

2023 HOUSE JUDICIARY

HB 1364

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1364
2/6/2023

Relating to dogs as a public nuisance

9:30 A.M. Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Property boundaries.
- Private property protections.
- Harassing defined.

Rep. S. Olson: Introduced the bill. No written testimony.

Sean Johnson, Bismarck, ND: Testimony #19180

Nathan Svihovec, Commissioner of Labor, Neutral: Testimony #19221

Hearing closed at 10:45 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1364
2/6/2023

Relating to dogs as a public nuisance

3:49 PM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Private property
- Committee action
- County ordinances
- Public roads and right-of-way

Rep. Olson moved a Do Pass
Seconded by Rep. Satrom

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll call vote: 11 Yes 2 No 0 Absent Carrier: Rep. Satrom

Meeting closed at 3:56 PM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1364: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1364 was placed on the Eleventh order on the calendar.

2023 SENATE JUDICIARY

HB 1364

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1364
3/8/2023

A bill relating to dogs as a public nuisance.

8:30 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Sickler, Estenson, Braunberger and Paulson are present.

Discussion Topics:

- Personal safety
- Property rights
- Pet ownership
- Harassment
- Nuisance pets

8:30 AM Representative S. Olson introduced the bill and provided written testimony #22873.

8:40 AM Sean Johnson testified in favor of the bill and provided written testimony #22814.

8:57 AM Jacki Hall spoke opposed to the bill.

Additional written testimony:

Susan Murphy #22729

Anna Rozova #22488

Steve Vetter #22336

Bob Matthews #21949

9:04 AM Chairman Larson closed the public meeting.

9:14 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1364
3/14/2023

A bill relating to dogs as a public nuisance.

9:25 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Amendments

9:25 AM The committee has discussion on the bill.

9:26 AM Senator Luick offers amendments LC 23.0894.01002 and LC 23.0894.01003 for consideration and provided written testimony #24815, 24816.

9:28 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1364
3/20/2023

A bill relating to dogs as a public nuisance.

10:38 AM Chairman Larson opened the meeting.
Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Braunberger and Paulson were present.

Discussion Topics:

- Committee action
- Amendments

10:38 AM The Committee had discussion on proposed amendment LC 23.0894.01004.

10:49 AM Senator Estenson moved to adopt amendment LC 23.0894.01004.
Motion seconded by Senator Luick.

10:49 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

10:50 AM Senator Estenson moved to Do Pass as Amended.
Motion seconded by Senator Luick.

10:50 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

Senator Luick will carry the bill.

This bill does not affect workforce development.

Additional Written Testimony:

Senator Luick #25910

10:50 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

March 17, 2023

DL
172
3-20-2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1364

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "42-03-01" insert ", 42-03-02, 42-03-03, and 42-03-04"

Page 1, line 2, replace "dogs" with "animals"

Page 1, line 6, overstrike "**dogs**" and insert immediately thereafter "**animals**"

Page 1, after line 6 insert:

"1."

Page 1, line 7, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 7, remove the overstrike over "molests"

Page 1, line 7, remove "harasses"

Page 1, line 7, after "individual" insert "or a person's property"

Page 1, line 8, replace "dog" with "animal"

Page 1, line 9, replace "dog's" with "animal's"

Page 1, line 10, replace "harasses" with "habitually molests a person's property or one or more"

Page 1, line 11, replace "a dog" with "an animal"

Page 1, line 11, replace "dog's" with "animal's"

Page 1, line 12, after the underscored period insert:

"2."

Page 1, line 13, overstrike the first "dog" and insert immediately thereafter "animal"

Page 1, line 13, overstrike the second "dog" and insert immediately thereafter "animal"

Page 1, line 14, overstrike "dog's" and insert immediately thereafter "animal's"

Page 1, line 14, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 15, overstrike "dog's" and insert immediately thereafter "animal's"

Page 1, line 16, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 16, remove the overstrike over "molesting"

Page 1, line 16, remove "harassing"

Page 1, line 16, overstrike "persons" and insert immediately thereafter "individuals or a person's property"

Page 1, line 17, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 18, overstrike "dog" and insert immediately thereafter "animal"

Page 1, after line 21, insert:

"3. A county, township, or city, including home rule counties and cities, may enact ordinances governing animals as public nuisances which are not less restrictive than this chapter.

4. For purposes of this section:

a. "Animal" does not include livestock as defined under section 36-11-01.1.

b. "Molest" means to annoy, disturb, or harass, especially with injurious effect.

OK
272
3-20-2023

SECTION 2. AMENDMENT. Section 42-03-02 of the North Dakota Century Code is amended and reenacted as follows:

42-03-02. Owner of ~~dog~~animal not known.

If it appears from the complaint that the owner is not known, ten days' notice ~~shall~~must be given by publication in one issue of a newspaper having wide circulation in the area. ~~Such~~The notice ~~shall~~must contain a description of the ~~dog~~animal as given in the complaint, a statement that ~~such~~the complaint has been made, and the time and place of ~~the~~ hearing thereon ~~on the complaint.~~

SECTION 3. AMENDMENT. Section 42-03-03 of the North Dakota Century Code is amended and reenacted as follows:

42-03-03. Hearing - Judgment - Execution.

