

2019 HOUSE JUDICIARY COMMITTEE

HB 1393

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
2/6/2019
32302

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

1

Chairman Koppelman: Opened the hearing on HB 1393.

Rep. Heinert, District 32: Introduced the bill. It is a bill that deals with domestic violence. It will basically remove the domestic violence section in current law from under the simple assault section 12.1-17-01 and create a new section titled Domestic violence under 12.1-17-01.2. It will also change the charge of domestic violence from a class B misdemeanor to Class A misdemeanor for the first offense and increase the 2nd offense with an injury to a felony.

Rep. Hanson: How can this help law enforcement and other entities with reporting on the specific offense?

Rep. Heinert: Part of the need for the change is the follow up for reports and data. Right now those reports will be under simple assault. This will give us a true account of what is out there as a domestic violence offense by separating this.

Chairman K. Koppelman: In addition to creating a new section in code specifically for domestic violence and the penalties go up for the same type of offense versus simple assault?

Rep. Heinert: That is correct and an explanation for this will come from the testifiers.

Janelle Moos, Executive Director of CAWS North Dakota: In support of HB 1393. (Attachment #1) Went over testimony and handouts. Stopped 16:00
There are things in this bill that we can take domestic violence more seriously and that people can get access to treatment and prevent those future homicides. Explained case of a man that repeatedly abused a women and eventually murdered her.

Chairman K. Koppelman: In that case were the penalties ramped up with the repeated assaults. Could they not in current law?

Janelle Moos: No they weren't and they possibly could have been. Judges have a lot of discretion in what charges are brought forward. It is important for judges to look at each incident and not apply a blanket sentence.

Rep. Rick Becker: We need to look and compare the bill to all of 12.1-17. If you go down to section 2 it is aggravated assault too. We need to look at the bill as a whole. What this does besides create a section called domestic violence is simply a class A misdemeanor for simple assault on a family member. If you slap your friend's husband it would be a class B misdemeanor but if you slap your husband it would be a Class A misdemeanor.

Janelle Moos: That is correct. If I were to slap you it is a class B misdemeanor; but if you were to slap me. So the change that this bill allows for is looking at those relationships that are defined under chapter 14 a family or household member.

Rep. Rick Becker: Why not just make a really simple bill by doing the small change with a simple assault? Why not just have that change?

Janelle Moos: The other reason is being able to get a sense of how many domestic violence cases are out there. You will actually be arrested for domestic violence under this bill.

Chairman K. Koppelman: You talked about treatment; does the bill do anything there?

Janelle Moos: No it doesn't.

Chairman K. Koppelman: This section in current law says mandated treatment of domestic violence offenders.

Rep. Paur: On 12.1-17-02. Subsection 2, if the victim is under 12 years of age or suffers permanent loss or impairment, then they are guilty of a class B felony. I was wondering why is that basically included in this.

Janelle Moos: Our domestic violence and rape centers primarily provide services for adult victims of domestic violence. We do have services across the state for children. This bill and the data that I reported to you was for victims age 18 and over. There are other statutes in place regarding the children.

Rep. Paur: But it says if they suffers permanent loss or impairment, that could apply to your 18 year olds or older.

Janelle Moos: We didn't talk about that particular case, if you look at page 2 line 21 it talks about bodily injury, substantial and serious bodily injury. We have not made any changes to that.

Rep. Satrom: I notice the changes in statute, it changes from \$500 to \$3000. Is there any magic in those numbers?

Janelle Moos: That is actually what is in current statute under Chapter 12. 1-32 under penalties and sentencing. Class B currently is a maximum of 30 days or \$500 fine. Class A is a year in jail or a \$3000 fine. That hasn't changed.

Chairman K. Koppelman: I understand the need for reporting and harmonizing the code as I mentioned with the domestic violence reference where there is no such offense currently. The question comes up what a terrible thing it is when there is an assault involving family. You mentioned a former spouse? Is that domestic violence if you are not currently part of the same household?

Janelle Moos: Yes, it is a household member, spouse, family member, former spouse, parent, child, residing together or have kids in common. It is an expansive definition.

Chairman K. Koppelman: Most of us think of a household as being under the same roof. If someone is divorced and 20 years later would it still be considered a domestic violence offense.

Janelle Moos: It would meet the definition of household or family member. In that particular case law enforcement, if they are responding to a report of a physical assault, once they arrive on scene they would have to determine that if they would have enough to arrest that person for simple assault and decide if it meets their criteria for domestic violence.

Chairman K. Koppelman: Let's say in a simple assault case should the crime be greater based upon whom it is committed against? Why is the fact I was assaulted any less egregious than if a family member is assaulted? How do you deal with that side of the issue?

Janelle Moos: I am not saying one physical assault is any more serious and if this committee would look to increasing the penalty for all simple assaults to an A misdemeanor then okay. Our programs serve the domestic violence victims. I do stand for making sure someone has the right to be safe in their own home.

Aaron Birst, North Dakota Association of Counties: We support this bill. We do not take a position on whether the penalty should be increased. We leave that for the legislators.
31:32

Chairman K. Koppelman: Any opposition or neutral testimony? Seeing none.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
2/12/2019
32592

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

1

Chairman Koppelman: Opened the meeting on HB 1393. What this bill does is create a separate Section in code on domestic violence. The concern is that there is no domestic violence charge because they are charged under simple assault at this time. The other thing the bill does is it elevates the level of an identical offense for domestic violence if it happens in a domestic violence incident. I personally don't have an objection to creating the domestic violence section but I have some problem with penalizing someone to a greater degree because of who they offend against. (Attachment #1) Proposed amendment.

Rep. Vetter: I move the amendment 19.0939.01001.

Rep. Becker: Seconded.

Chairman K. Koppelman: Any discussion on the motion?

Rep. Hanson: I will resist these amendments. We heard testimony on how domestic violence is an egregious crime since it involves two people within an intimate relationship. It certainly is a problem in North Dakota so I support the original bill.

Chairman K. Koppelman: Any further discussion? Seeing none.

Voice vote taken on amendment. Motion carries.

Chairman K. Koppelman: We have the amended HB 1393 before us. What are your wishes?

Rep. Rick Becker: In the aspect of out of state charges in consideration of what would be a repeat offense. Do we see that with other offenses in statute?

Chairman K. Koppelman: I think we do. We see offenses described very similar but have different nuances to them. The reason I think it may make some sense to insert this section

into code is because we have things like mandated treatment of domestic violence offenders in statute and general reference to domestic violence in our culture and yet we don't have that section in code.

Rep. Vetter: If we add this section of law can someone be double charged?

Chairman K. Koppelman: No. That would be double jeopardy.

Rep. Roers Jones: The definition of family or household member was read. The definition is quite expansive. I like the fact that we are keeping the penalty the same as assaulting any other person. I think the bill as far as creating the definition of domestic violence is good.

Chairman K. Koppelman: I agree with that expansive definition it should be covered. I support the addition of that section.

Rep. Paur: In the assault section which this mimicks there is a provision for under 12 years of age for them being guilty of a class B felony. Should that be included in this? We don't need this then?

Chairman K. Koppelman: I think it is already covered under that statute. We do need this as far as the other references of domestic violence.

Rep. Hanson: I recall that creating a separate section enables better reporting. It gives us a more accurate account of this particular crime. When we have better data we can follow up better and proactively try to prevent the crime.

Rep. Roers Jones: I move a Do Pass as amended on HB 1393.

Rep. Jones: Seconded.

Chairman K. Koppelman: Is there any discussion? Seeing none.

Roll call vote taken: Yes 10 No 4 Absent 0. Motion carried for a do pass as amended on HB 1393.

Rep. Hanson: Will carry the bill.

Hearing closed.

19.0939.01001
Title.02000

Prepared by the Legislative Council staff for
the House Judiciary Committee
February 11, 2019

DA 2/12/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 2, line 26, replace "class A" with "class B"

Page 2, line 27, replace "class C felony" with "class B misdemeanor"

Page 3, line 3, replace "class C felony" with "class B misdemeanor"

Renumber accordingly

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES ^{HB}
 BILL/RESOLUTION NO. 1393

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0939.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Vetter Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voiced
 vote. Motion
 carries*

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES HB, 393
 BILL/RESOLUTION NO.

