

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1363

2001 HOUSE JUDICIARY

HB 1363

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-30-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		1819 to 6247
TAPE I		x	01 to 2199
TAPE I		x	4223 to 6247
TAPE II	x		01 to 983
Committee Clerk Signature <i>Joan Diera</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1363. Relating to a mandatory assessment process for simple assault in domestic violence cases, relating to the penalty for assault in a domestic violence case and to provide a penalty.

Rep Delmore: District 43 of Grand Forks, south west part of the city. I am here in support of HB 1363. In North Dakota, domestic violence is becoming our most serious violent crime. Over fifty per cent of our homicides are domestic violence. Goes on to give static's on different categories of domestic violence. This bill will do three things, number 1, it will create an identifiable climate of domestic violence in North Dakota, number 2 it will enhance the penalty for domestic violence from a class B to a class A misdemeanor and number 3, it will require judges, when possible, to sentence the offender to risk assessment and counseling for the offender.

Rep Mahoney: District 33, Mercer, Olive and part of Dunn County. Here to testify in favor of HB 1363. Gave some examples on violence on children. Was in favor of a higher penalty.

Rep Eckre: What is the minimum/ maximum for a class A misdemeanor?

Rep Mahoney: A class A misdemeanor is up to a year in prison and \$2,000.00.

Rep Eckre: Is there a minimum too?

Rep Mahoney: NO. A class B misdemeanor is 30 days and \$1,000.00. There is no minimum or either of those.

Lynne Tally: Executive Director of S.A.F.E. Shelter in Jamestown, North Dakota and Vice President of the North Dakota Council on Abused Women's Services (see attached testimony)

Chairman DeKrey: Are there any questions, if not thank you for appearing.

Hasse Roberdeau: I live and work here in Bismarek. Was asked to speak on assessment and group treatment for batterers. Background, worked in domestic violence for 10 years in assessment and treatment for victims. She does four groups a week for victims and one group for batterers. She reads into testimony a letter from the co-leader of the batterers group Dennis Larkin. The letter was in support of HB 1363. At LSS Dennis conducts all the assessments of clients. The assessment process takes one to two hours which includes an interview, a written questionnaire and check list which helps in making a determination. He determines if it is domestic violence and what form of treatment is recommended. Usually group is the form of treatment. The assessment cost is \$65.00. Group therapy consists of two hours once a week for a minimum of twenty four weeks, we encourage them to go fifty-two weeks. They come either volunteer or court ordered. The longer they stay in treatment the more likely they will change. There is a policy that batterers should pay a portion of their treatment. Treatment is available in all eight regions of the state. Suggested amendments - on page 2 line 1 provide professional services  
On page one line three - after domestic violence insert offender treatment.

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1363  
Hearing Date 01-30-01

Rep Klemin: Would you clarify the amendments? Delete the reference to professional services on page 2 line 1??

Hasse Roberdeau: That would be correct.

Rep Klemin: Starting on line 23, page one with the words assessment and counseling with a domestic violence program unless the court makes a written finding. Remove or other agency that.

Hasse Roberdeau: That would be correct.

Rep Delmore: If we do that will it limit the treatment or services?

Hasse Roberdeau: Would it limit the folks in rural areas, that is a possibility.

Chairman DeKrey: If there are no further questions, thank you for appearing.

Mark Boening: Assistant States Attorneys of Cass County. Spoke in support of HB 1363.(see attached testimony).

Rep Klemin: Supervised probation, I don't understand where in this bill it requires supervised probation.

Mark Boening: It doesn't, it gives the court the option where it doesn't have it now.

Rep Klemin: If it was a class A misdemeanor, you would have supervised probation?

Mark Boening: It becomes an option for the judge. Judges are against any thing that restricts their freedom to sentence.

TAPE 1 SIDE B

Mark Boening testimony continues.

Rep Klemin: The key to this thing is the court had the option to have supervised probation. A class B misdemeanor doesn't require that but a class A would require.

Mark Boening: that would be better than nothing.

Rep Klemin: There is opposition to raising this to a class A.

Mark Boening: That is true, it is the collateral consequence of being prosecuted in district court as opposed to municipal court. Gives several examples.

Chairman DeKrey: Seeing no further questions, thank you for appearing.

Kari Sage: testified in favor of HB 1363, appearing as police officer from the City of Minot.

Chairman DeKrey: Is there anyone here wishing to testify in opposition of HB 1363?

Ladd Erickson: Morton States Attorney Office, we are opposed to the bill as written. Do not want the Legislature to take away simple assault. Bismarck had some 800 simple assault calls. Also would like the committee to look at the repeated offender and possibly have the penalty raised.

Chairman DeKrey: Did I hear you say the States Attorneys were against this.

Ladd Erickson: Mr Mattson is here, and he can talk about that.

Rep Delmore: The teeth of the bill is to make it a real penalty. States Attorneys were in on the writing of the bill and were on board.

Ladd Erickson: The first time the Association was made aware of the bill was last Friday. Domestic violence create protections problems.

Rep Delmore: Domestic violence is not just female or male, it is much broader than that.

Ladd Erickson: The most typical cases is the dominant male against a female, but there are others.

Rep Mahoney: I am troubled by the suggestion that some aren't so bad we still have to have tools to sort this out, perhaps we could narrow it down. Could this bill be amended to make it work.

Ladd Erickson: I don't see the distinction, why not make it so it is an A misdemeanor or the repeater and first offense Class B. I don't know what the problem is with reporting, we don't have any in Cass.

