that police service animal gives its life to protect that officer from harm, we currently recognize only a Misdemeanor-level offense. I do not believe that is any way to honor the service, and sacrifice, of that police service animal.

I support and appreciate the efforts by the lawmakers of this state to help protect our police service animals through the provision currently being considered by this committee. I further support and appreciate the amendment as offered here this morning. I would ask that this committee strongly consider amending this bill as proposed. I believe those police service animals that faithfully serve the citizens of North Dakota have more than earned that consideration.

Thank you for the opportunity to speak to you this morning.

Attach 6

2210

Testimony in support of Senate Bill 2210

January 27, 2009

Thank you Mr. Chairman and Members of the Judiciary Committee.

My name is George Vinson. I am a canine handler for the Fargo Police Department. I, along with the many other police canine handlers in the state, have been closely watching Senate Bill 2210. I want to thank you and your fellow Senators and Representatives for your hard work in sponsoring and supporting this bill. This is truly an important issue to us.

We were very happy to see the strong stance that was taken on the bill and are eager to see its progression through the Legislature. I am pleased to see that perhaps in the not so distant future, protections may be provided to police animals not only in regards to killing, but also teasing or harassing.

I would like to encourage the Judiciary Committee to consider the intentional and unjustified killing of a police animal to be a C Felony. Many states provide that this action be considered a felony.

My K9 partner, Earl, was purchased for \$10,000. His on-going training, etc. has increased his value greatly. K9 Earl has seized almost 7 times more money from drug dealers in Fargo compared to his initial cost. In his two years as a police animal, he has helped seized hundreds of pounds of illegal narcotics from the streets of Fargo. The near \$70,000 in cash that Earl has helped seized has, in theory, slightly lessened the burden on the tax payers. The cost and investment put into K9 Earl and all other service animals seems somewhat minimized by the idea of having a killer be convicted of a mere A Misdemeanor.

Service Animals provide and mean so much to people. Service animals like Seeing Eye dogs, emotional therapy animals, etc. become best friends and family members to those they serve and live with. Death to this family member and very important tool can be tragic, especially if that death is caused by another person. The negative impact it has can be nearly impossible to measure.

One common misconception about a police dog I would like to dispel is that they used for their teeth or their aggressiveness. They are not. A police dog is used for its nose. Its nose detects the odor of a violent offender trying to escape or that is hiding, waiting to assault or kill an innocent person; its nose detects the odor of an explosive coming from a piece of luggage at a bus terminal providing for the safe evacuation of people; its nose detects the odor of an illegal narcotic that a drug dealer tries to sell to our friends, family, and most importantly our children. Their work often goes unnoticed and unappreciated, but its loyalty and dedication to its job is unwavering. I encourage us to show our appreciation by providing a higher level of protection for these animals.

Under Criminal Mischief or plain Theft, the loss of Earl (and many other service animals) would be a B Felony. Yet the codified law pertaining to killing the animal is an A Misdemeanor. One might think to themselves, well if the death can be charged under criminal mischief or theft, then why amend this Bill? I believe the answer to that question is simple; the current law has standing over mischief or theft. If NDCC says killing a police dog is an A Misd, my belief is that courts will follow that guideline rather than going outside the box and convicting for Criminal Mischief or Theft. For many, the act of killing a service animal shocks the conscious; it is time to increase the penalty for this offense.

I thank you for your time and considering the issue. I encourage the Judiciary Committee to continue with their great work for the State of North Dakota and also encourage them to consider raising the penalty for willingly and unjustifiably killing any service animal.

Again, thank you for your time. Below I have included MN law on the issue to serve as a comparison.

Respectfully,

Officer George Vinson  
K9 Earl  
Fargo Police Department

**609.596 KILLING OR HARMING PUBLIC SAFETY DOG.**

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**Subdivision 1. Felony.**

It is a felony for any person to intentionally and without justification cause the death of a police dog, a search and rescue dog, or an arson dog when the dog is involved in law enforcement, fire, or correctional investigation or apprehension, search and rescue duties, or the dog is in the custody of or under the control of a peace officer, a trained handler, or an employee of a correctional facility. A person convicted under this subdivision may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both. In lieu of a fine, the court may order the defendant to pay restitution to the owner to replace the police dog, search and rescue dog, or arson dog, in an amount not to exceed \$5,000.

**Subd. 2. Gross misdemeanor.**

It is a gross misdemeanor for any person to intentionally and without justification cause substantial or great bodily harm to a police dog, search and rescue dog, or an arson dog when the dog is involved in law enforcement, fire, or correctional investigation or apprehension, search and rescue duties, or the dog is in the custody of or under the control of a peace officer, a trained handler, or an employee of a correctional facility.