On the day of the hearing the district or municipal judge shall hear the evidence in the case. If the judge finds that the ~~dog~~animal is a public nuisance, judgment must be entered accordingly, and the judge ~~shall~~may order any peace officer to ~~kill and bury the dog, which order the peace officer shall forthwith execute~~capture the animal and cause the animal to be removed or relocated or require the animal to be euthanized and disposed of humanely.

SECTION 4. AMENDMENT. Section 42-03-04 of the North Dakota Century Code is amended and reenacted as follows:

42-03-04. Costs.

Costs ~~shall~~must be paid by the complainant, but if the ~~dog~~animal is adjudged a nuisance, and the owner is known, judgment ~~shall~~must be entered against the owner for ~~such~~the costs."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1364: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1364 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "42-03-01" insert ", 42-03-02, 42-03-03, and 42-03-04"

Page 1, line 2, replace "dogs" with "animals"

Page 1, line 6, overstrike "**dogs**" and insert immediately thereafter "**animals**"

Page 1, after line 6 insert:

"1."

Page 1, line 7, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 7, remove the overstrike over "molests"

Page 1, line 7, remove "harasses"

Page 1, line 7, after "individual" insert "or a person's property"

Page 1, line 8, replace "dog" with "animal"

Page 1, line 9, replace "dog's" with "animal's"

Page 1, line 10, replace "harasses" with "habitually molests a person's property or one or more"

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Page 1, line 12, after the underscored period insert:

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Page 1, line 15, overstrike "dog's" and insert immediately thereafter "animal's"

Page 1, line 16, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 16, remove the overstrike over "molesting"

Page 1, line 16, remove "harassing"

Page 1, line 16, overstrike "persons" and insert immediately thereafter "individuals or a person's property"

Page 1, line 17, overstrike "dog" and insert immediately thereafter "animal"

Page 1, line 18, overstrike "dog" and insert immediately thereafter "animal"

Page 1, after line 21, insert:

- "3. A county, township, or city, including home rule counties and cities, may enact ordinances governing animals as public nuisances which are not less restrictive than this chapter.
4. For purposes of this section:
 - a. "Animal" does not include livestock as defined under section 36-11-01.1.
 - b. "Molest" means to annoy, disturb, or harass, especially with injurious effect.

SECTION 2. AMENDMENT. Section 42-03-02 of the North Dakota Century Code is amended and reenacted as follows:

42-03-02. Owner of ~~dog~~animal not known.

If it appears from the complaint that the owner is not known, ten days' notice ~~shall~~must be given by publication in one issue of a newspaper having wide circulation in the area. ~~Such~~The notice ~~shall~~must contain a description of the ~~dog~~animal as given in the complaint, a statement that ~~such~~the complaint has been made, and the time and place of ~~the~~the hearing ~~thereon~~on the complaint.

SECTION 3. AMENDMENT. Section 42-03-03 of the North Dakota Century Code is amended and reenacted as follows:

42-03-03. Hearing - Judgment - Execution.

On the day of ~~the~~the hearing the district or municipal judge shall hear the evidence in the case. If the judge finds that the ~~dog~~animal is a public nuisance, judgment must be entered accordingly, and the judge ~~shall~~may order any peace officer to ~~kill and bury the dog, which order the peace officer shall forthwith execute~~capture the animal and cause the animal to be removed or relocated or require the animal to be euthanized and disposed of humanely.

SECTION 4. AMENDMENT. Section 42-03-04 of the North Dakota Century Code is amended and reenacted as follows:

42-03-04. Costs.

Costs ~~shall~~must be paid by the complainant, but if the ~~dog~~animal is adjudged a nuisance, and the owner is known, judgment ~~shall~~must be entered against the owner for ~~such~~the costs."

Renumber accordingly

TESTIMONY

HB 1364

Sean M. Johnson
6405 Preston Loop
Bismarck, ND 58504
701-391-5326

North Dakota House of Representatives Judiciary Committee
State Capital
600 East Boulevard Avenue
Bismarck, ND 58505

Testimony in Support of HB 1364

Honorable Members of the House Judiciary Committee:

My name is Sean Johnson, and I reside in the Prairiewood Estates Second Subdivision of Apple Creek Township in Burleigh County. I am offering this testimony in support of HB 1364 relating to dogs as a public nuisance.

I presented the idea for this bill to Representative SuAnn Olson, who represents our subdivision in District 8, after a long and unfortunate chain of events which spanned the course of nearly two years related to a dangerous rottweiler dog. During this time, the rottweiler was allowed to run loose by the owner and subsequently proceeded to assault and terrorize residents and visitors to this area on several occasions.

I do not intend to dwell on the specifics of each instance or the severity of them because the facts that they occurred over the course of those two years is irrefutable. The fact that people also have a reasonable expectation not to live in fear of or experience an actual attack by a canine while on property they own or have a reason to be present on is also irrefutable. If such things do occur, people also have a reasonable expectation of effective intervention by and resolution from law enforcement and the courts.

It is this last point why this bill is before you today. All reasonable attempts were made to work with the owner to control and contain his dog. For reasons only he will fully know, he chose not to be a responsible pet owner in this regard. We then resorted to contacting law enforcement and were informed such matters were a civil matter versus a criminal one.

We do not dispute civil action is probably the correct outlet to seek redress through. North Dakota Century Code Chapter 42-03-01 does provide provisions for the court to act on the matter of nuisance dogs, but unfortunately these provisions **only apply when people are traveling peaceably on a public road or street**. This same part of the code is silent on the matter of nuisance dogs harassing people on their own property. Our situation drug on for an unreasonable amount of time because the harassment from the canine in question occurred primarily on private property he wandered on to.