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker		✓			
Rep. Terry Jones	✓				
Rep. Magrum		✓			
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur		✓			
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Hanson

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

REPORT OF STANDING COMMITTEE

HB 1393: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1393 was placed on the Sixth order on the calendar.

Page 2, line 26, replace "class A" with "class B"

Page 2, line 27, replace "class C felony" with "class B misdemeanor"

Page 3, line 3, replace "class C felony" with "class B misdemeanor"

Renumber accordingly

2019 SENATE JUDICIARY

HB 1393

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1393
3/11/2019
#33497 (36:54)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 12.1-17-01.2 of the North Dakota Century Code, relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple assault; and to provide a penalty.

Minutes:

1 Attachment

Chair Larson opens the hearing on HB 1393. Senator Osland was absent.

Pat Heinert, District 32 Representative, testifies in favor

Representative Heinert: The main reason behind this bill originally was to create a subtitling outside simple assault for domestic violence. We change it over to 12.1-17-01.2 under the heading of "Domestic Violence". The language is almost the same as above, but a couple changes were made in the House. The emphasis is to create a tracking system for domestic violence within the law through what law enforcement reports to the attorney general's office so we have a more precise number of how many domestics are happening in this state. In the change, both the first offense and any subsequent offense in the new language stays as a class b misdemeanor. In the past it was a class b misdemeanor for the first offense and a class a misdemeanor for the second offense. On the House side, we did ask to have that increased to a class a misdemeanor for the first offense and a class c felony for the second and subsequent offenses. They felt that was not appropriate, so it was reduced to class b misdemeanors across the board, which is not appropriate in my opinion. My request is that we go back to the original language. We cannot allow the second offense on a domestic to be the same charge; it has to be an upgraded classification.

Senator Bakke: 30 days is the penalty for a class b misdemeanor? Would you be alright if we went to class a misdemeanor?

Representative Heinert: There is a significant difference between class b and class a in the statute. It goes from 30 days and \$1,500 to 360 days and \$5,000.

Senator Luick: The people that commit these crimes, do you think they understand and anticipate the differences in the penalties? Is strengthening that penalty going to stop or get people to be more cautious when committing these crimes?

Representative Heinert: Serving in law enforcement for 39 years, I see every angle. Some people don't care of the charges, but a lot of people do care and understand the significant differences in repeat offending. Typically, if they have an attorney, they'll be informed that as well on their first offense.

Senator Myrdal: There are those cases where it's a one-time offense. I think a class b misdemeanor is appropriate in those cases.

Representative Heinert: Yes, and no. Many people who commit domestic violence if properly handled will probably not offend again. I think most of them recognize that they've committed a crime. However, I believe that it's the type of incident that if we don't have some form of punishment with, there is going to be a step up increase in domestics.

Chair Larson: What is the penalty for a simple assault that's not domestic?

Representative Heinert: I believe it's a class b misdemeanor for first offense.

Senator Bakke: Is there any mandatory counseling? In Grand Forks we have treatment for men who have committed domestic violence. There are classes they have to attend such as anger management. Is there anything like that that is required after the first offense or would you be in opposition to adding something like that?

Representative Heinert: I will defer that to the next speakers to address that.

Vice Chairman Dwyer: I see in the bill that bodily injury is a class b misdemeanor for the first offense and a class b misdemeanor for a second offense. Then I also see that for serious or substantial bodily injury it's also a class b misdemeanor. It doesn't talk about a second offense in those situations. Obviously there's a difference between regular or serious and substantial. We almost need to address those distinctions as well.

Representative Heinert: I agree, but I can tell you under a serious bodily injury, we would charge with the felony assault charge versus the domestic violence. Based on the domestic violence increase is what the states attorneys would typically look at doing.

Vice Chairman Dwyer: We'd be creating a conflict if we did this.

Representative Heinert: Yes, it appears to be a conflict.

Senator Bakke: Did this conflict occur when the House did their amendments?

Representative Heinert: We originally had asked for a class a misdemeanor for the first offense and a class c felony for the second offense. The House amended it to both b

misdemeanors. As to the third, I believe that's still the same language as was in the original under simple assault.

(11:25) Janelle Moos, Executive Director of the CAWS North Dakota, testifies in favor (see attachment #1)

Moos: I've talked with Aaron Birst with the States Attorneys Association. He's not here today, but they did support the bill on the House side and were instrumental in helping us think through how we draft this bill. There was no opposition on the House side, so we were concerned about the change to the two class b misdemeanors.

Senator Luick: What was the reasoning on the House side to reduce the penalties?

Moos: There was no justification presented. During the committee hearing, I testified in support as well as the states attorney association. There were some questions about why we wanted to do this, and I think we were able to provide proper rationale. There was no committee discussion at that time during the hearing. During committee work, the Chairman introduced an amendment to the bill which amended it to what's in front of you. Chairman Koppelman would be the person to ask.

Senator Myrdal: On page 2 line 26 and 27 where it says a class misdemeanor for the first offense and then a class misdemeanor for the second offense. Would you be in support if we did a class misdemeanor for the first then upped it to class a misdemeanor for the second?

Moos: That is what's currently in state law. In the overstruck language starting on page 2 line 4, that's current law. When they amended the bill, they changed the first offense to a class b, but they didn't change the language on line 27. My preference would be going back to the original bill.

Senator Myrdal: I'm not sure of the intent because they actually lessened it severely which was not the intent of the bill.

Chair Larson: The one benefit keeping it as a simple assault for a domestic assault but had it counted as domestic assault would be the gathering of statistics. That's the one thing that's not being done.

Moos: Correct.

Chair Larson: This bill back in its original language wouldn't be to change the penalty but would change it so all the statistics could be better put together for the AG's office reporting.

Moos: The original intent created a separate domestic violence section and also enhanced the penalty. The House changed the penalty. Our intent would be to go back to the original bill draft.

Senator Bakke: I noticed on page 3 lines 22 through 27, they address treatment. Does this take place in jail or once they're out?

Moos: Most of the domestic violence offender treatment programs are located in local communities and often run by a public or private provider. Some are offered in the prison system, but you're only going to catch the most dangerous folks that have landed in the prison system. Currently we have treatment programs in every judicial district. That's new within the last 18 months. Last session the House Appropriations included money in the Department of Health budget that increased funding to this type of treatment. Prior to that, we only had three programs in the state: Grand Forks, Bismarck and Fargo. With the additional money, our intent was to make sure offenders can get to treatments if the judge so sentences them. Now we have one in Williston, Dickinson, Minot, Bismarck, Devils Lake, Valley City, Wahpeton, Fargo, etc. Orders to treatment are pretty low in a lot of judicial district. Grand Forks is the exception. They've had a program for a good number of years, and it's very successful. Judges order to that program more often than they don't. The number of 911 calls, the number of protection orders and the number of rearrests decrease significantly. By getting someone in this 24-26 week program, we show tremendous results, and it's a good way to prevent that revolving door.

Senator Myrdal: If it's a one incident first-time offense, isn't it severe to go to a class a misdemeanor? Are you finding in your experience that victims wait until multiple incidences before they are willing to press charges?

Moos: I know we don't want to make a legislative change intended just for one particular individual. What we know in domestic violence cases, it might be the first time they've been arrested for a physical assault, but what we know in most cases, it's been ongoing years of violence and abuse emotionally, physically, sexually or others. I find it very unlikely that it's just a one-time incident. Most domestic violence victims stay in relationships for a large number of years. They know that if they know where the offender is, they're likely safer. Most victims know when they can and cannot leave a relationship. The most lethal time for a victim is when they chose to leave the relationship. That's when the stalking happens and often when victims are killed.

Vice Chairman Dwyer: While tracking domestic and simple assault charges is nice to have, the real heart of this bill is the class a misdemeanor because it provides greater opportunity to get these folks into treatment and/or jail.

Moos: Yes. After 40 years, we can demonstrate that we need to take these crimes seriously. Over half of our domestic violence homicides in 40 years are domestic violence related. We know ways to prevent this, and this is one way we can do it.