Rep Mahoney: There are some victims, who have a hard time coming forward, the repeat offender sort of thing, sometimes you are lucky to get one offense. You would have to prove the offense before you but also the ones before that also.

Ladd Erickson: I don't know how it would play out across the board.

Rep Maragos: Your positions regarding your ability to prosecute, wouldn't the same problem be there for class B to class A. How is that effected by the level of the charge?

Ladd Erickson: The reason is that a B misdemeanor is a 6 person jury and an A is 12 persons, but Municipal Court is a bench trial.

Rep Klemin: If you had higher penalty, that doesn't mean you are required to charge at that penalty.

Ladd Erickson: There is that possibility.

Rep Klemin: Discussed was that there is no option for the court to order supervised probation for domestic violence, but would be if it was a Class A.

Ladd Erickson: That is not an issue for us, I don't know across the state.

Rep Maragos: What gives you the ability and others can't or won't do it.

Ladd Erickson: We have a contract with a private contractor that came through a grant.

Chairman DeKrey: We will be in recess until 3:00 pm.

Chairman DeKrey calls the committee back to order and takes up HB 1363, with the opposition.

John Olson: North Dakota states Attorney Association and North Dakota Peace Officers

Association my opposition is trying to design a system that is efficient and capable of handling these kinds of cases. My opposition to the bill is the fact that there will be a large shift of first time simple assault from municipal court to district court. Section two is fine but we urge to keep the simple assault.

Rep Delmore: I'm not convinced there is a problem. I don't think you have to go to this section of the code for simple assault.

John Olson: Charlie Whitman says there is a large number that are charged with simple assault in municipal court. We may have to charge with disorderly conduct and we don't think that is appropriate.

Rep Delmore: That is the teeth of the bill, this penalty is totally where it should be.

John Olson: Looking at the statute, you are not going to get the penalty on the first offense.

Rep Delmore: The bill does not mandate that.

John Olson: No, it doesn't, but it does mandate a shift.

Rep Delmore: I have a problem with how they are handled now.

John Olson: I know that happens.

Rep Mahoney: The first time offender, what level of penalty, are we losing sight, are we doing convenience?

John Olson: I don't think we are saying that, first time offenders are more officialty handled in municipal court.



Rep Mahoney: A lot of cases, they will get a suspended or deferred imposition of sentence, when we look at these things we try to find something that is going to be appropriate. A suspended sentence has jail time over their head, isn't that a consideration too.

John Olson: I think it is. The system right now is designed to handle simple assault, leave it that way.

Rep Onstad: Currently, any domestic violence, do you classify as a Class B?

John Olson: Domestic violence is not a crime, what we are talking about the effect.

Rep Onstad: If this becomes a Class B, do you mandate any kind of a domestic violence offender program?

John Olson: Yes.

Rep Onstad: Are they followed up?

John Olson: I don't know.

Rep Klemin: Would there be any problem with adding language for supervised probation?

John Olson: In rural counties they don't have those programs. I don't believe having a second provision in would help. Cities are not equipped with staff to handle right now.

Rep Klemin: Looking at aggregated assault as a Class B felony.

John Olson: In order to elevate the charge you have to show serious body injury.

TAPE II SIDE A

Rep Klemin: Talking still about a stage in between class A and class B?

John Olson: There is .

Rep Klemin: Would it not be up to the States Attorney to decide?

John Olson: Doug Mattson can better answer that question.

Rep Klemm: We would have three stages of assault?

John Olson: Yes.

Doug Mattson: Ward County, Co-Chairman States Attorney Legislative Committee. There are three forms of assault 1) simple assault; 2) assault; 3) aggregated assault. A bench warrant is a form of supervised probation. We would urge you to keep simple assault, because it moves through the system faster. We want to get the first time offenders into counseling. Section two is a good point in the bill.

Chairman DeKrey: The problems is the morning after, they switch sides, if we raise the level of the crime, are they more or less likely to charge the offender?

Doug Mattson: A charge of a charge. Goes on to give examples. He pointed out that a bench trial goes through in a month or two in municipal court, but district court there can be a delay of up to six or eight months.

Rep Delmore: How many times, is the charge really the first time?

Doug Mattson: It would be speculation on his part.

Rep Delmore: This bill doesn't say anything about mandated supervised probation. Wouldn't there be a pretty good fiscal note, if we mandated everything?

Doug Mattson: In terms of treatment, we want it mandated, but we need the conviction first then the court order treatment.

Chairman DeKrey: If there are no further questions, we will close the hearing on HB 1363.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE 1		x	2557 to 3001
Committee Clerk Signature <i>Joan Deis</i>			

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1363. Rep

Delmore explains the amendments.

DISCUSSION

Chairman DeKrey The amendments are through line 2 of page 2 down to section 3. Rep

Mahoney moved the amendments, seconded by rep Maragos. The amendments were voted on by voice vote. Amendments carry.

Chairman DeKrey: HB 1363 has been amended and we will hold this for a committee action.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363b

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-12-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		5670 to 6240
TAPE II		x	01 to 574
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman DeKrey called the committee to order and we will take up HB 1363.

Charles Placek: DOCR was called in to explain the amendments, and after the amendments were approved the fiscal note would go away.

DISCUSSION

TAPE II SIDE B DISCUSSION CONTINUES

COMMITTEE ACTION

Rep Delmore moved to further amend HB 1363, Rep Mahoney seconded the amendments.

Voice vote was taken on HB 1363 and the amendment passed.