**Subd. 3. Definitions.**

As used in this section:

- (1) "arson dog" means a dog that has been certified as an arson dog by a state fire or police agency or by an independent testing laboratory;
- (2) "correctional facility" has the meaning given in section 241.021, subdivision 1, paragraph (f);
- (3) "peace officer" has the meaning given in section 626.84, subdivision 1, paragraph (c); and
- (4) "search and rescue dog" means a dog that is trained to locate lost or missing persons, victims of natural or other disasters, and human bodies.

## 18 USC

### **Sec. 1368. Harming animals used in law enforcement**

(a) Whoever willfully and maliciously harms any police animal, or attempts or conspires to do so, shall be fined under this title and imprisoned not more than 1 year. If the offense permanently disables or disfigures the animal, or causes serious bodily injury to or the death of the animal, the maximum term of imprisonment shall be 10 years.

(b) In this section, the term "police animal" means a dog or horse employed by a Federal agency (whether in the executive, legislative, or judicial branch) for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

#### SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-254, Sec. 1, Aug. 2, 2000, 114 Stat. 638, provided that: "This Act [enacting this section] may be cited as the 'Federal Law Enforcement Animal Protection Act of 2000'."

*Last modified: April 12, 2006*



# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



Senator Carolyn Nelson  
District 21  
1 Second Street South #5-402  
Fargo, ND 58103-1959  
Residence: 701-235-5161  
[cnelson@nd.gov](mailto:cnelson@nd.gov)

Assistant Minority Leader

**COMMITTEES:**  
Judiciary  
Government and Veterans Affairs

SB 2210 – Wednesday, March 11, 2009 at 9:00 in House Judiciary, Prairie Room

SB 2210 deals with animals used in law enforcement. These animals can be “owned” by law enforcement or “used in conjunction” with law enforcement such as Senator Oehlke’s dog, Tasha. Tasha is a water search and rescue dog.

Chapter 12.1-17 is the criminal code and this bill amends 12.1-17-09.

This bill increases the penalty in the criminal section one level and adds a civil penalty.

In subsection 3, the term “dog” is changed to “animal” to be more inclusive.

Finally in subsection 4, a clarification is made. Some law enforcement animals are not “certified”, they are trained.

Law enforcement is here today to add information for you and support to their canine friends.

I have also provided testimony from David Green, the constituent who initially got me interested in this project and a copy of an email received from Sergeant Mark Lykken, administration sergeant of the canine unit with the Fargo Police Department.

**David C. Green**  
523 University Drive South  
Fargo, North Dakota  
58103-2647  
[Lurrik@hotmail.com](mailto:Lurrik@hotmail.com)

## **Bill No. 2210**

Chairman and Honorable Members of the House Judiciary Committee,

I regret on not being able to stand before you today to personally give you my presentation. I have asked Senator Carolyn C. Nelson to read this into the record on my behalf in support of this bill that I fill is desperately needed to correct a deficiency in the current law.

Let me begin by providing some background on myself. I was born and raised in Southern California. I then served in the U.S. Navy aboard submarines as a sonar technician during the mid-80s. After my military service I worked at Naval Air Station North Island as a Department of Defense Police Officer. I was a trained traffic ascendant investigator and worked closely with local law enforcement agencies including the U.S. Border Patrol. I also served as the chief steward for the union local and was the lead negotiator for the labor contract while I was there. I was placed on a disability retirement in 1995. I then lived in Seattle for a year and a half before moving to Fargo to be closer and be able to help my parents.

After moving to Fargo I attended the Fargo Police Citizens Academy to help familiarize myself with where I bought a house. During the academy I learned about North Dakota's law for police animals (Century Code 12.1 – 17 – 09) and its deficiencies. Both in my time as a police officer and in the military, I have come to respect and value the animals used to aid in our jobs. But when we take and train an animal to serve us in what can be a very dangerous environment, we have an obligation to protect them to the best of our ability. We do this by train and special equipment, but also by providing them special recognition under the law. The recognition is not only to allow access, but includes the ability to punish those who would hinder or harm these animals.

I learned all to well the value of having K9 unit around to clear large hangers or warehouses when I was working as a police officer. They were an invaluable asset in bomb and drug detection when I was an officer. I also learn the threat they can come under when local drug cartels place \$100,000 bounty on some of the drugs dogs that worked the border. And while North Dakota seems far removed from this, drugs here have a connection to the southern border and its problems.