(29:35) Chas Neff, private citizen, testifies in favor

Neff: I'm not here on behalf of the ND States Attorneys Association, but I can say from May of 2014 to January of 2017 I was the assistant state's attorney for McKenzie County, and from January 2017 to January 2019, I was the states attorney for McKenzie County, and I have prosecuted many domestic violence cases. I'm strongly in support of the reporting aspect, but I'm not in favor of the amendments that came through with the penalties. This bill has taken simple assault, assault and ag assault and combined it under domestic violence; it's a, b and c under the subsection. If you look at the penalty that got amended down, you now have what is essentially an assault and an ag assault which would be an a misdemeanor

and a c felony now a b misdemeanor under domestic violence. This creates chaos for a state's attorney because the defense attorney would argue to the judge that they should have taken the lesser of the penalties and put it under domestic violence as opposed to ag assault or assault. The penalties at minimum should go back to where the current law is. I agree with CAWS that by the time you get an arrest for a domestic violence, there's been violence before; it just hasn't been reported. Is the first offense going to change someone? There are a lot of times that people take it seriously after the first offense because of the enhanced offenses down the road, and sometimes they don't. However, I would rather protect that victim and also rehabilitate that offender, even if it's just a few. Let's save those lives and make sure those two people continue to be good citizens. There is a mandatory domestic violence offender treatment throughout the state all the way from a class b misdemeanor domestic violence or a class c felony ag assault domestic violence.

Senator Bakke: The statute says unless the domestic violence offender treatment is not reasonably available to the defendant. We're hearing that they all are reasonably available. Do we need to remove that language?

Neff: I think that would be an appropriate amendment. In McKenzie County, we always struggled with getting services out there, but people can go up to Williston and get it. We've always included that, and I think it is a very good program to put people through to make sure they understand how to better their lives. I'm in full support of the reporting, but the penalties need to change in my opinion.

Senator Bakke: For the offenses, it says a class a misdemeanor for the first offense, a class c felony for a second offense, then it says if it's a serious offense such as substantial bodily injury, it's a class b misdemeanor. That should go to a class c felony, correct?

Neff: That was the original bill as introduced by Representative Heinert, is both of those would be the c felony. You'd have the analogous for the ag assault but an increased penalty for the assault.

Vice Chairman Dwyer: I would be willing to come up with amendments. This would create a conflict between ag assault and domestic ag assault as is.

Senator Bakke: I'd like to see us remove line 24-27 on page 3.

Chair Larson: That also talks about anger management class whereas above that, it doesn't even address that.

Senator Bakke: It's saying that may not order them to the anger management.

Vice Chairman Dwyer: The problem is it's a whole different subject matter. We'd have to have the supreme and district court and the prosecution folks address that before we make that change. Right now the court has discretion. I don't think we should make any change.

Chair Larson closes the hearing on HB 1393.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1393
3/12/2019
#33567 (6:41)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 12.1-17-01.2 of the North Dakota Century Code, relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple assault; and to provide a penalty.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1393. Senator Osland and Senator Myrdal were absent.

(see attachment #1)

Vice Chairman Dwyer: This was the one that Janelle from CAWS really pleaded with us to return it to the House version where they wanted an increase penalty for domestic violence. This changed is from class b to class a for the first offense and then class b to a class c felony for the second and subsequent offense. An aggravated assault is a c felony, so it wouldn't make any sense to have aggravated assault to be a c felony then have aggravated assault in domestic cases be a class b misdemeanor. In our current code, an aggravated assault against someone under 12 is a class b felony, so it wouldn't make sense to have aggravated assault against someone under 12 be a class b, but then in a home not be a class b. Those are the amendments.

Senator Luick: There was talk about removing lines on page 3.

Senator Bakke: In talking with Janelle, she said that anger management isn't intense enough. That's why they had "may not" to order those. They want them to take the offender treatment. She wanted that left alone.

Vice Chairman Dwyer moves to adopt the amendment 19.0939.02001.

Senator Luick: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 0 nays, 2 absent. Amendment is adopted.

Senate Judiciary Committee

HB 1393

3/12/2019

Page 2

Vice Chairman Dwyer: Motions for a Do Pass as Amended.

Senator Bakke: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 0 nays, 2 absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

19.0939.02001
Title.03000

Prepared by the Legislative Council staff for
Senator Dwyer
March 11, 2019

8/ 3/12
1801

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

Page 2, line 26, replace "B" with "A"

Page 2, line 27, replace "B misdemeanor" with "C felony"

Page 3, line 3, replace "B misdemeanor" with "C felony"

Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1393**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0939.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	AB				
Senator Osland	AB				

Total (Yes) 4 No 0

Absent 2

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1393, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1393 was placed on the Sixth order on the calendar.

Page 2, line 26, replace "B" with "A"

Page 2, line 27, replace "B misdemeanor" with "C felony"

Page 3, line 3, replace "B misdemeanor" with "C felony"

Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age."

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1393

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
4/17/2019
34798

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

Members Present: Rep. Roers Jones, Chairman; Rep. Vetter, Rep. Simons, Senator Dwyer, Senator Myrdal, Senator Bakke.

Rep. Roers Jones opened the conference committee on HB 1393. Looking at the differences in the bills does the Senate want to go first and explain their amendments from your perspective?

Senator Dwyer: The bill as you recall was introduced for a couple reasons; one was to separate domestic violence from normal aggravated violence or assault. Part of that was for reporting purposes so they could keep track of those kinds of offenses. The other was as the bill was introduced it provided that a offense for a domestic violence or bodily injury to family or a household member would be a class a misdemeanor and a class c felony for a second offense. Part of the testimony was that these offenders are often repeat offenders and their intimate relationships in a household. On page 2 substantial bodily injury; which is described in the code, and serious bodily injury which is described in the code; offenses of those natures would be a class c felony. In the century code if you commit an aggravated assault against a child under the age of 12 it is a class b felony. We made that change on page 3, lines 5 & 6 so that the code would be consistent with current code regarding aggravated assault; so that was just to be consistent. We went back to the way the bill was introduced because we felt these kinds of offenses deserved these higher penalties because they are so often repeat offenses.

Senator Myrdal: I think Senator Dwyer covered the basics of this. On page 2, subsection 1 & 2 described the bodily injury part of it. In testimony we all know what if it is a one-time thing. If it is we are dealing with that. But that is a serious issue as well because you have an intimate relationship. It is different than when you are walking on the street and you see somebody with a hood on and they are crossing the street and following you; that is different than home with one of your beloved that all your guards are down. Historically we know; mostly women, though it can be men too, these have occurred over a long period of time

before they are being reported the first time. That is proven fact. It is very often not reported, until it comes to the point you have this bodily injury issue. That is what lead me in my conviction to returning it to the original bill. I understand the concern of the House and I think we all know what we are dealing with here and it needs a strong bill.

Senator Bakke: We were looking at some consistency throughout our century code. For something like this I think I prefer it the way it originally came out.

Rep. Roers Jones: The request for consistency I think is what we need strive for here. The House version had some errors. I don't think we can go all the way back to the House version because we actually reduced the penalty level into places. On the House version on the second offense we made that a class b misdemeanor and the current statute for assault; the current penalty would be a class a misdemeanor.

Senator Dwyer: The way the House passed it out is a .01001 version?

Rep. Vetter: Looking at .2001 on page 3 here where it has a class b misdemeanor struck and then you have a c felony, does that b misdemeanor mean that is what the House had and the c felony is what you guys changed it to?