Chairman DeKrey: What are the wishes of the committee. Rep Maragos moved a DO PASS as amend, Rep Onstad seconded the motion. The clerk will call the roll on a DO PASS as amend on HB 1363. The motion passes with 13 YES, 1 NO and 1 ABSENT. Carrier Chairman DeKrey

## FISCAL NOTE

Requested by Legislative Council

02/14/2001

Bill/Resolution No.:

Amendment to: HB 1363

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

As amended, HB 1363 will have no fiscal impact on the Department of Corrections and Rehabilitation.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No fiscal impact.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No fiscal impact.

Name:	Elaine Little	Agency:	Dept. of Corrections & Rehabilitation
Phone Number:	328-6390	Date Prepared:	02/15/2001

**FISCAL NOTE**  
Requested by Legislative Council  
02/07/2001

Bill/Resolution No.: HB 1363

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$170,899	\$0	\$268,531
<b>Expenditures</b>	\$0	\$0	\$680,453	\$170,899	\$660,877	\$268,531
<b>Appropriations</b>	\$0	\$0	\$680,453	\$170,899	\$660,877	\$268,531

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
		\$0			\$0			\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Increasing the penalty for the offenses covered in this bill from a Class B misdemeanor to a Class A misdemeanor would have a major impact on the DOCR. Currently offenders who commit a class B misdemeanor are not sentenced to the DOCR to be supervised by the Field Services Division (probation).

The North Dakota Council on Abused Women Services 1999 annual report shows 3,597 people were victims of domestic assault. The report indicates that 36% of the domestic assault cases resulted in an arrest. Assuming one victim to one offender ratio we assume 1,295 offenders were arrested. Using an 80% conviction rate 1,036 offenders would be sentenced to a class "A" misdemeanor sanction. The class "A" misdemeanor sanction would allow the Courts to place the offender under the supervision of the DOCR. Assuming 50% of those offenders would be placed under the Field Services Division supervision the DOCR would see its probation offender count rise by 518 offenders by July 1, 2002 (utilizing 1999 data).

The Field Services Division would need an additional 10 parole officer positions around the State. The expenditure estimate provides for the staggering of these officers' hiring dates through the first year of the biennium. In addition, the Department of Transportation would be asked to add 5 vehicles to their State Fleet to provide transportation for these officers (\$14,800 per vehicle).

We have no way to estimate the impact on other units of government if offenders were sentenced to longer jail terms than under current statute. Also, this fiscal note does not include a cost for any offenders who might be sentenced to prison in DOCR facilities.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Field Services Division, using the above assumptions, estimates on average 43 new admissions to probation per month. It estimates a cash collection rate of 40% of the present \$36 per month supervision fee that is assessed to offenders. Based on these assumptions supervision fees collected would total approximately \$170,899 special funds during the 2001-2003 biennium and \$268,531 during the 2003-2005 biennium.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The cost incurred to fund ten new probation officers would be as follows:

	<u>2001-2003</u>	<u>2003-2005</u>
Salaries and Wages	\$634,032	\$783,332
Operating	118,320	146,076
Equipment	25,000	0
DOT Vehicles	<u>74,000</u>	<u>0</u>
Totals	\$851,352	\$929,408

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The information included in Section 1 indicates the amount and funding source for the additional appropriation that would be required.

<b>Name:</b>	Warren Emmer	<b>Agency:</b>	Dept. Of Corrections & Rehabilitation
<b>Phone Number:</b>	328-6193	<b>Date Prepared:</b>	02/08/2001

YR  
2/13/01

HOUSE AMENDMENTS TO HB 1363 HOUSE JUDICIARY 02-13-01  
Page 1, line 3, after "12.1-17-01" Insert "and subsection 1 of section 12.1-32-07"

Page 1, line 4, after "case" Insert "and supervision of probation"

Page 1, line 17, after "14-07.1-01" Insert "and the actor has a prior conviction for an offense of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of an offense under a law or ordinance of another state which is equivalent to this section"

Page 1, line 22, replace "for an" with "to complete"

Page 1, line 23, remove "assessment and counselling with", after "violence" Insert "offender treatment", and remove "or other agency that"

HOUSE AMENDMENTS TO HB 1363 HOUSE JUDICIARY 02-13-01

Page 2, line 1, remove "provides professional services"

Page 2, after line 2, Insert:

**"SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, except for a violation of subdivision b of subsection 2 of section 12.1-17-01, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation."

Renumber accordingly



Date: 02-12-01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1363

House JUDICIARY Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amend

Motion Made By Rep Maragos Seconded By Rep Onstad

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande					
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham		✓			

Total (Yes) 13 No 1

Absent 1

Floor Assignment Chr DeKrey

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

**REPORT OF STANDING COMMITTEE**

**HB 1363: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1363 was placed on the Sixth order on the calendar.

Page 1, line 3, after "12.1-17-01" insert "and subsection 1 of section 12.1-32-07"

Page 1, line 4, after "case" insert "and supervision of probation"

Page 1, line 17, after "14-07.1-01" insert "and the actor has a prior conviction for an offense of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of an offense under a law or ordinance of another state which is equivalent to this section"

Page 1, line 22, replace "for an" with "to complete"

Page 1, line 23, remove "assessment and counselling with", after "violence" insert "offender treatment", and remove "or other agency that"

Page 2, line 1, remove "provides professional services"

Page 2, after line 2, insert:

**"SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, except for a violation of subdivision b of subsection 2 of section 12.1-17-01, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation."

Renumber accordingly

2001 SENATE JUDICIARY

HB 1363

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1363

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 5th, 2001

Tape Number	Side A	Side B	Meter #
I	x		0-55.1
March 7th, 2001 tape 2		x	49.6-57.6
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1363.