This bill seeks to remedy that gap. Summarized, the bill if passed into law will allow a judge to take the same actions they can today to address nuisance dogs on public roads and streets, and **extends them to provide an outlet for redress to people on private property they have a right to be on, especially their own homes**. It also provides permissive language to the court to allow them to evaluate each situation based on its specific facts and circumstances, versus the prescriptive language that exists today.

I feel this change will provide the necessary civil relief that will prevent another neighborhood in North Dakota from having to go through what we did in Prairiewood over such an extended amount of

time, better avoid unfortunate and dangerous attacks by canines with a track record that meets nuisance criteria, but also allow a judge the latitude they need to apply the provisions of this law appropriately and when truly warranted.

I genuinely appreciate the opportunity to present a case for passage of this bill today and look forward to answering any questions you may have.

A handwritten signature in black ink, appearing to read "Sean M. Johnson", with a long horizontal flourish extending to the right.

Sean M. Johnson

68th Legislative Assembly
Regular Session (2023)

H.B. 1364

House Judiciary Committee

Rep. Lawrence R. Klemin, Chairman

Rep. Karen Karls, Vice Chairman

Testimony of Nathan Svihovec

Commissioner of Labor

N.D. Department of Labor and Human Rights

NEUTRAL

February 6, 2023

I. Introductory Summary

Chairman Klemin, Vice Chairman Karls, and members of the House Judiciary Committee, my name is Nathan Svihovec and I was appointed as the North Dakota Department of Labor and Human Rights Commissioner beginning December 2022. I am a licensed attorney in the State and prior to my appointment, primarily practiced in labor and employment law as well as other civil litigation areas. I have been fortunate to formerly represent the Department as an Assistant Attorney General and to represent private businesses and individuals before the Department while I was in private practice.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Commissioner of Labor (Labor Commissioner). The Department's statutory duties can be most concisely summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public.

II. Bill Summary and Effects

Although the proposed amendments via H.B. 1364 include clarification of existing statutory language, certain provisions may impact members of the public with disabilities. Generally, an individual who has a medical necessity for a service or companion animal must have the animal accompany that person even in public places. The proposed language on Page 1, Lines 11-12 conflicts, at least in principle, with the position that service or companion animals generally do not need permission for persons with disabilities to enjoy facilities the same as people without disabilities. As an example, a more obvious comparison would be declaring that wheelchairs that track in mud to a facility are deemed to have entered the

property without the permission of the property's owner. Although a wheelchair clearly cannot inflict injury on someone the same as a dog could, the principle carries the same effect when a service or companion animal is a medical necessity to an individual with a disability.

III. Recommendations

Removing the language "without the permission of the property owner" (Page 1, Line 9) and "If a dog enters a property and the dog's owner is unknown, it is presumed to have entered that property without permission of the property's owner" (Page 1, Lines 11-12) would accomplish the same intent of the bill without creating questionable issues for individuals with disabilities. Indeed, whether the property owner knows or does not know the animal should not matter. If an animal – service, companion, or other – inflicts injury on a fellow patron, the owner's prior knowledge of the animal should be irrelevant.

Additionally, the term "harasses" is somewhat ambiguous, vague, and open to a large spectrum of individual interpretation that could yield absurd results not intended by the bill. Defining "harasses" would likely create clarity in this bill.

IV. Fiscal Impact

No fiscal impacts are anticipated by this bill.



Attn: Senate Judiciary Committee
Re: House Bill 1364 – Dogs as a Public Nuisance
Date: February 17, 2023
Position: Oppose

Honorable Members of the Senate Judiciary Committee,

I write you today on behalf of the Congressional Sportsmen’s Foundation in opposition of House Bill 1364, which allows for any dog that enters onto property not owned by the dog’s owner to be considered a public nuisance. In North Dakota, hunters may enter onto private land to retrieve wounded game, so long as that game was wounded on land that the hunter was authorized to hunt on. Additionally, the language of this bill does not define what constitutes harassment by a dog. Given the existing right of hunters to enter private land to retrieve game and the ambiguity of what constitutes harassment, I respectfully request that the members of this committee oppose the passage of H 1364.

Founded in 1989, the Congressional Sportsmen's Foundation (CSF) is the informed authority across outdoor issues and serves as the primary conduit for influencing public policy. Working with the Congressional Sportsmen's Caucus (CSC), the Governors Sportsmen's Caucus (GSC), and the National Assembly of Sportsmen's Caucuses (NASC), CSF gives a voice to hunters, anglers, recreational shooters, and trappers on Capitol Hill and throughout state capitols advocating on vital outdoor issues that are the backbone of our nation's conservation legacy.

According to Section 20.1-01-19 of the North Dakota Century Code (N.D.C.C.), “[a]ny person may enter upon legally posted land to recover game shot or killed on land where the person had a lawful right to hunt.”¹ Additionally, according to Section 20.1-05-04 of the N.D.C.C., dogs may be used for the recovery of big game animals.² Under the proposed language of this bill, dogs belonging to hunters that may lawfully enter land to recover game without the landowner’s permission could be considered a public nuisance. Without a definition for what constitutes harassment, this bill creates significant problems for hunters lawfully recovering game and could subject them to unjustified complaints of “harassment” by their dog.