Rep. Roers Jones: That is correct. The version that came out of the House had some errors in the fact that we actually went backwards with some of the penalties. I don't know if I am comfortable increasing domestic violence. I don't think it should be less offense to assault a stranger than it is to assault someone you have a relationship with. I think we should make it the same as assaulting a stranger. I think we should make this section separate so we can track it separately for reporting purposes. I am open to discussion on that. My next thought is in the new section for domestic violence we a sub 2 where we break out and it is defining elsewhere. Senator Dwyer referenced the fact we have separate definitions created for bodily injury; substantial bodily injury and serious bodily injury. Read the definitions. Substantial bodily injury and serious bodily injury have the same penalties so I think the committee should consider breaking those out into separate offenses. My thought would be we would take; if the Senate were willing to recede from their amendments so we could further amend my thought would be we would make this a class b misdemeanor for the first offense under subdivision a; which would be just bodily injury. We can look at the Senate version, if that is the simplest we would go to page 2, line 26; we would return that to a class b misdemeanor; and then on line 27 for a second or subsequent offense we would make that a class a misdemeanor. Those would be consistent with the law for assault currently. If we go to page 3; we would go to line 3 where it says a class c felony for an offense under subdivision b or c; where those subdivisions are the same for both substantial or serious bodily injury. I would recommend that we would say a class b misdemeanor for an offense under subdivision b; which would be substantial bodily injury or a class c felony for a offense under the subdivision c; so we would have that step up for a serious bodily injury. If the committee was open to it; that is not c 5 differentiated in the assault section, so we could also seek to amend the assault section so it is consistent for non-domestic violence offenses, if the committee wanted to go that far. The other thing I would like to clarify is the Senate added about a class b felony on lines 5 & 6 for an offense under subdivision b or c. if the victim is under the age of 12 years; I think that is currently a class c felony? Beau can you check?

I think we should leave it as the same type of offense as in a non-domestic violence situation. Those are my thoughts as far as amending.

Senator Dwyer: If I am walking down the street and someone beats me up; I may never see them again. You cannot compare assault to a stranger to assault to a domestic violence where they are in the home where they are going to come back and live together again. To me that is just a whole different situation. The person assaulted is most often unable to defend themselves. The reporting is just an extra benefit. The purpose of this bill is to provide protection for family members that are being assaulted. This is usually the whole hoist of reasons why people don't report this the first time it occurs. Maybe it is the children, fear or finances. We need to provide some protection for these victims and some safety.

Rep. Vetter: I disagree with the previous speaker and so does our committee when we worked through this bill. In our committee we did not see a difference on the assault. The crime should be the same. We are talking about consistency; let's keep it consistent. If all these statistics are what they say are then we can get better reporting, if this goes into law. If the limits are raised; I am certainly going to be a no on the Senate version; and I think I speak for the majority of the committee? I will not change my mind on that.

Senator Bakke: I see domestic violence as something totally different because there is an emotional component. There is the emotion act of the attack and that makes a difference. If I Rep. McWilliams walking down the street and get attacked by a complete stranger that is going to be devastating to me. But to walk into my home where I should be safe and have somebody who supposedly loves me attack me is going to attack me on all different levels. Not just the physical attack, but the emotional attack. I do think there is a difference and if we punish that differently or not is an entirely different matter.

Senator Myrdal: I fully understand where you are coming from a legal point of view. I would have to concur with the other Senators. I think the deterrent part for me is what is important. So you get attacked on the streets you will never see that person again; they don't know where you live and they don't know how to get ahold of you again, they don't know your name; none of that is involved here. You get attacked in your home where everybody knows where you are and they know where you live; they know everything about you; to not have a deterrent that is stronger on behalf of those victims is my concern. Even under a misdemeanor or a felony the judge still has the discretion. He can go to the lowest or the highest, right? I think there is a strong difference there because the victims have a very different path to walk afterwards. I think it is a graver crime and I think we have an epidemic of this going on. I think we should put a line in on being in your home and I think we are stuck on that issue.

Rep. Roers Jones: I would like to read the definition of a family member. I think that weighs a lot into my thought. A family or household member means a spouse; parent, child, person related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time and for the purpose of the issuance of a domestic violence protection order any other person with a sufficient relationship to the abusing person as determined by the court under other sections. My

concern is we are not talking about people that have to continue to live together. We could be talking about cousins, second cousins; or cousins-in-law so we are creating this higher level of punishment for someone who may assault even though the domestic relationship is very tenuous.

Senator Myrdal: I appreciate that. Those people can still continue to find each other. We talk about judiciary discretion. I understand your concern.

Representative Simons: I think in the House we have no appetite for what you propose. I think we are offering a good compromise. I think this is going to help us out. I voted against the bill even as we wrote it but to say somebody the first time is going to be treated like that could be treated up to that many days is a major deal. This is adding tools in the tool box that they have never had before. This is a real problem and we all recognize that.

Rep. Vetter: The other thing hearing from the Senators view; you are talking more from a husband and wife relationship. If you know the person and you have the ability to not be around them because you know who they are versus if somebody that I don't know attacks me and I don't know who they are and they can come and get me again, I have no idea when they are coming or how to protect myself versus somebody that I know. All these different family members you know who they are; you can avoid them and make your situation where you are no longer around them. That is my prospective. You are really center in basically with husband and wife.

Senator Bakke: I am looking at the version .03000 and what you are proposing that on page 2, line 26 the class a misdemeanor you are recommending that be a class b misdemeanor. Line 27 you are saying instead of a class c felony. It would be a class a misdemeanor. Then on the next page 3 at the top for b instead of a class c felony?

Rep. Roers Jones: I think it was going to be a class a misdemeanor for subdivision b and a c felony for subdivision c.

Senator Dwyer: Aggravated assault is a class c felony; and against a person under 12 is a class b felony.

Rep. Roers Jones: I will get my amendments drafted and perhaps even a Christmas tress version and distribute that between now and our next meeting.

Recessed

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
4/18/2019
34847

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

1,2

Members Present: Rep. Roers Jones, Chairman; Rep. Vetter, Rep. Simons, Senator Dwyer, Senator Myrdal, Senator Bakke.

Rep. Roers Jones opened the conference committee on HB 1393. (Attachment 1 & 2) Handed out the two proposed amendments .02002 and 02003. Went through the two proposals and their proposals. The amendments will make it consistent with current law making the first offense a b misdemeanor; second offense and a misdemeanor and if you look at the amendments for page 2, line 27 we are going to break out anything like the third offense or subsequent offense; which would make that a c felony. That would be one thing that would be above and beyond the current statute; on page 3, line 3 a sub. C which is part of the language that the Senate added back for offenses for a victim 12 years or under. That is the extent of the .02002 amendment. The .02003 amendment we added one additional thing here that addresses some of the concerns that were raised by Ms. Moos and the CAWS group. Their main concern with elevating that first offense to an A misdemeanor was the fact that they would like to get these offenders into the district court where they have more resources available to them. If the committee would indulge me, I would like to have Ms. Moos come up and talk a little bit about the resources available to both the victims and the offenders through the district court process. That is why one the second amendment that I passed out we have added language that just says that a person charged with an offense under this section, the domestic violence section, must be prosecuted in the district court versus municipal court.

Janelle Moos, CAWS: Discussing difference between the resources available in district court versus municipal courts. There were two issues in particular of why we want first offenders with a class c misdemeanor should be district court. Judges are more likely to look at those cases; order them to what we call domestic violence treatment center programs. We now have a domestic violence treatment center in every judicial district. If you get these first time offenders in front of a district judge; knowing their resources are available; they can order that person to treatment. It is a 24-week treatment program. What we have seen in counties where this happens; in Cass county and Grand Forks county where these cases

are automatically moved to district court; Grand Forks county alone, when they get domestic violence treatment we see the number of 911 calls decrease dramatically. The number of re-offenses by that particular person on that victim or on other victims reduces significantly and the number of protection orders against that person go down. The other resource that is available in district court that is not as available in municipal is victim witness advocates. After Marcy's law passed 27 counties had no available resources related to victim services. That goes down even more when you look at municipal courts. If we get those offenders on that first offense in front of district court the victim's will have access to victim witness coordinators that can help walk them through the process.

Rep. Vetter: I am looking at these amendments. I am not ok with this addition here. I am we are giving quite a bit already when we are back to this plus I think a lot of the problems solved with this district court thing; I am reluctant to raise the penalty.

Rep. Roers Jones: I would like to take more discussion on the amendment.

Senator Bakke: What are you objecting to?

Rep. Vetter: I am looking at .02003. on the 3 line of page 2, line 27 after second insert offense; I have a problem with adding a felony.

Senator Myrdal: Why? If you are up to a third offense that is a serious indicator that this is an abusive situation.