**Representative Delmore**, district 43, bill is proactive. Bill does three things: it would create an identifiable crime of domestic violence, it would enhance the penalty for domestic violence and it would offer counseling to those who commit domestic crimes.

**Senator Traynor**, what is the fiscal impact? I notice after the amendment the fiscal note disappeared.

**Rep. Delmore**, yes, that is correct.

**Senator Traynor**, what was the thrust of the amendment?

**Rep. Delmore**, there were three amendments attached to the bill. One was to make it a second offense instead of the first. The other one was that the offenders must complete their treatment program. The third dealt with supervised probation.

**Diane Zainhofsky**, Executive Director of the Abused Adult Resource Center in Bismarck, testimony attached.

**Senator Watne**, in Minot there were women tracking the sentences that judges dealt out to violent offenders. What was the result of that study?

**Diane Zainhofsky**, that was a pilot program. I believe it was an excellent program, it ran out of grant money.

**Senator Watne**, if we had this bill, but if you had a lenient court, would they have to do what it says in this bill.

**Diane Zainhofsky**, we believe so.

**Senator Lyson**, have you ever tracked domestic violence and the days in jail an offender serves.

**Diane Zainhofsky**, we really haven't studied that.

**Senator Lyson**, have you ever seen anyone serve 30 days?

**Diane Zainhofsky**, no.

**Senator Dever**, how much of a deterrent would these penalties be?

**Diane Zainhofsky**, when we tell the perpetrator that this is a strong offense, that is a deterrent.

**Senator Trenbeath**, we are not increasing the penalty, we are raising the classification of the offense?

**Senator Traynor**, I received a letter from a municipal court from Dickinson it states: "the person charged is allowed to return home to live with the victim at the request of the victim, sometimes contrary to court order." Do you have any comment on that?

**Diane Zainhofsky**, I believe those are isolated cases.

**Senator Lyson**, battery is not limited to females alone, I just want to point that out.

**Diane Zainhofsky**, yes, that is right.

**Rep. Mahoney**, district 33, this is a different issue from all aspects. Offenders generally know what the penalty is. The perpetrator is in a controlling relationship. Judges will be given more flexibility to bring the hammer down.

**Senator Watne**, judge Keogh notes, "It may not be possible for the arresting officers to know whether a defendant has any prior convictions of this particular crime. Because not all municipal courts are connected to the uniform court info system." Isn't that the same with DUP's, isn't there a way to find out?

**Rep. Mahoney**, your absolutely right. We do have measures to find information.

**Senator Trenbeath**, I can see a lot of first time offenses be deferred to impositions.

**Rep. Mahoney**, it is still in the records.

**Senator Trenbeath**, does the municipal judge report this? How is this law going to help?

**Rep. Mahoney**, they don't want to spend a night in jail.

**Senator Trenbeath**, this bill would present the possibility of increased workloads for the courts.

**Rep. Mahoney**, I hope it does increase the population of jails.

**Bonnie Palecek**, speaking on behalf of the ND Council on Abused Women's Services, supports the bill. (testimony attached)

**Cassie Robedue**, works full time at West Central Victims of Domestic Violence and part time at Lutheran Social Services. Believes this will tell batterers that this is a serious problem. It will protect victims. Domestic violence worsens with time. We need to give them counseling. Treatment needs to be more than anger issues.

**Senator Dever**, wouldn't treatment be better if they were committed to changing. How many are remorseful? It sounds like a lot of this is because of alcohol. Are there alcohol related help?

Page 4  
Senate Judiciary Committee  
Bill/Resolution Number 1363  
Hearing Date March 5, 2001

**Diane Zahnhofsky**, 80% of batterers are addicted to drugs or alcohol. We require men to come to group sober.

**John Olson**, representing peace officers and states attorneys, supportive of the engrossed bill.

Page 1 subsection b, we want to enhance line 18, page 1. We need to include provisions that involve a situation dealing with domestic violence.

**Wade Enga**, States Attorney, want to make sure that states attorney are in supportive of bill, along with Mr. Olson's amendments.

**Senator Traynor**, do some states that define domestic violence as a crime? Do you know?

**Wade Enga**, yes there are in certain states.

**Senator Traynor**, closed the hearing on HB 1363.

March 7th, 2001 tape 1 side B

**SENATOR LYSON MOTIONED TO MOVE AMENDMENTS. SECONDED BY SENAATOR WATNE. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR LYSON MOTIONED TO DO PASS AS AMENDED, SECONDED BY SENATOR NELSON. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR LYSON VOLUNTEERED TO CARRY THE BILL.**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1363

Page 1, line 16, replace "A" with "B" and after "misdemeanor" insert "for the first offense"

Page 1, line 17, after "and" insert "a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07, 1-01 and"

Page 1, line 21, replace "section" with "subdivision"

Re-number accordingly



Date: 5/7/01

**Roll Call Vote #:** 1

## 2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

**BILL/RESOLUTION NO. 1363**

<b>Senate</b>	<b>Judiciary</b>	<b>Committee</b>
---------------	------------------	------------------

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

**Legislative Council Amendment Number** \_\_\_\_\_

Action Taken Move Amendment by Mr. Enty

Motion Made By Lyson Seconded By Watne

[illegible]

Total (Yes) 6 No 0

**Absent** 1

**Floor Assignment** \_\_\_\_\_

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

Date: 3/7/01  
Roll Call Vote #: 2

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1363**

Senate	Judiciary	Committee
--------	-----------	-----------

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DPA

Motion Made By Lyson Seconded By Sp Nelson

[illegible]

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent

**Floor Assignment** *Hyson*

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

**REPORT OF STANDING COMMITTEE**

HB 1363, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1363 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "A" with "B" and after "misdemeanor" insert "for the first offense"

Page 1, line 17, after "and" insert "a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and"

Page 1, line 21, replace "section" with "subdivision"

Renumber accordingly

2001 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1363


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1363-Conference

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-26-01

Tape Number	Side A	Side B	Meter #
TAPE 1	X		01 to 470
Committee Clerk Signature			

Minutes: Chairman Maragos called the conference committee to order on HB 1363. The clerk will call the roll on the committee. Rep Maragos, Rep Disrud, Rep Delmore, Senator Lyson, Senator Trenbeath and Senator C Nelson were all present.