¹ N.D.C.C., Sec. 20.1-01-19. <https://www.ndlegis.gov/cencode/t20-1c01.pdf#nameddest=20p1-01-17>

² N.D.C.C., Sec. 20.1-05-04. <https://www.ndlegis.gov/cencode/t20-1c05.pdf>

Your Inside Connection to Outdoor Legislation

For these reasons, I respectfully request that the members of this Committee reject the passage of House Bill 1364. I thank you for the opportunity to submit this testimony and welcome any questions.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Matthews". The signature is written in a cursive style with a clear, legible font.

Robert Matthews

Senior Coordinator, Upper Midwestern States

Congressional Sportsmen's Foundation

rmatthews@congressionalsportsmen.org | 517-210-2890



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Steve Vetter

District 18
804 South 17th Street
Grand Forks, ND 58201-4241
smvetter@ndlegis.gov

COMMITTEES:

Judiciary
Government and Veterans Affairs

03/07/2023

My name is Steve Vetter and I represent district 18. My constituents would be affected by this bill, if it were to pass. My current local ordinances is what my constituents want , not a state law superseding it.

My name is Steve Vetter and I represent district 18. My constituents would be affected by this bill if it were to pass. My current local ordinances is what my constituents want, not a state law superseding it.

Reasons for a Do Not Pass

1. Not Needed as it can be done by county ordinance- Burleigh County recently passed a Home Rule Charter so they could enact an ordinance to fit their individual county instead of passing a law for the whole state.
2. Local Control- this bill supersedes and impose its will over local counties and cities throughout the state in search of solving a local problem in one area of the state.
3. Local ordinances are different depending on location in the state.
4. Lowers standards and expands area of which a dog would be subject to state law instead of being governed by their local ordinance. The state penalty is very strict. See below.

What happens when a dog is declared a public nuisance. See Century Code below.

42-03-03. Hearing - Judgment - Execution.

On the day of hearing the district or municipal judge shall hear the evidence in the case. If the judge finds that the dog is a public nuisance, judgment must be entered accordingly, and the judge shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.

For these reasons and because it is not needed. Please give 1364 a Do Not Pass.

06 March 2023

Senate Judiciary Public Hearing Testimony

Bill 1364, Dogs as a public nuisance

Mr. /Madam Chairman, and members of the committee, my name is Anna Rozova. I reside in West Fargo, ND and I provide this testimony in opposition of this bill.

Currently, section 42-03-01 of the North Dakota Century Code, states that a dog habitually molesting/harassing a person traveling peaceably on the public road or street is considered a public nuisance. Two written complaints lead to the designation of such dog as a nuisance, and under section 42-03-02, the judge shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.

While one can appreciate concerns some individuals may have about a stranger dog approaching them, one can also appreciate that the threshold for individual perception of harassment may vary significantly. A dog barking at a person, a dog jumping on a person, for some just seeing a dog of a specific breed, may be enough to feel harassed. The punishment for the dog is the same- death. Not even a humane euthanasia, but likely death by shooting. There is no distinction based on the type of harassment, designation of the dog as dangerous, attempt to humanely trap the dog, or, if the owner is known, apply a form of punishment to the owner. The verdict is nondiscriminatory and definitive- kill and bury the dog.

Bill 1364 seeks to expand the existing scope of the section 42-03-01 to the private property, stating that any dog outside the property of the dog's owner which enters the property of another without the permission of the property owner, and subsequently harasses individuals who are lawful entrants on the property, may be considered a public nuisance. It further specifies that if a dog enters a property and the dog's owner is unknown, it is presumed to have entered that property without permission of the property's owner. Which is not surprising, as dogs rarely are aware of property lines and even less frequently ask permission to enter.

The example that was given at the House hearing referred to a rottweiler who was "terrorizing" the neighborhood and animal control was unable to deal with it, as it was happening not on public property. This is truly unfortunate, and it does need to be addressed, but the question I have if killing of a dog is a good answer to this problem.

I can suggest another example that fits the framework of the proposed bill: a young dog (not yet neutered or microchipped) dashes through the house door and runs away. Accidents happen. He is not yet fully trained, young and full of energy. He happily runs free and enters an unfenced property of a family sitting in the back yard and enjoying their evening barbecue. He sees people, smells wonderful aroma of a grilled hamburger, and happily runs, announcing his arrival with a deep bark. He jumps on people, as people are friends, maybe even trying to grab some food from their plates. He does not mean any harm, he is loud and clumsy, and wants to play. However, the lady of the house is afraid of dogs. To her- this is harassment. To add to the trouble, the dog looks large and black. They file a written complaint. Well- according to the proposed bill, this dog should be put to death. There is no gradation, no impounding, no quarantine. The only proposed solution is death. Again, no attempt to deal with the issue in much more humane way. Moreover, the bill does not discriminate between rural and urban

settings, where resources available to handle such an animal vary. In my opinion, this matter would be more efficiently addressed by municipal ordinances rather than a state law. Local authorities are much better positioned to deal with such situations, considering available infrastructure.

I do recognize that a problem of the stray dogs exists, however, in all fairness, in large part it is a result of irresponsible dog ownership. Unfortunately, it is almost always the dog who pays the price. And the way this bill is written, under unfortunate circumstances, it can be your dog.