Rep. Vetter: I am objecting to creating more felon's. My objective was to be consistent. I don't want things to be different based on who the person is. If I punch the mailman or if my wife punches me and then punches the mailman; why do, I get more protection or why is it worse if she punches me than if she punches the mailman? If a child is being abused; if it is the mother that is doing it or the uncle, teacher or mailman; what difference does it make. What matters is the crime has been committed. That is where I have an issue with it. We are creating a new law and I think it should be consistent with the rest of assault.

Senator Bakke: For a third assault charge; what is the penalty?

Rep. Roers Jones: For a third assault charge it would be a misdemeanor; unless there are aggravating circumstances, then it goes up.

Senator Bakke: How many times do you have to assault someone before it gets to be a felony?

Rep. Roers Jones: I am not sure there are escalating in the simple assault section. For it to escalate to the felony level there has to be other aggravating circumstances.

Rep. Vetter: It isn't ow many times; it is basically what happens like damage.

Rep. Roers Jones: From the House position there are other items that we are amending; we are doing is making this in line with what the law is currently. I applauded the Senate efforts to increase any of the other penalty levels; I think the Senate was hoping to increase

the penalty levels from a b felony to an a felony; and I agree. we don't want to necessarily treat people differently on that. I felt when we get to a third offense that we are looking at a difference class of situation than a typical individual who might assault someone in a bar fight or an isolated incident in the public realm.

Senator Myrdal: I think it is important to say we are dealing with domestic violence. I like this .02003 amendment for many reasons. If you have the perpetrator doing it for a third time, there is encumbering upon our laws to have stricter deterrent for that and stronger protection. I think going to district court is a good move. If we can get some help for these people, I commend you for this amendment.

Senator Bakke: I think the difference between your average assault it is probably not the same victim. If it was the same victim the judge would look at it differently than if you were somebody who had a simple assault against three totally different people. In the case of domestic violence, it is the same person; and it is a repeat offense on somebody can't for some reason get away from this person. I have no problem with a class c felony for a third offense when it is the same person and the same incident.

Senator Dwyer: What the amendments do is current law except for district court.

Rep. Roers Jones: I think that is accurate, except for the third offense a class c felony.

Senator Dwyer: So everything is current law except for this third offense?

Rep. Roers Jones: That is accurate.

Representative Simons: I am not ok with a c felony at all. Our House committee has worked so hard to get away from felons. We have a country full of felons. Personally if I caught someone doing that to his wife or a loved one it would be better for the law to catch them than myself perhaps. To put a class c felony on somebody is a major thing. If the court system wants they can put a class c on them; I don't want to mandate it.

Rep. Roers Jones: The court has discretion. The court never would have the discretion to We are suggesting when the conduct keeps happening time and again they are going to have the opportunity and tools at their discretion where they are going to have the opportunity to have an evaluation and treatment and these people are coming back before the courts for a third time for the same type of assault on a family or household member. No one wants to see more felons created; but we need to look at the fact this is not a victimless crime.

Senator Myrdal: Committee we need to remember deterrents. We are looking at you have done it twice; you have had the opportunity for treatment; restoration and to change your life around. If you do it a third time it is an escalating violence so the court can't go above what we set in law. If a c felony for a third offense for the same victim is too high; then I feel as a state, we have failed that victim and the perpetrator for allowing him or her to continue in that life style.

Senator Dwyer: So Rep. Simons you said you would be happy to become a felon because what you would do would be worse.

Representative Simons: Senator if more men thought like I do more people wouldn't do those horrendous acts.

Rep. Vetter: Class A misdemeanor is not a slap on the wrist. It is up to a year in jail. We are talking about assault; not the b and c category where it is simple assault and it is three times.

Rep. Roers Jones: I see we are about 5 minutes from the end of our time. Shall we move the amendments today or do we want to adjourn and come back?

Representative Simons: I think moving it from the court system we have right now is a great step in the right direction. I think that in itself will help.

Senator Myrdal: Moved Senate recede to Senate Amendments and further amend 19.0939.02003.

Senator Dwyer: Seconded

Roll Call Vote: 4 Yes 2 No 0 Absent; Failed since two from the House voted no.

Rep. Roers Jones: Do we have an alternative amendment that anyone wants to put forward.

Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
4/22/2019
34902

Subcommittee

Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

1

Members Present: Rep. Roers Jones, Chairman; Rep. Vetter, Rep. Simons, Senator Dwyer, Absent; Senator Myrdal, Senator Bakke.

Rep. Roers Jones: Opened the conference committee on HB 1393.

Rep. Vetter: (Attachment #1) Proposed amendment. Went over the amendment. Basically we are putting all the penalties back and adds the language from Rep. Roers Jones bill where it says a person charged with the offense under this section must be prosecuted in district court.

Rep. Roers Jones: Went through the proposed amendment and how it would apply.

Rep. Vetter: It would be the .02003 amendment with only taking out an a class c felony for the third.

Rep. Roers Jones: Continued going through the proposed amendment.

Senator Myrdal: So basically the Christmas tree of that would be a class b misdemeanor for the first offense under subdivision and a class a misdemeanor for a second or subsequent offense?

Rep. Roers Jones: Correct. Read through the changes to be sure we are all on the same page. We are just mirroring the current law under this domestic violence new section.

Senator Bakke: This is a whole new section of law on domestic violence so there are no prior penalties that we are changing.

Senator Myrdal: Motion for Senate recede from Senate amendments and amend as follows 19.0939.02004

Senator Bakke: Seconded

Discussion:

Rep. Roers Jones: Yes that is correct.

Senator Myrdal: I think this is a compromise for now. All three of us on the Senate committee are disappointed that we couldn't push through the felony on the third offense. I think we can build on it now. I think this is an issue that will never go away, sadly. We are glad it will go to district court where they can get more justice where the perpetrator may get some help. This should be able to pass our chamber; I hope so we are beginning to address these more serious issues of domestic violence.

Rep. Roers Jones: I appreciate the Senate's willingness to work with us on this. I think we have solved the major concerns that the bill sponsor had with this with regard to having this section set out separately from the rest of the assaults for property tracking. Also for getting these cases into district where they have different resources available to them.

Roll Call Vote: 5 Yes 0 No 1 Absent Carrier: Rep. Roers Jones; Senator Bakke

Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1393
4/24/2019
Job # 34974

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to domestic violence; to simple assault and to provide a penalty.

Minutes:

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Members present: Rep. Roers Jones, Chairman; Rep. Vetter, Rep. Simons, Senator Dwyer, Senator Myrdal, Senator Bakke

Rep. Roers Jones: Opened the conference committee on HB 1393. When I was carrying the conference committee report to the floor yesterday there were a number of questions that came up about a wide range of topics. Everything from disciplining child, to district court. One of the questions from Rep. K. Koppelman was regarding page 3, line 4, the language that was added related to a Class C felony, he asked is this an increase offense level in the bill and is that something we were intending to do? I was thinking of the back and forth amendment process we had and I wasn't certain if we had something included inadvertently? I then recognize this was indeed the language that we had included and this line just refers to what we were trying to do to harmonize the subdivision B and C under 2 on page two with the assault and aggravated assault. We are just copying the penalties from the assault and aggravated assault portions of the code over into this domestic violence section that we are creating. So it's not increased penalties. We need to have a motion to send out the conference committee report as it was, I will take it back to the floor and have the background information so I can explain this is not something new.

Senator Dwyer: I do believe we are reducing the penalty, if the offense is under subdivision B which is substantial bodily injury, aggravated assault is a felony.

Rep. Roers Jones: If you read it, a class A misdemeanor for an offense under subdivision B which is substantial bodily injury is an assault, it currently is a class A misdemeanor. A class C felony for an offense under subdivision C, which is serious bodily injury and that is the aggravated assault.

Rep. Vetter: If you look under page 2, A is simple assault, B is assault and C is aggravated assault.

Rep. Vetter: Made a motion to reconsider bill.

Senator Myrdal: Second the motion.

Roll Call Vote: 6 Yes 0 No 0 Absent

Senator Myrdal: As far as the discipline of children or spanking and I did visit with a Legislature who had concerns about that and I checked with legal counsel and that definition is in code already.