Chairman Maragos: the first order of business is first we need to concede to the Senate amendments and then further amend. Would someone move the concession.

Rep Delmore: I will moved that we concede to the Senate amendments.

Chairman Maragos: Is there a second.

Rep Disrud: second.

Chairman Maragos: It has been moved and seconded that the House accede to the Senate amendments, Rep Delmore would you like to explain the amendments.

Rep Delmore: We needed to make it specific that the first offense had to be simple assault, involving the commission of domestic violence, in order to put the penalty into the second part and provide a stiffer penalty for the second time .It was left off the amendments that were

brought to the Senate. I talked to the States Attorney Association and they other people evolved. this was drafted by John Olson. We should be on board with this. I would move that we further amend with the Olson amendments.

Chairman Maragos: Is there a second.

Senator Lyson: Second.

Chairman Maragos: It has been moved and seconded that we accept the amendments proposed by John Olson of the States Attorney's Association. On page one line 18, replace "an offenses" with "simple assault involving the commission" and on page one line 20, replace "an offense" with "simple assault where a finding of domestic violence was made".

#### DISCUSSION

Senator Trenbeath: It seems to me that we talked about this in the Senate and never came to a conclusion, because when you refer to an offense as domestic violence, there is no such an offense. These amendments made the bill enforceable.

Chairman Maragos: Any other discussion on the proposed amendments. Hearing none, we will take a voice vote on the amendments. Voice vote carries the amendments are adopted. We now have the amended bill HIB 1363 before us. Is there any discussion. I need a motion on the bill.

Senator Lyson: I move a DO PASS as amended.

Rep Delmore: Second.

Chairman Maragos: We have before us a DO PASS as amended motion. is there any discussion.

#### DISCUSSION

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1363  
Hearing Date 03-26-01

Chairman Maragos: We have the bill before us with a DO PASS as amended motion, the clerk will call the roll. The motion passes with 6 YES, 0 NO, 0 ABSENT. Chairman DeKrey will carry the bill. Rep Maragos stated that if they call on him, he will explain the bill and amendments.

Prepared by North Dakota State's Attorneys Association  
John M. Olson  
March 6, 2001

Proposed Amendments to Engrossed House Bill No. 1363

Page 1, line 18, replace "an offense" with "simple assault involving the commission"

Page 1, line 20, replace "an offense" with "simple assault where a finding of domestic violence was  
made"

Renumber accordingly



18310.0202  
Title.0400

ce.  
Adopted by the Judiciary Committee  
March 26, 2001

3/26/01

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HB 1363 HOUSE JUD 03-27-01

That the House accede to the Senate amendments as printed on page 571 of the House Journal and page 743 of the Senate Journal and that Engrossed House Bill 1363 be further amended as follows:

Page 1, line 18, replace "an offense" with "simple assault involving the commission"

Page 1, line 20, replace "an offense" with "simple assault in which a finding of domestic violence was made"

Renumber accordingly

Date: 3/26/01  
Roll Call Vote #: 1

**2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB - 1363**

House	JUDICIARY	Committee
-------	-----------	-----------

☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☒ Conference Committee

Legislative Council Amendment Number

Action Taken See Pass around

Motion Made By Senator Lison Seconded By Rep Dolman

[illegible]

Total (Yes) 6 No 0

Absent ☒

Floor Assignment Rep DeKruis

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

**REPORT OF CONFERENCE COMMITTEE**

**HB 1363, as engrossed:** Your conference committee (Sens. Lyson, Trenbeath, C. Nelson and Reps. Maragos, Disrud, Delmore) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 871, adopt amendments as follows, and place HB 1363 on the Seventh order:

That the House accede to the Senate amendments as printed on page 871 of the House Journal and page 743 of the Senate Journal and that Engrossed House Bill 1363 be further amended as follows:

Page 1, line 18, replace "an offense" with "simple assault involving the commission"

Page 1, line 20, replace "an offense" with "simple assault in which a finding of domestic violence was made"

Renumber accordingly

Engrossed HB 1363 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB-1363 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Senator [Signature]  
Senator [Signature]  
Senator [Signature]

For the House:

House [Signature]  
House [Signature]  
House [Signature]

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
the (Senate/House) amendments on (SJ/HJ) page(s) 457 - 871

☐ and place \_\_\_\_\_ on the Seventh order.

☒ , adopt (further) amendments as follows, and place  
18310 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed.

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

DATE: 5/1/11

CARRIER: \_\_\_\_\_

LC NO. 18310 . 0202 of amendment

LC NO. \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

2001 TESTIMONY  
HB 1363

Testimony of Lynne Tally  
To the House Judiciary Committee  
In Support of House Bill 1363  
January 30, 2001

Chairman DeKrey and members of the Committee, my name is Lynne Tally. I am the Executive Director of S.A.F.E. Shelter in Jamestown and Vice President of the North Dakota Council on Abused Women's Services. I am here today to testify in favor of House Bill 1363.