I urge you to vote “no” on this inhumane and non-discriminatory bill. We need to do better as human beings.

Respectfully,

Anna Rozova

Susan R. Murphy
6215 Preston Loop
Bismarck, ND 58504
(701) 550-1067

North Dakota House of Representative Judiciary Committee
State Capitol
600 E Boulevard Ave
Bismarck, ND 58505

Testimony in Support of HB 1364

Honorable Members of the House Judiciary Committee:

My name is Susan Murphy and I am providing this testimony on behalf of my family in support of HB 1364 relating to dogs as a public nuisance.

I feel it important to share with this committee the terror that my family experienced due to a very aggressive rottweiler dog that was continuously uncontained and unsupervised in our neighborhood for a period of approximately six years. We reside directly adjacent to the dog and spent those six years unable to comfortably enjoy our property because we lived in constant fear of being attacked.

During this six-year period, my family, visitors to our property, and our family dog were continually harassed by the rottweiler within the bounds of our property. By "harassed" I mean chased, snarled at, barked at, and lunged at. Our dog and our neighbor's dogs were involved in multiple scuffles with the rottweiler. Thankfully, no human or animal suffered serious injury.

During this six-year period, we had many conversations with the dog's owners regarding the aggressive behavior. Unfortunately, the owners refused to recognize the dangerous nature of the dog or the seriousness of the constant harassment. My family was forced to remain prepared to protect ourselves any time we were outside the safety of our home. We learned not to walk out the front door without first looking to see if the dog was in our yard. We learned not to perform yard maintenance without some sort of protection. Additionally, we learned to be prepared to warn or protect any visitors to our yard, including children. There were times when we knew the rottweiler was loose and could not allow visiting children to play outside. There were times when people sat in the safety of their vehicles until we were certain the dog had gone away and would not attack.

During this six-year period, we placed a minimum of eight calls to law enforcement to report incidents involving the rottweiler. Each time that a Burleigh County Sheriff's Deputy responded, we were referred to North Dakota Century Code Chapter 42-03: Dogs As Public Nuisance. Unfortunately, we were also told that our situation did not fit

within this Chapter because each incident occurred within the bounds of our property, as opposed to “a public road or street”. The best the deputies could do for us was to speak to the dog’s owners and ask them to contain and control their dog. During one such incident, I was a witness as a deputy approached the dog owner’s home, was charged at by the rottweiler, and forced to dispense protective spray at the dog.

I have viewed the House Judiciary Committee video and read other testimony provided relating to HB 1364 and noticed some focus on 42-03-03: Hearing-Judgement-Execution, which states: “On the day of hearing the district or municipal judge shall hear the evidence in the case. If the judge finds that the dog is a public nuisance, judgment must be entered accordingly, and the judge shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.” However, I would like to draw further attention to 42-03-01, of the proposed version, which clearly states what happens prior to 42-03-03: “Upon written complaint to a district or municipal judge describing the dog, giving the name of the dog and the dog's owner if known, and, if not, so stating, and alleging that the dog is a public nuisance, the district or municipal judge shall give notice to the dog's owner that a complaint has been filed that the dog has been harassing certain persons and that the owner shall take the necessary action to prevent the dog from any further violations of this chapter. If the district or municipal judge receives a further complaint regarding the dog after notice has been given under this section, the judge shall issue a summons, if the owner is known, commanding the owner to appear before the judge in the same manner as other court summonses.”

Throughout the six-year period, I witnessed countless situations where the rottweiler chased or lunged at people walking past on the street. During one such incident, the dog chased and charged at members of a family with very young children, including an infant in a stroller. This incident resulted in one of the victims filing an official complaint with Burleigh County District Court, as it fit within the Chapter because it took place on a “public road or street”. Accordingly, the dog’s owner was then notified by a district judge that a complaint had been received and was instructed to take the necessary action to prevent the dog from creating a nuisance.

If enacted, the proposed changes in HB 1364 would offer my family and all families of North Dakota protection within the bounds of our privately owned property. We all deserve to live our lives without fear.

Thus, I respectfully request that the members of this committee approve the passage of HB 1364. I appreciate the opportunity to provide this testimony and would welcome any questions.

Respectfully,

Susan R. Murphy

Sean M. Johnson
6405 Preston Loop
Bismarck, ND 58504
701-391-5326

North Dakota Senate Judiciary Committee
State Capital
600 East Boulevard Avenue
Bismarck, ND 58505

Testimony in Support of HB 1364

Honorable Members of the Senate Judiciary Committee:

BOTTOM LINE UP FRONT:

HB 1364 simply seeks to extend the current NDCC protections our citizens enjoy on public roads from habitually dangerous dogs to their own private property. No different than the current law, a judge would review the merits of each complaint made under this part of the code to determine if a dog truly is a nuisance, if it is a public safety concern, and if all options have been exhausted with an owner before ordering a dog euthanized humanely.

This is a straightforward bill which creates no new law, but rather closes a significant gap in current law through making it applicable to private property in addition to a public road. It also enables a judge better latitude than currently exists to weigh the facts of each complaint and determine if a nuisance exists in the first place. This provision best assures due process for all involved. This is a law that works, and ultimately prevents more harm to people and destruction of animals in the long run through the involvement of a judge objectively reviewing the facts of each circumstance, initiating a process that starts with a warning letter, and in turn deterring many situations from getting worse for both the people and animals involved while offering certain relief to victims when the deterrence does not work. This is something local ordinances could not replicate as effectively and consistently. Extending a current law that is working to private property, and the protections thereof to those people who have a legal right to be on that property, is the right thing to do in all respects.