Rep. Roers Jones: I will be prepared also to read from the sections in code and how that is already defined and laid out there. I will talk about the fact that both the definition of bodily harm whether the concern came up it included physical pain. There was concern that anytime you discipline a child there would be physical pain that could be inflicted. We don't want to try and change that definition because that is not what we are trying to change. But it would have implications on many other sections related to assault of domestic violence. related to people who are not your children, like dating partners, spouses, other household members where inflicting physical pain upon them would not be appropriate. We will be more prepared to address that question and indicate that if someone wants to look at redefining that section we should do it at another time.

Rep. Vetter: Motion Senate recede from the Senate amendments and further amend 19.0930.02004.

Senator Myrdal: Seconded

Discussion:

Vote yes 6, no 0, absent 0.

Rep. Roers Jones will carry the bill to the House.

Senator Bakke will carry the bill to the Senate.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

That the Senate recede from its amendments as printed on pages 1189 and 1190 of the House Journal and page 909 of the Senate Journal and that Engrossed House Bill No. 1393 be amended as follows:

Page 2, line 27, replace "and" with an underscored comma

Page 2, line 27, replace "B" with "A"

Page 2, line 27, after "second" insert "offense, and a class C felony for a third"

Page 3, line 3, replace "B" with "A"

Page 3, line 3, replace "or" with "of subsection 2 and a class C felony for an offense under subdivision"

Page 3, after line 3, insert:

- "c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.
- 4. A person charged with an offense under this section must be prosecuted in district court.

Renumber accordingly

5/1/19
4/22/19
19/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

That the Senate recede from its amendments as printed on pages 1189 and 1190 of the House Journal and page 909 of the Senate Journal and that Engrossed House Bill No. 1393 be amended as follows:

Page 2, line 27, replace "B" with "A"

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Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.

4. A person charged with an offense under this section must be prosecuted in district court."

Renumber accordingly

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

HB 1393 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Myrdal Seconded by: Senator Dwyer

Representatives			Yes	No		Senators			Yes	No
	4/17	4/18					4/17	4/18		
Rep. Roers Jones, Chairman	X	X	X			Senator Dwyer, Chairman	X	X	X	
Rep. Vetter	X	X		X		Senator Myrdal	X	X	X	
Rep. Simons	X	X		X		Senator Bakke	X	X	X	
Total Rep. Vote			1	2		Total Senate Vote			3	

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment. 19.0939.02003

Failed

Insert LC: 19.0939.02004
House Carrier: Roers Jones
Senate Carrier: Bakke

REPORT OF CONFERENCE COMMITTEE

HB 1393, as engrossed: Your conference committee (Sens. Dwyer, Myrdal, Bakke and Reps. Roers Jones, Vetter, Simons) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1189-1190, adopt amendments as follows, and place HB 1393 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1189 and 1190 of the House Journal and page 909 of the Senate Journal and that Engrossed House Bill No. 1393 be amended as follows:

Page 2, line 27, replace "B" with "A"

Page 3, line 3, replace "B" with "A"

Page 3, line 3, replace "or" with "of subsection 2 and a class C felony for an offense under subdivision"

Page 3, after line 3, insert:

"c. A class B felony for an offense under subsection b or c of subsection 2 if the victim is under twelve years of age.

4. A person charged with an offense under this section must be prosecuted in district court."

Re-number accordingly

Engrossed HB 1393 was placed on the Seventh order of business on the calendar.

Insert LC: 19.0939.02004
House Carrier: Roers Jones
Senate Carrier: Bakke

REPORT OF CONFERENCE COMMITTEE

HB 1393, as engrossed: Your conference committee (Sens. Dwyer, Myrdal, Bakke and Reps. Roers Jones, Vetter, Simons) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1189-1190, adopt amendments as follows, and place HB 1393 on the Seventh order:

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Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.

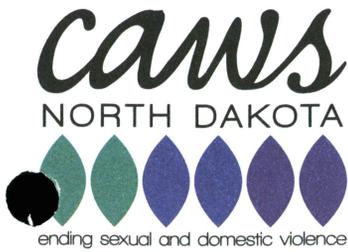
4. A person charged with an offense under this section must be prosecuted in district court."

Renumber accordingly

Engrossed HB 1393 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1393



#1
HB1393
2-6-19
p.1

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Testimony on HB 1393
House Judiciary
February 6, 2019

Chair Koppleman and Members of the Committee,

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1393.

Last year nearly 5,800 incidents of domestic violence were reported to crisis intervention centers. Ninety two (92) percent of the victims were female and seventy seven (77) percent of those victims reported being physically abused. In at least 39% of the cases, the abuser had a history of abusive behavior with other adults including prior partners.

Beginning in the 1970's, efforts focused primarily on implementing legislation that criminalized domestic violence. Police departments instituted proarrest or mandatory arrest policies, prosecution increased dramatically, and the courts began using a variety of sanctions such as jail, probation, and mandatory treatment. At the same time, civil legal protections were expanded to cover domestic issues, and protection and restraining orders became widespread.

Underlying the criminalization of domestic violence and the associated legal sanctions are a variety of goals. Deterrence of future crime, moral retribution, protection of victims and society, rehabilitation of offenders, and repairing individual and community harm are just some of the goals that are related to different legal sanctions, though not always clearly. For example, jail or prison sentences can be viewed as theoretically linked to deterrence, retribution, and protection, while fines are related to deterrence, retribution, and repairing harm. For example, in some jurisdictions a criminal sentence may include any combination of incarceration, probation, community service, fines, no-contact orders, various prohibitions such as no guns or alcohol, and multiple types of treatment.

Currently, in North Dakota, Chapter 12.1-17-01 defines simple assault for family and household members (domestic violence) in subdivision b starting on line 4 on page 2 of the bill and is currently classified as a class B misdemeanor with a maximum penalty of 30 days in jail, a \$500 fine or both. Data gathered and reported by BCI related to misdemeanor simple assault arrests on a family or household member age 18 + (NDCC 14-07.1-01) is highlighted below by county with highest volume of cases:

Burleigh-493, Cass-980, Grand Forks-261, McKenzie-63, Morton-142, Ramsey-71, Richland-72

#1 HB 1393
2-6-19
p.2

Stark-120, Stutsman-130, Ward-175 and Williams-180

The current practice in most counties with the exception of Cass and Grand Forks, 1st offense misdemeanor simple assault cases are heard in municipal court if the offense occurred in city limits, otherwise they are heard in district court. Burleigh County also used to hear misdemeanor DV cases in district court but after Marsy's Law was passed they declined the contract with the city due to the anticipated increased case load so those cases are heard in municipal court again. Second and subsequent offenses are all heard in district court in all counties.

As you can see from the data and the explanation of current practices, caseloads in district court should not "explode" or increase beyond the capacity to prosecute or provide services for victims in these cases.

In domestic violence cases, the risk of re-offense, violence and lethality are usually very high. Two separate studies conducted by the American Probation and Parole Association noted that about 2/3 of state prisoners who were serving time for domestic violence had a prior conviction and in another study conducted nearly 4 out of 5 inmates surveyed in local jails for domestic violence had previous criminal justice system involvement.

HB 1393 proposes 2 changes in the statute. First, the bill would create a new section called domestic violence (line 18, page 2). The second change proposed in HB 1393 changes the first offense of (simple assault) domestic violence from a class B to a class A misdemeanor which increases the penalty from 30 days to up to 1 year in jail and increase the fine to \$3,000 vs. \$500.

The reason for the changes proposed in HB 1393 include:

- Easier to track domestic violence (simple assault) cases in order to understand the true extent of domestic violence cases by county. This could lead to changes in policies, practices and funding if we are better able to study the incidents of domestic violence in order to decrease the likelihood of recidivism including more serious assaults.
- Track sentencing in cases and order to domestic violence offender treatment and probation.
- Simple assault (domestic violence) on a family or household member should be taken more seriously and be classified as an A vs. B misdemeanor and be considered separately from bar fights or other assaults on non-household members. Assaults on partners are more "intimate" in nature and the likelihood of recidivism is high (and lethality increases with each arrest)
- Cost effective and in line with Justice Reinvestment- including orders for treatment- which is less costly than prison which could cost upwards of \$100/day which is likely to happen with the high risk of recidivism in domestic violence cases leading to felony offenses including aggravated assault or murder.

