

2009 SENATE JUDICIARY

SB 2293

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No 2293

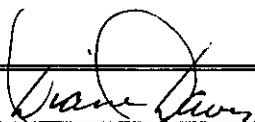
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number 8346

Committee Clerk Signature



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

Relating to the assault of state hospital employees and to provide a penalty.

Senator Nething – District 12 - Introduces the bill – Makes it a class C felony on an attack on an employee at the state hospital in the course and scope of employment.

Fritz Fremgen –States Attorney for Stutsman County – See written testimony.

Senator Lyson – Asks if this bill is for those that are there for mental disease or just sexual offenders.

Fremgen – Correction just sexual offenders

Senator Olafson – Asks if effort will be made to inform people when they come into the facility that these penalties have been increased. Are you confident that will act as a deterrent for these kinds of assaults?

Fremgen – He is confident they are oriented.

Alex Schweitzer – Superintendent of the ND State Hospital – See written testimony.

He has seen an increase in violent behavior. Particularly true in the sexually dangerous unit. This unit has a small number of patients that are causing the majority of the violence towards staff and other patients. There is a group of anti-social members of this unit that continue to

bring violence to staff and patients. He believes that state hospital employees should be afforded the same protection under law that correctional employees and peace officers have.

Senator Olafson moves do pass

Senator Lyson seconds

Vote – 6-0

Senator Lyson

REPORT OF STANDING COMMITTEE

SB 2293: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2293 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

--SB-2293

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2293

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10969, 11022

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2293.

Fritz Fremgen, State's Attorney, Stutsman County: Support (attachment). Explained the bill.

Rep. Koppelman: I know that there are two different classes of inmates, are these mentally handicapped people, do they even know if we change the penalty; are they astute enough or calculating enough to say that the penalty has changed so am I going to do it or not.

Fritz Fremgen: We did have one case involving a mentally handicapped person that was a victim, and I didn't get to see that person myself. My office prosecutes every defendant who is not on the secure services unit and all of the people who have been prosecuted are well able to understand the punishment.

Rep. Koppelman: You talked about special victims, why should they differ from someone visiting someone in the hospital.

Fritz Fremgen: I'm with you on that, I support bills that contemplate that, including another patient on patient. What we have seen happen is they go after the staff to take out their frustrations. There is also patient on patient assault, but they use assault, property damage, to tear apart the system for their entertainment and retribution.

Rep. Klemin: On page 1, line 10 of the bill, it says "which the actor knows to be a fact".

Fritz Fremgen: That refers to them working in a capacity.

Rep. Klemin: An employee of the state hospital, acting in the course and scope of employment, which the actor knows to be a fact. The actor is the individual committed or detained...I don't see the knowledge of the actor, is that in any other part of the code here.

Fritz Fremgen: I believe that same standard applies to correctional officers and emergency responders, and you want the actor (the accused) to know that they are assaulting a public employee working at public employment at the time.

Rep. Klemin: You're jumping from a class B misdemeanor, to a class C felony, is that what we're doing and why not a class A misdemeanor.

Fritz Fremgen: Well, we're not giving these folks very big sentences, so we wanted to open their eyes when we talked about the potential for 5 years. When these folks who are disgruntled realize, I'm going to sit out for maybe 18 months at the penitentiary and then I get to go back and start over again with treatment; then I get right back where I was. It's not often when we would charge a class C felony; our experience has been when they find out that they can be charged with a C felony, they usually calm down and behave.

Rep. Klemin: I guess we've had some experience over the years with increasing penalties to felonies and then we found out that maybe we shouldn't have put so many people in prison, and we backed off and changed some of these penalties back to class A misdemeanors. If we're going from a class B misdemeanor or a class C felony, which is quite a jump.

Fritz Fremgen: I agree, but we need this with this group of people because they are antisocial patients in the secure services unit, the staff is in a captive environment and that warrant the increase in the level of offense. If a patient kicks staff in the face, it is only a B misdemeanor.

Rep. Delmore: This is quite a leap you are making. As I'm reading this section in reference to the code, it doesn't just cover sexually dangerous individuals, it covers people who may not necessarily know what they're doing.