This bill, if successful, will increase the maximum penalty for simple assault in domestic violence cases by raising the charge from a B misdemeanor to an A misdemeanor. This will essentially take all simple assaults involving domestic violence out of the municipal courts and move them up to the district courts.

We have several reasons for supporting this bill, the most compelling of which is the seriousness and lethality of domestic violence. The one question I have been asked most often is why I think a person who has assaulted his wife or girlfriend should be charged with a different class of crime than a person who, let's say, is involved in a bar fight. There are several factors that separate simple assaults in domestic violence cases from other types of simple assaults such as assaults that take place in bars.

1. A domestic assault is rarely a random act of violence. Instead, it is usually a deliberate and often repeated action, which is part of a pattern of behavior. The goal of that pattern of behavior is to establish and maintain power and control in the relationship. By the time an assault is reported to law enforcement, it is likely that several other assaults have preceded it over the course of the relationship. That pattern of behavior also includes other kinds of repeated abuses, such as threatening the victim, intimidating the victim by destroying property, punching holes in walls, etc.
2. The recurrence of domestic violence is probably the most predictable of crimes. Although statistics tell us that people who assault their partners do not usually assault other people, they pose a greater threat because their assaults are likely to be repetitive. And they are able to repeat the assaults because they have constant access to their victims. People who assault each other in a bar rarely have that kind of access to their victims.
3. In most domestic violence cases, there are other inequities aside from the unequal balance of power. For example, the assailant is usually bigger and more willing to do harm. The domestic violence victim most often does not fight back for fear of making her assailant even angrier. In bar fights, generally, each participant is likely to be willing or able to harm the other, or they have mutually picked the fight.
4. Domestic assaults usually become more and more serious over time. The first incidents may involve yelling and pushing, but it usually does not take long for them to escalate to slapping, punching, kicking, strangling, and injuries such as broken

bones. Some escalate to murder. In four of the seven homicides in North Dakota last year, the victim and assailant were involved in a relationship of some kind.

In short, it is the dynamics of domestic violence and the context in which these assaults take place, that set them apart from other assaults.

I understand that some concerns have been raised in regard to this bill. Some are worried that moving all domestic assaults to district court will cause the courts to become even more overloaded. I called the district court clerks in each of the 53 counties in the state. The written testimony I have given you includes a chart that shows the information I received from the clerks. In 38 of the 53 counties, all simple assaults are already being heard in the District Courts. In fact, many of the rural counties do not have municipal courts. Only 15 counties have municipal courts in which simple assault cases that take place within a city would be heard. In two of those 15 counties, Ward and Morton Counties, the State's Attorney's Office already contracts with the city to prosecute criminal offenses. So passage of this bill would impact only 15 of the 53 counties, and 13 of the State's Attorney's Offices.

We have also heard the concern that the delays caused by shifting these cases to district court would give defendants more time to harass their victims into refusing to testify. We were told, in fact, that some believe this will be a step backwards for victims. However, even in municipal courts there are delays unless the defendant pleads guilty at the first appearance. I spoke with the Jamestown Municipal Court Clerk, and she said that if the defendant pleads not guilty, it is likely to be two to three months before the trial is held. And if the defendant demands a jury trial, the case gets bumped up to District Court anyway. Abusers are very adept at intimidating and harassing their victims. They know exactly what it will take and they don't necessarily need a lot of time get the point across.

This bill is far from a step backwards for victims. Its passage would send a clear message that the State of North Dakota is concerned about domestic violence and its impact on the citizens of this state, and it will not shirk its moral responsibility to produce stronger intervention in its attempt to address the problem.

COURTS IN WHICH SIMPLE ASSAULT CASES ARE HEARD  
BY COUNTY

COUNTY	HEARD IN DISTRICT COURT	HEARD IN MUNICIPAL COURT	STATE'S ATTORNEY CONTRACTS TO PROSECUTE
Adams	X		
Barnes	X	X	
Benson	X		
Billings	X		
Bottineau	X	X	
Bowman	X		
Burke	X		
Burleigh	X	X	
Cass	X		
Cavalier	X		
Dickey	X		
Divide	X		
Dunn	X		
Eddy	X		
Emmons	X	X	
Foster	X		
Golden Valley	X		
Grand Forks	X		
Grant	X		
Griggs	X		
Hettinger	X		
Kidder	X	X	
LaMoure	X		
Logan	X		
McHenry	X		
McIntosh	X		
McKenzie	X		
McLean	X		
Mercer	X		
Morton	X	X	X
Mountrail	X		
Nelson	X	X	
Oliver	X		
Pembina	X		
Pierce	X		
Ramsey	X	X	
Ransom	X		
Renville	X		
Richland	X	X	
Rolette	X	X	
Sargent	X		
Sheridan	X		
Sioux	X		
Slope	X		
Stark	X	X	
Steele	X		
Stutsman	X	X	
Towner	X		
Traill	X	X	



COURTS IN WHICH SIMPLE ASSAULT CASES ARE HEARD  
BY COUNTY

COUNTY	HEARD IN DISTRICT COURT	HEARD IN MUNICIPAL COURT	STATE'S ATTORNEY CONTRACTS TO PROSECUTE
Walsh	X		
Ward	X	X	X
Wells	X		
Williams	X	X	

and to provide information about the following treatment components:

**Education** - an education component which addresses the belief systems that legitimize and sustain domestic violence and makes information that motivates participants to change their abusive behavior

**Therapy** - therapy which provides an opportunity for participants to process the information provided to them and apply it to their individual situations. It should also provide an opportunity to develop and improve support systems

**Crisis Management** - Ongoing assessments should always be built into the group process in order to identify high-risk offenders and protect the safety of victims, children, and offenders, as well as providers

**Constitution** - Treatment groups are generally most effective when comprised of 10 to 12 members, but a minimum of 24 weekly sessions, and average two hours per session

#### 11. FEE SCHEDULE

Batterer's treatment programs should charge a fee for participation, whether or not it is court ordered. Sliding fee scales may be available for indigent clients.