Both Dogs and Horses serve in various law enforcement and emergency services, including search and rescue, and tracking. We all have had pets in our lives and know the connection we have with them. But that only begins to compare to the connection an officer has with their K9 partner. In Fargo, the police even take the dog home with them. If someone were to target a police dog, that could bring the officer's family into harms way.

The other major consideration is the simple dollar value involved. The animals covered under these changes all require specialized training to perform their duties. It can cost an estimated \$14,000 (ND Highway Patrol) to put a police K9 on the street. The substantial time and monetary investment in service animals warrants the special protection that is sought in the changes to the current law. An officer and K9 are certified together. The loss of the K9 partner removes the team from protecting the public. The time and investment in replacing that team can be considerable. As such the punishment for such crimes needs to be corresponding high.

In addition to the use of dogs, horses are another asset that law enforcement makes use of, normally in undeveloped areas. They are ideal transportation for certain terrain and have served well through most of history. They can become a target as easily as their rider, more so if the shooter thinks that wounding the horse is only a minor offense.

Emergency services also make use of privately owned animals that have special training. These privately owned animals could be invaluable assets that cannot afford to have these animals as a regular part of their force. Yet they can be put into harms way and have similar expense to regular police animals. As such, these animals as well need and deserve the special recognition and protection under this law.

In closing let me say that Protection these animals is a mater of personal responsibility and economic necessity.

**Nelson, Carolyn C.**

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**From:** Mark Lykken [MLykken@cityoffargo.com]  
**Sent:** Tuesday, March 10, 2009 11:01 AM  
**To:** Senator Carolyn Nelson  
**Cc:** James VanLith; Joel Vettel  
**Subject:** Senate Bill 2210  
**Attachments:** image001.jpg

Dear Senator Carolyn Nelson,

I am the administration sergeant of the canine unit with the Fargo Police Department. I also handled a canine for the unit for seven years and have been with the unit or ten years.

I wanted to thank you for your support of this bill. The canines are an invaluable tool locating suspects of crimes. There is a cost associated with the canines though.

The average career of a working police dog (dual purpose narcotics and apprehension) is between five and eight years. The costs are not only financial but also an investment in the individual officer's time.

The typical untrained police service dog costs in a range of \$5,000 - 15,000. The training for an apprehension police service dog is between nine and thirteen weeks. Not only is there a cost for the training but an officer's salary, room and board must be included making the cost over \$10,000 just for the expenses.

If a canine suffers an injury it can take months to correct and overcome the behavior associated with the action which caused the fear. Although I have not experienced an injury to the canine I have handled, I am familiar with cases in St. Paul. One canine was stabbed with a screw driver and it took over six months to build the drive to overcome the fear the canine experienced to make him street worthy again. There are numerous cases nation wide when a canine does not comeback for an injury inflicted by a fighting suspect.

Any deterrent to avoid the conflict associated with a fighting subject is worth the effort. As you can see, the expenses to a department are large. It is possible the expenses to the department could be higher if the police dog is injured and not able to work resulting in an injury to the officers who were not able to utilize the police service dog.

**Sergeant Mark Lykken**  
Personal Crimes CIU  
Fargo Police Department  
222 4th St N  
Fargo ND 58102  
Phone: (701)241-1410  
Fax: (701)241-1407





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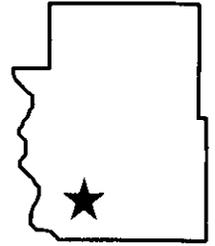
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# BURLEIGH COUNTY SHERIFF'S DEPT.

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*PAT HEINERT, SHERIFF*



514 E. Thayer  
P.O. BOX 1416  
BISMARCK, ND 58502-1416

TELEPHONE 701-222-6651  
FAX 701-221-6899

TO: House Judiciary Committee

DATE: March 11, 2009

FROM: Pat Heinert, Sheriff, Burleigh County

RE: SB 2210

Good Morning Chair DeKrey and members of the House Judiciary Committee.

I am here today to support SB 2210.

We are supporting this bill because of the language that changes to support animal. In today's law enforcement world we are utilizing more than just what most people see as the typical police dog. For instance in Burleigh County we have one animal, his name is Ace Bentley and he is a bloodhound. Bentley is about 10 months old now and is in the middle of puppy training and learning tracking. Our handler, Sgt Mike MacDonald would have liked to bring Bentley this morning, but Bentley is just not used to larger crowds as of yet and Sgt. MacDonald was somewhat concerned about how Bentley would act.

I urge your support of this bill and I thank you for your support of law enforcement in North Dakota.