BACKGROUND:

My name is Sean Johnson, and I reside in the Prairiewood Estates Second Subdivision of Apple Creek Township in Burleigh County. I am offering this testimony in support of HB 1364 relating to dogs as a public nuisance.

I presented the idea for this bill to Representative SuAnn Olson, who represents our subdivision in District 8, after a long and unfortunate chain of events which spanned the course of nearly two years related to a dangerous rottweiler dog. During this time, the rottweiler was allowed to run loose by the owner and subsequently proceeded to assault and terrorize residents and visitors to this area on several occasions.

I do not intend to dwell on the specifics of each instance or the severity of them because the facts that they occurred over the course of those two years is irrefutable. A neighbor, Susan Murphy, has also submitted testimony which spells out in great detail the serious circumstances and fear encountered because of this dog. The fact that people also have a reasonable expectation not to live in fear of or experience an actual attack by a canine while on property they own or have a reason to be present on is

also irrefutable. If such things do occur, people also have a reasonable expectation of effective intervention by and resolution from law enforcement and the courts.

It is this last point why this bill is before you today. All reasonable attempts were made to work with the owner to control and contain his dog. For reasons only he will fully know, he chose not to be a responsible pet owner in this regard. We then resorted to contacting law enforcement and were informed such matters were a civil matter versus a criminal one.

We do not dispute civil action is the correct outlet to seek redress through. North Dakota Century Code Chapter 42-03-01 does provide provisions for the court to act on the matter of nuisance dogs, but unfortunately these provisions **only apply when people are traveling peaceably on a public road or street**. This same part of the code is silent on the matter of nuisance dogs harassing people on their own property. Our situation drug on for an unreasonable amount of time because the harassment from the canine in question occurred primarily on private property he wandered on to.

This bill seeks to remedy that gap. Summarized, the bill if passed into law will allow a judge to take the same actions they can today to address nuisance dogs on public roads and streets, and **extends them to provide an outlet for redress to people on private property they have a right to be on, especially their own homes**. It also provides permissive language to the court to allow them to evaluate each situation based on its specific facts and circumstances, versus the prescriptive language that exists today.

I feel this change will provide the necessary civil relief that will prevent another neighborhood in North Dakota from having to go through what we did in Prairiewood over such an extended amount of time, better avoid unfortunate and dangerous attacks by canines with a track record that meets nuisance criteria, but also allow a judge the latitude they need to apply the provisions of this law appropriately and when truly warranted.

MISINFORMATION AND CLARIFICATION:

This bill has elicited an emotional response from some that would be understandable if it truly did what they fear, but it does not. Unfortunately, such reactions can often lead to misunderstandings and the subsequent spread of misinformation. That has occurred here, and it is unfortunate. I would like to take an opportunity at the end of this testimony to try and correct the misunderstandings and misinformation.

Of note, the current law and this proposed amendment **do not call for the indiscriminate elimination of dogs** found out wandering around, hunting, working (such as seeing eye dogs) or otherwise just being dogs. To imply otherwise is simply misleading.

A review of the current law and the proposed amendment should make it very clear that this is not what is being proposed, nor would this happen. As mentioned, this is a civil action requiring the involvement of a judge who will determine if there is a track record of clearly dangerous harassment. Judges are well trained to look at all facts bearing on a case before making a ruling (The amendment gives them even better latitude to do just that as well). They are also experienced and learned in the law enough to know what habitual harassment is in a specific circumstance, **and what it is NOT** (This is a positive aspect in this bill difficult to replicate with a local ordinance as well).

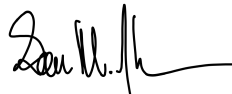
Reasonable people would agree barking may be annoying, but is not harassment. Dogs wandering into other yards and making a "deposit" is frustrating, but isn't harassment. Even an isolated case of a dog nipping at someone because they got lost and are scared is not harassment. **If reasonable people can see this, a Judge will definitely see this, and more.**

It is also key to reiterate that **this law already exists and is being successfully and fairly applied today**. With that we have a track record for how judges have carried out their responsibilities as they relate to this law. Orders to euthanize are not common, and when issued it is because all reasonable avenues to work with owners have been exhausted, and **that animal is a demonstrated danger to people**. While it is unfortunate a dog has to pay for an irresponsible owner, **it is completely unacceptable for people to have to live in fear of and face the dangers incumbent with a habitually dangerous dog that that owner refuses to take responsibility for**.

Last, it is unfortunate some have sensationalized the actual act of euthanasia by erroneously claiming the animal is shot. What really happens is they are put down humanely by a veterinarian, and as an absolute last resort.

In short, **had all the horrible things some profess this bill would do have even a scintilla of validity, they would be evident already because this law already exists and is in use**. They are not evident because the law is effectively and appropriately applied now and will still be with this straightforward change. It simply eliminates a "safe harbor" from the spirit of the law currently existing on private property, and ensures that spirit applies wherever you may be including your own back yard.