I encourage you to look favorably on HB 1393 and would be happy to answer any questions that you may have. Thank you.

#1 HB1393
2-6-19
p.3

— NORTH DAKOTA — DOMESTIC VIOLENCE FACTS



were reported to
crisis intervention
centers in
North Dakota



received services
from 19
crisis intervention
centers in
North Dakota

2017



CASE by CASE

At least **77%** of victims served were physically abused.

In at least **39%** of cases, the abuser had a history of abusive behavior with other adults including prior partners.

Weapons were used in at least **14%** of the cases identified. Guns were used in **14%** of the cases and knives were used in **16%** of the cases involving weapons.

Alcohol use by abuser only was indicated in **28%** of the new cases. Alcohol use by both victim and offender was indicated in **5%** of the cases.

ADVOCACY



28% of the victims were self-referred to domestic violence programs; 30% were referred by law enforcement.

Domestic violence programs provided victim assistance with 803 emergency protection orders.



92% of the victims were women.



91 women (2% of total new victims) were pregnant at the time they were assaulted.



14% of new victims were people with disabilities. Of those 14% were people with developmental disabilities, 35% had physical disabilities and 51% were people with mental health disabilities.



At least 2,934 children were directly impacted by these incidents.



At least 19% of the victims were under the age of 25. At least 1% were under the age of 18.



*new = unduplicated for calendar year.

March 2018. Domestic Violence Statistics are compiled by CAWS North Dakota for the State Health Department. CAWS North Dakota 521 E Main Ave, Suite 250, Bismarck, ND 58501 | 701.255.6240 | www.cawsnorthdakota.org

Strengthening North Dakota Families



#1 HB1393 2-6-19 P.4

Domestic Violence Offender Treatment Funding made it possible to:

- Expand services to four new regions in ND
- Increase the number of affordable groups offered statewide
- Ensure all programs funded are compliant with the ND Batterers' Treatment Standards and implementing evidence-based programming

Comments from participants:



"I didn't think my [abusive] reactions were having such an impact on my children . . . I don't want them thinking it's ok to treat people this way because they've seen me set the example."



"Before this class, I was not able to recognize the severity of the abuse; I was not even willing to consider it. I was in complete denial. This class has helped me become more aware and honest with myself."

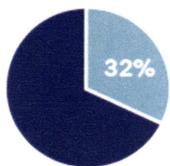
The Community Violence Intervention Center's Coordinated Community Response Project (Grand Forks, ND) conducted a study that tracked 343 male offenders who completed the New Choices program from 2004-2015. Offenders experienced:

- 73% decrease in law enforcement involvement
- 89% decrease in criminal charges
- 87% decrease in protection orders filed

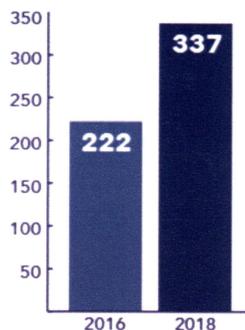
The initial investment of evidence-based intervention leads to tax dollar savings in the criminal justice system along with a new generation of children that are positively impacted.

The funding provided for Battering Intervention Services is vital

\$941,069 Invested 2017-2019



North Dakota Department of Health: \$300,000
Other Sources: \$641,069



52% increase in offenders reached

Battering Intervention Services have been expanded to four regions in ND



Programs In Compliance & NDDoH Funds New Programs

All programs funded are compliant with the North Dakota Batterers' Treatment Standards which requires: collaboration with criminal justice agencies; attention to lethality; policies incorporating accountability and safety planning with victims.

All programs use an evidence-based model that has been proven to reduce violent offenses (*more information available on crimesolutions.gov*).

19.0939.01001
Title.

Prepared by the Legislative Council staff for
the House Judiciary Committee
February 11, 2019

#1
HB1393
2-12-19
P.1

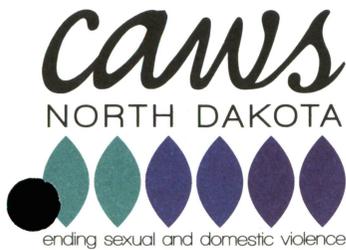
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1393

Page 2, line 26, replace "class A" with "class B"

Page 2, line 27, replace "class C felony" with "class B misdemeanor"

Page 3, line 3, replace "class C felony" with "class B misdemeanor"

Re-number accordingly



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Testimony on HB 1393
Senate Judiciary
March 11, 2019

HB 1393
3/11/19

Chair Larson and Members of the Committee,

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1393.

Last year nearly 5,800 incidents of domestic violence were reported to crisis intervention centers. Ninety two (92) percent of the victims were female and seventy seven (77) percent of those victims reported being physically abused. In at least 39% of the cases, the abuser had a history of abusive behavior with other adults including prior partners.

Beginning in the 1970's, efforts focused primarily on implementing legislation that criminalized domestic violence. Police departments instituted proarrest or mandatory arrest policies, prosecution increased dramatically, and the courts began using a variety of sanctions such as jail, probation, and mandatory treatment. At the same time, civil legal protections were expanded to cover domestic issues, and protection and restraining orders became widespread.

Underlying the criminalization of domestic violence and the associated legal sanctions are a variety of goals. Deterrence of future crime, moral retribution, protection of victims and society, rehabilitation of offenders, and repairing individual and community harm are just some of the goals that are related to different legal sanctions, though not always clearly. For example, jail or prison sentences can be viewed as theoretically linked to deterrence, retribution, and protection, while fines are related to deterrence, retribution, and repairing harm. For example, in some jurisdictions a criminal sentence may include any combination of incarceration, probation, community service, fines, no-contact orders, various prohibitions such as no guns or alcohol, and multiple types of treatment.

Currently, in North Dakota statute Chapter 12.1-17-01 defines simple assault for family and household members (domestic violence) in subdivision b starting on line 4 on page 2 of the bill and is currently classified as a class B misdemeanor with a maximum penalty of 30 days in jail, a

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The current practice in most counties with the exception of Cass and Grand Forks, 1st offense misdemeanor simple assault cases are heard in municipal court if the offense occurred in city limits, otherwise they are heard in district court. All misdemeanor simple assault (DV) cases are heard in district court. Burleigh County also used to hear misdemeanor DV cases in district court but after Marsy's Law was passed they declined the contract with the city due to the anticipated increased case load so those cases are heard in municipal court again. Second and subsequent offenses are all heard in district court in all counties.

As you can see from the data and the explanation of current practices, caseloads in district court should not "explode" or increase beyond the capacity to prosecute or provide services for victims in these cases.

In domestic violence cases, the risk of re-offense, violence and lethality are usually very high. Two separate studies conducted by the American Probation and Parole Association noted that about 2/3 of state prisoners who were serving time for domestic violence had a prior conviction and in another study conducted nearly 4 out of 5 inmates surveyed in local jails for domestic violence had previous criminal justice system involvement.

HB 1393 proposes 2 changes in the statute. First, the bill would create a new section called domestic violence (line 18, page 2). The second change proposed in the original draft of HB 1393 changes the first offense of (simple assault) domestic violence from a class B to a class A misdemeanor which increases the penalty from 30 days to up to 1 year in jail and increase the fine to \$3,000 vs. \$500.

The reason for the changes proposed in HB 1393 include:

- Easier to track domestic violence (simple assault) cases in order to understand the true extent of domestic violence cases by county. This could lead to changes in policies, practices and funding if we are better able to study the incidents of domestic violence in order to decrease the likelihood of recidivism including more serious assaults.
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- Simple assault (domestic violence) on a family or household member should be taken more seriously and be classified as an A vs. B misdemeanor which should be considered separately from bar fights or other assaults on non-household members. Assaults on partners more “intimate” in nature and the likelihood of recidivism is high (and lethality increases with each arrest)
- Cost effective and in line with Justice Reinvestment- including orders for treatment- which is less costly than prison which could cost upwards of \$100/day which is likely to happen with the high risk of recidivism in domestic violence cases leading to felony offenses including aggravated assault or murder.