Fritz Fremgen: You can't prosecute people who don't know what they're doing. First they get an evaluation to determine the level of criminal responsibility; you can't prosecute a person with mental illness or defect.

Rep. Delmore: So you're telling me that is a person who would be protected from this law.

Fritz Fremgen: Any individual who either a mental illness or defect, and can't understand the wrongfulness of the conduct, lacks criminal responsibility, that's 12.1-04, the entire chapter. I can't prosecute a person who has mental illness or defect.

Rep. Delmore: You're talking in circles. What I'm looking for is the reference to 25-03.3 which covers all the definitions that are included in the code. You were talking about the sexually dangerous criminals, but that is a different section that covers that part; section 25-03.3-03 is sexually dangerous individuals.

Fritz Fremgen: I'm not going to prosecute anyone that has mental illness or defect.

Chairman DeKrey: Thank you. Further testimony in support.

Alex Schweitzer, Superintendent of ND State Hospital & ND Developmental Center of the Dept. of Human Services: Support (attachment).

Rep. Delmore: It looks like in your testimony, one employee was hospitalized. Is this something that happens frequently.

Alex Schweitzer: This particular initiative was addressed because of the personal cost to us. There are probably weekly assaults on our staff, breaking and damaging property in the unit, they will start skirmishes with other patients. So this is an ongoing problem. I mentioned this

individual because she was so violently attacked that she ended up in the hospital. This is an ongoing concern.

Rep. Delmore: So class C felonies would you be asking for.

Alex Schweitzer: Obviously some of these acts of violence are not instances where we would refer them to the state's attorney. We deal with them, day to day. If there is an attack, such as the one that happened to this individual, if it was violent enough, if there was enough property damage, then we refer those cases.

Rep. Griffin: The individual that ended up in the hospital, you thought she had enough injuries where it would have been a felony charge.

Alex Schweitzer: That's probably true.

Rep. Griffin: Does the local county correctional center not want to take these individuals in.

Alex Schweitzer: These individuals were civilly committed. They were not criminally committed. They don't have a problem with it. I have worked with the county in the past and the sheriff has worked with us at the State Hospital.

Rep. Griffin: If they are charged criminally for a simple assault, and they get a 30 day sentence, instead of the correctional center for the local law enforcement, is that a problem, or do they not want them in with the other prison population.

Alex Schweitzer: That's not the problem, they will.

Rep. Koppelman: I've been looking at the statute in current law, and it looks like this started out as a protection against people trying to interfere with police officers, emergency medical folks, and so on in the performance of their duties; and now we've added correctional workers and obviously the next step is the State Hospital wants to be included too, in terms of the

employees. I don't necessarily have a problem with that, but when you sit back and analyze what we're really doing, then we get into a situation you mentioned in your testimony recalling

attacks against employees and also other patients. Are we creating kind of a special class in saying that the employees have greater protection than does a visitor to the hospital have. If someone makes a 911 call, and there is a paramedic there, he/she has that protection, but if a family member comes to visit someone and they are attacked, it's not the same penalty. I'm struggling with that.

Alex Schweitzer: It is unlikely that you have an attacked on a family member because of the security in the visitation room that we have. I have no problems with other people; I am concerned about the employees that work in this particular environment, for their safety and for their morale. It's hard to keep staff working in an environment like that. You have to be able to show that you will deal with these kinds of situations. This setting is very different than any other setting in terms of patients. Individuals that come here stay for a really long time, and they feel that they haven't anything to lose if they cause trouble/problems.

Rep. Koppelman: If one of the persons attacked was a fellow inmate or someone else that is there for whatever reason that is not an employee, if the concern is that they are there for a long time and they don't care, would putting them in prison make a difference.

Alex Schweitzer: I agree with that, I think that if they assault a patient, I have a responsibility to that patient as well. I would consult with the local state's attorney to see what action needs to be taken, we do that now. We need the penalty to be a deterrent.

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 2293.

Rep. Griffin: Explained the amendments. This amendment creates another subdivision. A B misdemeanor, which provides for up to a year in jail, and a year in a county jail is worse than a year in prison, because you don't get time off for good behavior, etc.