#### 12. STANDARDS FOR GROUP THERAPY

The standard addition group programs designed for adult males who are violent toward their intimate relationships. However, the Adult Batterer's Treatment Forum recognizes the need for other specialized treatment programs to treat female batterers and gay/bisexuals.

#### 13. STANDARDS FOR INDIVIDUAL THERAPY

Individual therapy should be provided for:

- Persons in active psychosis
- Persons in need of primary treatment for sexual assault, child sexual abuse, or child abuse or neglect
- Persons with untreated alcohol or drug addictions
- Persons at high risk for lethality
- Persons for whom group treatment is not appropriate (determined by provider)

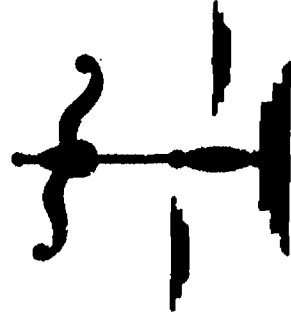
#### 14. STANDARDS FOR TREATMENT

Standards for treatment include the following topics:

- Any treatment approach that blames or intimidates victims, providers, or law enforcement. Victim participation is not appropriate
- Couples, marriage or family therapy is never recommended during the batterer's treatment phase. It is only recommended when the batterer has completed the program, the violence has stopped and the victim is in agreement
- Anger management theories that attribute the primary cause of violence to anger
- Addiction counseling that defines violence as an addiction and the victim and children as enabling or codependent in the violence

# BATTERERS' TREATMENT STANDARDS

A SERVICE FOR BATTERERS AND SERVICE PROVIDERS FROM THE NORTH DAKOTA BATTERERS' TREATMENT FORUM



Brochure and Batterers' Treatment Standard are brought to you by the North Dakota Council on Abused Women's Services

Primary funding for the development of this Brochure was provided by a Community Policing (COPS) grant from the Department of Justice. Printing costs were provided by a grant from the Department of Health and Human Services

For more information or for a referral to a Batterers' Program nearest you that is currently in compliance with the standard, contact:

NEVADA STANDARDS  
425 East Russell Ave. #120  
Reno, NV 89502-4406  
☎ 701.225.6240  
☎ 1.888.255.6240  
fax 701.225.1442  
e-mail: info@nvstandards.com

## INTRODUCTION

The North Dakota Adult Batterer's Treatment Forum was formed in 1995. It was a joint effort of the North Dakota Council on Abused Women's Services and the Division of Parole and Probation. The volunteer members of the forum include individuals from a variety of human service, criminal justice, legal, and social service fields.

## MISSION

The initial mission of the forum was to develop standards for the treatment of batterers in North Dakota that would create a network which promotes the safety of victims and assists batterers in stopping abusive behavior. Although treatment guidelines are not currently mandatory, the forum has left open the possibility of future statutory enforcement.

## PHILOSOPHY

The standards define domestic violence as a crime involving power and control requiring swift and sure consequences for batterers in order to protect victims. Cooperation with and intervention by the police, courts, and probation services, as well as victim advocates, offender-specific treatment programs, schools, and child protection service are all necessary to deter this abusive behavior.

These "swift and sure consequences and intervention necessary to end domestic violence" should include the arrest of the perpetrator, a mandatory assessment and required treatment ordered by the courts. Any comprehensive plan should also include the responsibility of the offender to pay for the evaluation and treatment services that are required.

Batterers' treatment under the standards is intended to provide tools for participants to change, whether or not participants choose to change their behavior remains their responsibility.

## PRINCIPLES OF PRACTICE

After much in-depth discussion, the Forum adopted the following principles of practice:

- Marriage, couples, or family counseling should never be an initial intervention. Such counseling is not precluded forever, but should never occur during batterers' treatment and may be used only when the abuser has completed the program, the violence has stopped, and the victim is in agreement.
- Batterer's treatment is a crime and is never the fault of the victim.
- Swift and sure consequences for batterers are critical, particularly those imposed by the criminal justice system. Two years of probation should be the minimum consequence for any level of domestic violence.
- Intervention with batterers must be a cooperative effort involving at least the following: police, probation, courts, victim advocates, schools, offender-specific treatment and child protection services.
- There are strong political and cultural dimensions to male battering behavior. Battering is primarily part of an oppressive pattern of male violence.
- Treatment groups should be accessible on an ongoing basis.
- Batterers should assume financial responsibility for the cost of their treatment.
- Treatment is an ongoing process, providing batterers with education and therapy. Treatment does not imply cure.
- Domestic violence is not a disease or an illness, but a learned behavior.
- Violence is a choice that is not provoked or elicited by the battered partner.
- Victims of domestic violence should not be mandated into any treatment or intervention program as a result of their seeking redress for having been victimized.

## PROGRAM ETHICS

The standards prescribe the following ethical guidelines for group treatment.