I encourage you to look favorably on HB 1393 and reinstate the bill to its original form that doesn't include the House Amendments that change the penalty back to a B misdemeanor instead of the proposed enhanced penalty for domestic violence assaults (or an A misdemeanor) and would be happy to answer any questions that you may have. Thank you.

NORTH DAKOTA

DOMESTIC VIOLENCE

FATALITY REPORT

2017



Between 1998-2017, 45% of deaths due to homicide involved domestic violence. 77% of female homicide victims were killed in domestic violence incidents, compared to 31% of males.
In 2017, 4 of the 12 homicides in North Dakota were domestic violence related.

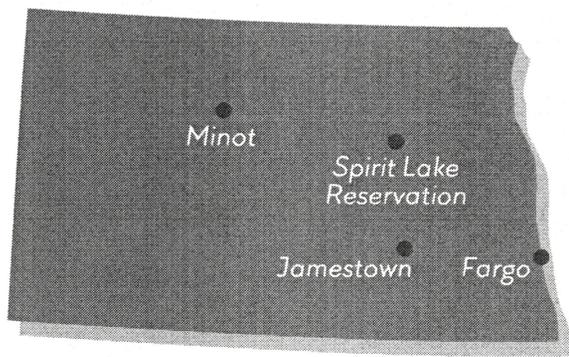


Persons killed in domestic violence incidents were more likely to be killed with a firearm, than those killed in non-domestic violence incidents.

46%

of female deaths in domestic violence incidents involved firearms compared to 30% of female deaths in non-domestic violence incidents

DOMESTIC VIOLENCE HOMICIDES IN 2017



Established in 2011, the Domestic Violence Fatality Review Commission reviews domestic violence deaths that have occurred in the state and recommends policies and protocols to help prevent future incidents of domestic violence and resulting fatalities (N.D.C.C. 14-07.1-20)

DOMESTIC VIOLENCE IN NORTH DAKOTA



"In One Day"



295 VICTIMS SERVED IN ONE DAY *September 13, 2017*

122 domestic violence victims found refuge in emergency shelters or transitional housing provided by local domestic violence programs.

173 adults and children received non-residential assistance and services, including counseling, legal advocacy, and children's support groups.



71 HOTLINE CALLS ANSWERED

Domestic violence hotlines are a lifeline for victims in danger, providing support, information, safety planning, and resources. In the 24-hour survey period, domestic violence programs answered more than 6 hotline calls every hour.



10 UNMET REQUESTS FOR SERVICES IN ONE DAY

6 (60%) were for housing.

Victims made requests for services that could not be provided because programs did not have the resources to provide these services.

2017 NORTH DAKOTA DOMESTIC VIOLENCE FACTS

5,787
INCIDENTS OF
DOMESTIC VIOLENCE
were reported to crisis
intervention centers in
North Dakota



In at least 39% of cases, the abuser had a history of abusive behavior with other adults including prior partners.

4,722
NEW VICTIMS
received services from
crisis intervention
centers in
North Dakota



In at least 37% of cases, the abuser had a history of abusive behavior with other adults including prior partners.



Weapons were used in at least 14% of the cases identified. Guns were used in 14% of the cases and knives were used in 16% of the cases involving weapons.

FINDINGS & RECOMMENDATIONS



DOMESTIC VIOLENCE COURT

Several factors were common in all fatality review cases that have been reviewed by the DVFR Commission since 2011 including one or both parties having a history of domestic violence incidents (in the current and previous relationships); the majority of the incidents resulted in involvement with law enforcement and the criminal justice system. In many instances, multiple judges heard and made decisions about cases involving the same victim and offender and may have missed opportunities to make connections or determine lethality in cases.

Domestic Violence Court is a dedicated domestic violence criminal court that includes all felony and misdemeanor cases involving one or more allegations of domestic violence occurring between intimate partners, including relationships that involve current and former dating relationships, cohabitating couples or people with children in common. The criminal court utilizes civil protective orders as a tool to disarm batterers.



RECOMMENDATION

Pursue the legislative and policy changes necessary to create a domestic violence court pilot program in North Dakota.

RESULT: 65th Legislative Assembly

SB 2309 Domestic violence court. (N.D.C.C. 14-07.1-08.1.)

The district court may require an individual who has committed a crime involving domestic violence, as defined in this chapter, or who has violated a domestic violence protection order to complete domestic violence treatment under the direction of the domestic violence court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with chapter 12.1-32.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-8163-02000.pdf>

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FINDINGS & RECOMMENDATIONS



FIREARMS REMOVAL

As previously noted, persons killed in domestic violence incidents were more likely to be killed with a firearm than those killed in non-domestic violence incidents.



RECOMMENDATION

Enhance statute related to the authority of law enforcement to remove firearms in domestic violence incidents and protection order violations.

RESULT: *65th Legislative Assembly*

HB 1402 - Surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders (subsection 4 of section 14-07.1-02.)

<https://www.legis.nd.gov/assembly/65-2017/documents/17-0836-02000.pdf>
accordance with chapter 12.1-32.

NOTICE AND SERVICE OF ORDERS

Victims often apply for or receive three types of orders in domestic violence incidents—domestic violence protection orders (NDCC), disorderly conduct restraining order (NDCC), or a criminal no contact order or order prohibiting contact as a condition of bond. Currently, there is no process for streamlining the transmission of an order from the court to the agency responsible for entering it into a database, serving the order and providing notice (LE) which leads to a gap in safety for victims.



RECOMMENDATION

Pursue the legislative and policy changes necessary to create language and the process to require submission of data related to all orders into a statewide system.

RESULT: *65th Legislative Assembly*

(SB 2309) 12-60-23. Bureau to maintain registry of protection orders, orders prohibiting contact, and restraining orders.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-8163-02000.pdf>

FINDINGS & RECOMMENDATIONS

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DOMESTIC VIOLENCE OFFENDER TREATMENT

Under current ND law, judges are mandated to sentence an individual charged with an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, to complete a domestic violence offender treatment program unless the court makes written findings for the record explaining why such an order would be inappropriate. Although we know many domestic violence offenders are arrested for crimes under the sections listed above the number of offenders ordered to attend group varies widely across judicial districts management programs that may be inappropriate for the crimes committed.



RESULT

SB 2004. DOMESTIC VIOLENCE OFFENDER TREATMENT PROGRAM.

Provide an appropriation of \$300,000 to the department of health to provide grants to organizations that provide domestic violence offender treatment as a part of a graduated range of sanctions used by judges to hold offenders accountable for their criminal actions and for changing their behavior. The treatment programs shall either be in compliance or in the process of working towards compliance with the ND Adult Batterer's Treatment Standards.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-0512-05000.pdf>

19.0939.02001
Title.

Prepared by the Legislative Council staff for
Senator Dwyer

March 11, 2019

#1
HB 1393
3.12.19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

Page 2, line 26, replace "B" with "A"

Page 2, line 27, replace "B misdemeanor" with "C felony"

Page 3, line 3, replace "B misdemeanor" with "C felony"

Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age."

Renumber accordingly

19.0939.02002
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
April 17, 2019

#1
HB 1393
4-18-19
P. 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

That the Senate recede from its amendments as printed on pages 1189 and 1190 of the House Journal and page 909 of the Senate Journal and that Engrossed House Bill No. 1393 be amended as follows:

Page 2, line 27, replace "and" with an underscored comma

Page 2, line 27, replace "B" with "A"

Page 2, line 27, after "second" insert "offense, and a class C felony for a third"

Page 3, line 3, replace "B" with "A"

Page 3, line 3, replace "or" with "of subsection 2 and a class C felony for an offense under subdivision"

Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age."

Renumber accordingly

#2
HB 1393
4-18-19
P-1

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Page 3, after line 3, insert:

"c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.

4. A person charged with an offense under this section must be prosecuted in district court."

Renumber accordingly

19.0939.02004
Title.

Prepared by the Legislative Council staff for
Representative Vetter
April 19, 2019

#1
HB1393
4-22-19
P.1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1393

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