Rep. Klemin: I agree with the amendment, and I think in the other situations, which is described in the existing language of the class C felony. We've got a situation where somebody coming out of the blue to interfere with one of these other officers or firemen, and they aren't expecting somebody to do something to them, that's one thing. But in the State Hospital setting, they know these people, they are dealing with people and know their propensities. It's not exactly the same. I can see your reason for increasing the penalty to get away from the situation that was described. I don't think it's quite the class C felony situation either.

Rep. Dahl: I disagree. When you look at line 7, it includes the correctional institution, and I think that the employees at the State Hospital are very similar to correctional center employees. I would be in favor of keeping the class C felony status.

Rep. Griffin: I move the amendment.

Rep. Klemin: Second.

Chairman DeKrey: Roll call vote, **9 YES 4 NO; Motion carried.** We now have the bill before us as amended. What are the committee's wishes in regard to SB 2293.

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

Rep. Boehning: Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Boehning

VR
3/17/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2293

Page 1, line 8, remove the overstrike over the overstruck comma and remove " : an"

Page 1, remove lines 9 and 10

Page 1, line 11, remove "or detained at the state hospital pursuant to chapter 25-03.3:"

Page 1, line 12, remove the overstrike over the overstruck comma and remove the underscored semicolon

Page 1, line 15, after "b." insert "A class A misdemeanor when the victim is an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3.

c."

Page 2, line 3, overstrike "c." and insert immediately thereafter "d.", overstrike "or" and insert immediately thereafter an underscored comma, and after "b" insert ", or c"

Renumber accordingly

Date: 3/16/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2293

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # 90749.0101

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

Motion Made By _____ Seconded By _____

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		✓			

Total (Yes) 9 (No) 4 (Absent) —

Floor Carrier: _____

Vote is amendment, briefly indicate intent:

Roll Call Vote - Motion Carried.

Date: 3/16/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2293

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. Boehning

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	✓				

Total (Yes) 13 (No) 0 (Absent) 0

Floor Carrier: Rep. Boehning

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2293: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2293 was placed on the Sixth order on the calendar.

Page 1, line 8, remove the overstrike over the overstruck comma and remove "an"

Page 1, remove lines 9 and 10

Page 1, line 11, remove "or detained at the state hospital pursuant to chapter 25-03.3;"

Page 1, line 12, remove the overstrike over the overstruck comma and remove the underscored semicolon

Page 1, line 15, after "b." insert "A class A misdemeanor when the victim is an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3.

c."

Page 2, line 3, overstrike "c." and insert immediately thereafter "d.", overstrike "or" and insert immediately thereafter an underscored comma, and after "b" insert ", or c"

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2293

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2293


Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/17/09

Recorder Job Number: 11933

Committee Clerk Signature



Minutes:

Senator Nething, Chairman

Representative Boehning

Senator Lyson

Representative DeKrey

Senator Fiebiger

Representative Zaiser

Senator Nething asks Rep. Boehning to explain the amendment put on by the House.

Rep. Boehning said he felt it was more unpleasant to be in a county jail for up to a year than being in the State Penitentiary for up to 5 years. He said these people are in treatment and if you take them away from treatment for too long they would have to start over from day one.

He said in a Class A misdemeanor they will be sitting in county jail with nothing to do, he said they felt it was a more harsh penalty and when they get out they could pick back up on their treatment. Senator Nething asks him what their discussion was on the hospital employees.

Rep. Boehning said they had some discussion on that and says do we want to put them into the State Penitentiary where they can do the same thing to a different officer. He said if we go with a Class C felony maybe there should be a clause that says they should be in total lockup for 23 hours a day in maximum security. Senator Nething asks if any of the House committee

members were able to tour the State Hospital. Rep. Boehning responds yes, a couple years