I genuinely appreciate the opportunity to present a case for passage of this bill today and look forward to answering any questions you may have. We do not want to hear of another development or neighborhood experiencing what we did for two summers. Our experiences motivated the proposal for this bill in the hopes we can save other North Dakotans the fear, angst, and danger we experienced.



Sean M. Johnson



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative SuAnn Olson

District 8
17763 Highway 83
Baldwin, ND 58521-9724
solson@ndlegis.gov

COMMITTEES:

Judiciary
Agriculture

HB 1364

March 8, 2023

Chairwoman Larson and members of the committee. I am Rep. SuAnn Olson, representing District 8.

HB 1364 was introduced because the original statute, 42-03-01, as originally written was unenforceable. The original language stated that before action could be taken, a dog had to habitually molest a person on a public road or street. The words "public road or street" have been interpreted literally. Which means, if a dog was a problem anywhere other than a street or road, there wasn't really anything that could be done where there weren't local ordinances.

Sec. 45-03-01 is re-written in this bill to clarify that if a dog HABITUALLY harasses a person anywhere outside of the dog owner's property, then a complaint can be made to a district or municipal judge. It is important to note the word "habitually" was already in the statute and is still present in the Section as re-written.

All of us can sympathize and many of us have experienced our dog getting away from us or out of our yard on occasion and needing to search the neighborhood for the escape artist. This bill does not affect those occasions. This bill will not affect hunters who are out with their dogs. It is intended to provide a resolution where dogs are repeatedly off leash, roaming the neighborhood, and harassing other people. Again, the word "habitually" is important in this statute.

There is testimony online which indicates concern that this Chapter would supersede local ordinances. This question was addressed in a North Dakota Supreme Court case from 2009 called State of North Dakota v. Lori Lee Brown. In that case, Brown had 3 barking dogs and her neighbor filed a complaint under Cass County's Animal Control Ordinance. Brown argued that the County didn't have authority to control her barking dogs because the State law only addressed dogs that were molesting individuals on public roads. A portion of the case states: "the legislature envisioned there would be instances when an ordinance adopted by a home rule county would apply to the same subject matter as, and conflict with, state law. The legislature expressly provided that, in such cases, the county ordinance would ordinarily supersede state law...These statutes would be rendered meaningless if, as Brown suggests, NDCC Sec 11-09.1-05(5) prohibits the county from enacting any ordinance if there is any state law or rule addressing the same subject matter." I think this case should allay fears

that local ordinances would be overruled by state law. The existing law has been co-existing with local ordinances for many years now.

A problem dog also becomes a property rights issue. People have a right to use their own backyards, their front yards, without fear. Children should be able to play in their own yard without worry. People should be able to let their own dog out in their yard without fear of a dog fight and without fear that their small dog may be mauled. People shouldn't be forced to put up a fence to keep other people's dogs out.

HB 1364 cleans up an unworkable section of Century Code. Please give this bill a DO PASS recommendation. Thank you.

23.0894.01003

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1364

Introduced by

Representatives S. Olson, Holle, Satrom

Senator Magrum

1 | A BILL for an Act to amend and reenact ~~section~~sections 42-03-01 and 42-03-03 of the North
2 | Dakota Century Code, relating to dogs as a public nuisance.

3 | **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 | **SECTION 1. AMENDMENT.** Section 42-03-01 of the North Dakota Century Code is
5 | amended and reenacted as follows:

6 | **42-03-01. When dogs are a public nuisance.**

7 | 1. Any dog that habitually ~~molests a person~~harasses an individual or a person's property
8 | traveling peaceably on the public road or street ~~is~~may be considered a public
9 | nuisance. Any dog outside the property of the dog's owner which enters the property
10 | of another without the permission of the property owner, and subsequently
11 | ~~harasses~~habitually molests a person's property or one or more individuals who are
12 | lawful entrants on the property, may be considered a public nuisance. If a dog enters a
13 | property and the dog's owner is unknown, it is presumed to have entered that property
14 | without permission of the property's owner.

15 | 2. Upon written complaint to a district or municipal judge describing the dog, giving the
16 | name of the dog and the dog's owner if known, and, if not, so stating, and alleging that
17 | the dog is a public nuisance, the district or municipal judge shall give notice to the
18 | dog's owner that a complaint has been filed that the dog has been ~~molesting~~harassing
19 | certain ~~persons~~individuals or a person's property and that the owner shall take the
20 | necessary action to prevent the dog from any further violations of this chapter. If the
21 | district or municipal judge receives a further complaint regarding the dog after notice
22 | has been given under this section, the judge shall issue a summons, if the owner is
23 | known, commanding the owner to appear before the judge in the same manner as
24 | other court summonses.

1 3. For purposes of this section "molest" means to annoy, disturb, or harass, especially
2 with injurious effect.

3 **SECTION 2. AMENDMENT.** Section 42-03-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **42-03-03. Hearing - Judgment - Execution.**

6 On the day of hearing the district or municipal judge shall hear the evidence in the case. If
7 the judge finds that the dog is a public nuisance, judgment must be entered accordingly, and the
8 judge ~~shall~~may order any peace officer to ~~kill and bury the dog, which order the peace officer~~
9 ~~shall forthwith execute~~cause the dog to be killed and buried.