ago. Senator Nething asks what the discussion was about the recommendation from the State's Attorney's Association. Rep. Boehning says they have to prosecute no matter what. Senator Lyson responds to the comments about county jails. He clears up some misconceptions about being in the county jails. Senator Fiebiger said he is still confused at what the goal is. He said his recollection of the hearing was that unless you make the offense extremely serious it would not have any affect. That was the whole idea of the C felony opposed to the misdemeanor. He understood the focus was on the penalty provision not whether they go to county jail. Rep. Zaiser said he concurs with Sen. Fiebiger because as he saw it the bill's intent was to provide a significant deterrent so this kind of behavior would not continue. Senator Lyson said if you do a Class A misdemeanor you put the expense to the county. He doesn't think we should put the expense on Stutsman County. Rep. DeKrey said it wasn't unanimous in the committee either. He believes an assault on a jailer isn't worth more than an assault on an employee at the state hospital. He would like to see the Senate amendments put back on and take this back to the House floor. Senator Nething relates that he is the prime sponsor on this and he serves on a committee as a lay person that reviews the schedules of treatment advancement for these individuals consequently he has been exposed to the population of the sexual offender unit at the hospital. He has observed the lockup unit and treatment, and there is definitely a reason the individuals are there. Senator Nething asks Alex Schweitzer, Superintendent of ND State Hospital to give his comments on the bill. He tells of two significant events where staff have been assaulted. He said there are two different populations in this program. He said they have a small amount of people whose intent is to cause mischief in the program and they assault the staff. He belies strongly that you need a deterrent, this group of people will not engage in treatment until they understand when you make these kinds of decisions you're going to pay for them. He also says he can't understand

why his employees should be treated differently than a jailer, correctional officer or an emergency personnel person. They deal with the same situations. Senator Nething asks him to describe the new housing. Rep. DeKrey says those people may be deviants but they are not stupid and these people have that figured out. They know they're in a lock up position where they have no freedom and all they have to do is slap a worker around and they get a free trip downtown and get to be in court. If your life is total lock-up that trip is a pretty good deal. Schweitzer replies that is quite possible and they have no desire to be in treatment so they are going to cause problems. Rep. Boehning asks Schweitzer at what level do you charge these patients. Schweitzer replies that is up to the State's Attorney's, they determine when there should be a charge. Schweitzer is most concerned with the major incidents, not the minor incidents. Rep. Zaiser said he echo's the comments of Rep. DeKrey about some of the interaction in the House Judiciary Committee, after speaking with Mr. Schweitzer about the initial focus of this bill is a deterrent. He motions the House recede from House amendments.

Roll call vote – 6 yes, 0 no

Date: 4/17/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB2293** as (re) engrossed

Senate Judiciary Committee

Check here for **Conference Committee**

- Action Taken SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 907 --

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Rep Zaiser Seconded By Rep DeKrey

Senators				Representatives			
		Y e s	N o			Y e s	N o
Senator Nething-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Rep. Boehning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Senator Lyson	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Rep. DeKrey	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Senator Fiebiger	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Rep. Zaiser	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

Vote Count 6 Yes 0 No _____ Absent

Senate Carrier S. Nething House Carrier Rep. Boehning

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2293: Your conference committee (Sens. Nething, Lyson, Fiebiger and Reps. Boehning, DeKrey, Zaiser) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 907 and place SB 2293 on the Seventh order.

SB 2293 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2293

My name is Fritz Fremgen, 511 2nd Ave. SE, Jamestown, ND. I support SB 2293

What the bill would do

SB 2293 would make it a felony for a patient in the state hospital's sex offender program to assault a staff member. Without SB 2293, if the patient on staff assault does not rise to substantial bodily injury or serious bodily injury, it is classified as a B misdemeanor, which is only punishable by up to 30 days imprisonment and/or a \$1,000 fine. We would like to see a patient on staff assault classified as a C felony, even if it only causes bodily injury. A C felony is punishable by up to 5 years imprisonment and/or a \$5,000 fine. Bodily injury is defined in NDCC 12.1-01-04(4) as any impairment of physical condition, including physical pain. This is presently the standard for C felony assault for correctional officers and emergency responders.

My connection to the bill

I am the State's Attorney in Stutsman County. I've prosecuted violent crime that happened in the Secure Services Unit of the State Hospital, the Stutsman County Correctional Center, and the James River Correctional Center. These are what I will refer to in general terms as "captive environments".

A captive environment

I believe a captive environment is a special situation that warrants the increase in the level of offense.

There's an old saying that 5% of the people ruin it for the other 95%, sometimes you'll hear it put: 5% of the people commit 95% of the crime. What do you expect to happen when you cull that particularly prolific 5% out of the society and house them together? This special group is not as amenable to the typical societal deterrents as society at large.

Sexually dangerous individuals committed to the Secure Services Unit of the NDSH are defined as people who have engaged in sexually predatory conduct and have either a sexual disorder, mental disorder, or other dysfunction that makes them likely to sexually reoffend. They are either detained for evaluation or committed for treatment under NDCC chapter 25-03.3, the chapter on civil commitment of sex offenders, and held at the North Dakota State Hospital's *Secure Services Unit*.

B misdemeanor is ineffective deterrent

Some of the detainees are anti-social; some are frustrated, depressed, or angry that they are indefinitely detained. Some can have the attitude that an indeterminate commitment plus 30 days is still just an indeterminate amount of time. Some who realize they are most likely committed for several year see 30 days as such an insubstantial amount of punishment.

Sabotage, harass, and interdict

Some have long records and are very savvy to the criminal justice system. Some get much more from one of these assaults than the immediate satisfaction of hitting someone.

For the mere possibility of 30 days outside the Secure Services Unit in the Stutsman County Correctional Center, they get to upset hospital staff and the treatment environment for a few hours, tie up staff and resources over a period of months with transports to and from hearings, producing documents requested by the public defender appointed at no cost to the accused, preparing to testify, and negotiating a settlement. What's more, the patient involves the state's judicial personnel, spending the time of the judge, reporter, clerk, public defender, and the prosecutor. Perhaps, since he is a patient alleged to have a sexual disorder or mental disorder, he can obtain a forensic psychiatric evaluation to support a lack of criminal responsibility defense. It's free.

We have had patients let us know they intend to use the trial to air their concerns, whether real or contrived, about the treatment system or the civil commitment system. These cases have been used by residents as entertainment, retaliation, and harassment, and a way to pour some frustration back on the state.

Not a new class of special victims

Personally, I disagree with the general premise of elevating the seriousness of the offense based on the age, race, gender, ethnicity, or marital status or any other protected or suspect class we can put around the victim. It is no greater wrong to punch me, because I'm a lawyer, a dad, or a husband, than it is to punch my single, insert your race, insert your gender, insert your marital status or sexual orientation, newspaper delivery person. My hurt or sensibilities are not worth more than the next's. We are equal before the law.

This bill isn't about meeting out justice for the individual hospital employee. This bill is about the state having the tools it needs to meet its burden to run a captive environment in a respectable humane manner. This bill is about running an effective treatment facility. We need to ensure this captive environment is run by the rule of law, not the law of the jungle.

The employees, the psychiatric treatment providers, and the patients all deserve to work and receive treatment in a humane environment. They depend on, and it is the responsibility of the state to provide, a place where they do their work, reasonably free from being emotionally and physically jacked around by some of our state's best button pushers.

Testimony
Senate Bill 2293 – Department of Human Services
Senate Judiciary Committee
Senator Nething, Chairman
February 2nd, 2009

Chairman Nething, members of the Senate Judiciary Committee, I am Alex C. Schweitzer the Superintendent of the North Dakota State Hospital and North Dakota Developmental Center of the Department of Human Services. I am here today in support of Senate Bill 2293.

The North Dakota State Hospital has in recent years seen an increase in the admissions of more violent and behaviorally challenged patients. The Hospital is seeing more referrals from correctional facilities, patients requiring competency evaluations and admissions to the unit for Sexually Dangerous Individuals. This particular unit has a small group of patients that are causing the most violence toward staff and other patients. At least one employee in recent memory was hospitalized because of an unprovoked and violent attack by a patient from this unit.

As has been pointed out, when a peace officer, correctional facility employee or medical services personnel are assaulted in their official capacity, the person doing the attack can be charged with a Class C felony. It seems only fair that the employees of the Hospital should be afforded the same protection under the law.

Thank you. I would be happy to answer any questions.

My name is Fritz Fremgen, 511 2nd Ave. SE, Jamestown, ND.

I support SB 2293

What the bill would do

SB 2293 would make it a felony for a patient in the state hospital's sex offender program to assault a staff member even if the amount of injury was only bodily injury. *Bodily injury* is defined in NDCC 12.1-01-04(4) as any impairment of physical condition, including physical pain.