23.0894.01002

Sixty-eighth
Legislative Assembly
of North Dakota

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5 | amended and reenacted as follows:

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7 | 1. Any dog that habitually ~~molests a person~~harasses an individual traveling peaceably on
8 | the public road or street ~~is~~may be considered a public nuisance. Any dog outside the
9 | property of the dog's owner which enters the property of another without the
10 | permission of the property owner, and subsequently ~~harasses~~habitually molests one
11 | or more individuals who are lawful entrants on the property, may be considered a
12 | public nuisance. If a dog enters a property and the dog's owner is unknown, it is
13 | presumed to have entered that property without permission of the property's owner.

14 | 2. Upon written complaint to a district or municipal judge describing the dog, giving the
15 | name of the dog and the dog's owner if known, and, if not, so stating, and alleging that
16 | the dog is a public nuisance, the district or municipal judge shall give notice to the
17 | dog's owner that a complaint has been filed that the dog has been ~~molesting~~harassing
18 | certain ~~persons~~individuals and that the owner shall take the necessary action to
19 | prevent the dog from any further violations of this chapter. If the district or municipal
20 | judge receives a further complaint regarding the dog after notice has been given under
21 | this section, the judge shall issue a summons, if the owner is known, commanding the
22 | owner to appear before the judge in the same manner as other court summonses.

23 | 3. For purposes of this section "molest" means to annoy, disturb, or harass, especially
24 | with injurious effect.

1 **SECTION 2. AMENDMENT.** Section 42-03-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **42-03-03. Hearing - Judgment - Execution.**

4 On the day of hearing the district or municipal judge shall hear the evidence in the case. If
5 the judge finds that the dog is a public nuisance, judgment must be entered accordingly, and the
6 judge ~~shall~~may order any peace officer to ~~kill and bury the dog, which order the peace officer~~
7 ~~shall forthwith execute~~cause the dog to be killed and buried.

23.0894.01004

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1364

Introduced by

Representatives S. Olson, Holle, Satrom

Senator Magrum

1 A BILL for an Act to amend and reenact ~~section~~sections 42-03-01, 42-03-02, 42-03-03, and
2 42-03-04 of the North Dakota Century Code, relating to ~~dogs~~animals as a public nuisance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 42-03-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **42-03-01. When ~~dogs~~animals are a public nuisance.**

7 1. Any ~~dog~~animal that habitually ~~molests~~ ~~a person~~harasses ~~an individual~~ or a person's
8 property traveling peaceably on the public road or street ~~is~~may be considered a public
9 nuisance. ~~Any ~~dog~~animal outside the property of the ~~dog's~~animal's owner which enters~~
10 the property of another without the permission of the property owner, and
11 subsequently ~~harasses~~habitually molests a person's property or one or more
12 individuals who are lawful entrants on the property, may be considered a public
13 nuisance. If ~~a dog~~ an animal enters a property and the ~~dog's~~animal's owner is
14 unknown, it is presumed to have entered that property without permission of the
15 property's owner.

16 2. Upon written complaint to a district or municipal judge describing the ~~dog~~animal, giving
17 the name of the ~~dog~~animal and the ~~dog's~~animal's owner if known, and, if not, so
18 stating, and alleging that the ~~dog~~animal is a public nuisance, the district or municipal
19 judge shall give notice to the ~~dog's~~animal's owner that a complaint has been filed that
20 the ~~dog~~animal has been ~~molesting~~harassing certain ~~persons~~individuals or a person's
21 property and that the owner shall take the necessary action to prevent the ~~dog~~animal
22 from any further violations of this chapter. If the district or municipal judge receives a
23 further complaint regarding the ~~dog~~animal after notice has been given under this

1 section, the judge shall issue a summons, if the owner is known, commanding the
2 owner to appear before the judge in the same manner as other court summonses.

3 3. A county, township, or city, including home rule counties and cities, may enact
4 ordinances governing animals as public nuisances which are not less restrictive than
5 this chapter.

6 4. For purposes of this section:

7 a. "Animal" does not include livestock as defined under section 36-11-01.1.

8 b. "Molest" means to annoy, disturb, or harass, especially with injurious effect.

9 **SECTION 2. AMENDMENT.** Section 42-03-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **42-03-02. Owner of ~~dog~~animal not known.**

12 If it appears from the complaint that the owner is not known, ten days' notice ~~shall~~must be
13 given by publication in one issue of a newspaper having wide circulation in the area. ~~Such~~The
14 notice ~~shall~~must contain a description of the ~~dog~~animal as given in the complaint, a statement
15 that ~~such~~the complaint has been made, and the time and place of ~~the~~hearing ~~thereon~~on the
16 complaint.

17 **SECTION 3. AMENDMENT.** Section 42-03-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **42-03-03. Hearing - Judgment - Execution.**

20 On the day of ~~the~~hearing the district or municipal judge shall hear the evidence in the case.
21 If the judge finds that the ~~dog~~animal is a public nuisance, judgment must be entered
22 accordingly, and the judge ~~shall~~may order any peace officer to ~~kill and bury the dog, which order~~
23 ~~the peace officer shall forthwith execute~~capture the animal and cause the animal to be removed
24 or relocated or require the animal to be euthanized and disposed of humanely.

25 **SECTION 4. AMENDMENT.** Section 42-03-04 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **42-03-04. Costs.**

28 Costs ~~shall~~must be paid by the complainant, but if the ~~dog~~animal is adjudged a nuisance,
29 and the owner is known, judgment ~~shall~~must be entered against the owner for ~~such~~the costs.