Without SB 2293, patient on staff assault resulting in injury less than substantial bodily injury is only a B misdemeanor. The maximum punishment for a B misdemeanor is 30 days in county jail and/or a \$1,000 fine.

SB 2293 would make patient on staff assault a C felony, even if the resulting injury is only bodily injury. A C felony is punishable by up to 5 years imprisonment and/or a \$5,000 fine.

The standard this bill would enact for secure services employees is the standard already in place for correctional officers and emergency responders conducting their duties.

My connection to the bill

I am the State's Attorney in Stutsman County. I've prosecuted violent crime that happened in the Secure Services Unit of the State Hospital, the Stutsman County Correctional Center, and the James River Correctional Center. I'll call these places, "captive environments".

A captive environment

A captive environment warrants the increase in the level of offense suggested by this bill.

The old saying is 5% of the people ruin it for the other 95%. What can we expect when we cull the trouble making 5% out of the society and house them together?

A sexually dangerous individual (SDI) committed to the Secure Services Unit of the NDSH is defined as a person who has engaged in sexually predatory conduct and has either a sexual disorder, mental disorder, or other dysfunction that makes it likely the person will sexually reoffend. Those held at the North Dakota State Hospital's Secure Services Unit are either detained for evaluation or committed for treatment under NDCC chapter 25-03.3, the chapter on civil commitment of sexually dangerous individuals.

B misdemeanor inadequate deterrent

Some detained are anti-social, frustrated, depressed, or angry that they are indefinitely detained. If due to being committed for an indeterminate amount of time, I grow despondent, I may view another 30 days from a B misdemeanor assault conviction as a

simple change in scenery.

Sabotage, harass, and interdict

Some detained have long records and are very savvy to the criminal justice system. Some use these assault prosecution for more than the immediate satisfaction of hitting someone.

For the possibility of a mere 30 days outside lock up at the Secure Services Unit and inside lock up at the Stutsman County Correctional Center, the patient can hit a staff member, draw an immediate security team response, and upset staff. As the months pass, the patient can go on to tie up staff with preparing to testify, negotiating a settlement, providing secure transport for the patient to and from hearings, and producing documents requested by the public defender appointed at no cost to the accused. Since the patient has a sexual disorder or mental disorder, he likely can obtain a forensic psychiatric evaluation on whether a lack of criminal responsibility defense is germane. It's free. The patient can also involve a judge, court reporter, public defender, court clerks, prosecutor, and law enforcement.

In some cases, patients have used their defense attorneys to convey that they intend to use the trial to air their concerns about the treatment system at the Secure Services Unit or the civil commitment system.

Not a new class of special victims

This is not a case of elevating the seriousness of the offense because of the victim's age, race, gender, ethnicity, marital status, or any protected or suspect class we find around the victim. This is not about making the hurts of one class of citizen more important than the injury of another.

This bill is about providing the state the tools it needs to run a captive environment in a humane manner. This bill puts in place an adequate deterrent, it ensures the patients and staff focus on the mission at hand, treatment. We are obliged to ensure our captive environments are run by the rule of law, not the law of the jungle.

Senate Bill 2293
House Judiciary Committee
Representative DeKrey, Chairman
March 16, 2009

Chairman DeKrey, members of the House Judiciary Committee, I am Alex C. Schweitzer, the Superintendent of the North Dakota State Hospital and North Dakota Developmental Center of the Department of Human Services. I am here today to testify in support of Senate Bill 2293.

The North Dakota State Hospital in 1997 started a treatment program to evaluate and treat sexually dangerous individuals. This is a unique population of patients as they require both treatment and high security. About 80% of the patients in the sex offender unit are engaged in active treatment. The remainder of patients tend to violate treatment unit rules and regulations, disrupt ward milieu and at times, physically assault staff and other patients. These individuals are often referred to the Stutsman County State's Attorney office for possible prosecution.

Violence toward staff on the high security unit is a major concern to hospital administration. At least one employee in recent memory was hospitalized after such an unprovoked and violent attack by a patient from this unit.

As has been pointed out, when a peace officer, correctional facility employee or emergency services personnel are assaulted in their official capacity, the person doing the attack can be charged with a Class C felony. It seems only fair that the employees who work at the Hospital should be afforded the same protection under the law.

Thank you. I would be happy to answer any questions.