Programs should, at minimum:

1. Meet the standards of the Adult Batterers' Treatment Forum.
2. Establish and maintain cooperative working relationships with local domestic violence programs, domestic violence task forces, victims of violence and the Adult Batterers' Treatment Forum.
3. Refrain from seeking funding for batterers' treatment services that competes with funding for victims' services.
4. Acknowledge in all services that the safety of victims and their children takes precedence over all other treatment objectives.
5. Develop and enforce policies addressing ethical standards for their staff such as sexual harassment, equal opportunity and professional practice policies.
6. Abide by standards regarding human subjects research and accept responsibility for the selection of research topics and methods that will promote the safety and integrity of victims, protect victim confidentiality and contribute to the elimination of domestic violence.

## TREATMENT STAFF ETHICS

All treatment staff should:

1. Be of good moral character, including remaining violence free in their own lives.
2. Model respectful personal and professional relationships and communicate respect toward victims of violence.
3. Be open to self-examination and receptive to feedback on issues of power and control, victim blaming, sexism and collusion in their own lives.
4. Immediately warn victims of any danger that the provider believes they may be in.
5. Immediately report suspected child abuse or neglect pursuant to North Dakota Century Code 26-02.1-02.

## QUALIFICATIONS OF GROUP FACILITATORS

Within each treatment group, the two facilitators should always have between them the educational and experiential components listed below. In the case of only one facilitator (which is not recommended), he/she will meet all of the following requirements.

- Be licensed in a human service related field by a North Dakota licensing board. If one facilitator is not licensed, he/she would be required to complete continuing education credit in domestic violence issues.
- Be experienced working with both victims and perpetrators of domestic violence, including a minimum of 50 hours of direct clinical work with perpetrators and one year of direct clinical work with victims.
- Facilitators should always have training in the following areas prior to facilitating a group:

domestic violence	substance abuse
power and control	gender issues
intervention and assessment	victim issues
group process	group work
cultural competence	crisis intervention
diversity	character disorders
	criminal personalities

All batterers' treatment staff shall have violence free personal relationships. No individual may serve as paid or unpaid staff who has been a perpetrator of abuse or battering unless he has successfully completed a batterers' treatment program that is in accordance with these standards and has been violence free for no less than two years.

Testimony of Mark Boening in support of HB1363

I support House Bill No. 1363 for the following reasons:

1) North Dakota does not have a separate domestic violence crime.

Most domestic violence incidents are charged as violations of the North Dakota's Simple Assault crime.

Simple Assault is a class B misdemeanor offense. The maximum penalty for a class B misdemeanor offense is 30 days imprisonment and/or a \$1000 fine.

The threat of a 30 days term of imprisonment is inadequate to modify the behavior of many domestic violence offenders.

House Bill No. 1363 makes a domestic violence Simple Assault a class A misdemeanor. The maximum penalty for a class A misdemeanor offense is 1 year imprisonment and/or a \$2000 fine.

2) North Dakota's Simple Assault crime already recognizes that enhanced penalties are appropriate because of the status of a victim. For example, the current Simple Assault law makes a violation a class C felony offense when the victim of the offense is a peace officer, correctional employee, judge, court staff, fire fighter or emergency worker. Those victims are in all likelihood strangers to an offender.

Because of the relationship that exists between an offender and the victim, domestic violence simple assaults are more likely to occur than simple assaults between an offender and a stranger. It is appropriate for the law provide for more significant

penalties in order to attempt to deter a domestic violence offender.

3) In general, supervised probation by North Dakota Parole and Probation is not available for a class B misdemeanor offense. Without supervision no one monitors compliance with a Court's order for counseling. Counseling can help break the cycle of violence.

By making a domestic violence Simple Assault a class A misdemeanor, House Bill No. 1363 makes possible supervised probation by North Dakota Parole and Probation. Supervised probation increases the likelihood that counseling will work.

4) House Bill No. 1363 provides that the sentencing Court "must include an order for an assessment and counseling with a domestic violence program or other agency that provides professional services, unless the Court makes written findings for the record explaining why such a sentence would be inappropriate."

Because the sentencing Court is free to not impose an assessment and counseling requirement as long as the Court explains itself for the record, the bill draft does not establish a true "minimum mandatory" penalty. North Dakota law does not permit a sentencing court in drug or DUI cases to deviate from a proscribed sentence whether or not written findings are made.

My own opinion is that the bill draft does not go far enough in suggesting to the sentencing court the sentence which should

be imposed. I believe it should also require 2 days incarceration or 20 hours of community service in lieu of the incarceration unless the sentencing court makes written findings for the record explaining why such a sentence would be inappropriate.

5) House Bill No. 1363 does not invent or define new concepts in North Dakota law, but relies on existing concepts.

In defining the cases in which the enhanced A misdemeanor domestic violence Simple Assault would exist, the bill draft incorporates the existing definition of "family or household member" found in N.D.C.C. 14-07.1-01(4).

In describing the suggested assessment and counseling, the bill draft incorporates the existing phraseology found in N.D.C.C. 14-07.1-02(4)(d). That statute describes the provisions of civil protection orders already authorized by North Dakota law.

6) I anticipate that the net effect of a) an enhancement of the penalties from a class B misdemeanor to a class A misdemeanor and b) the option of supervised probation, will be, in general, greater compliance with orders for an assessment and treatment.

7) The passage of House Bill No. 1363 will not end domestic violence in North Dakota. But it will aid in the prosecution and treatment of domestic violence offenders. It is a reasonable and measured step toward the goal of stopping the violence.

# FIFTY-FIVE PERCENT OF REPORTED DOMESTIC VIOLENCE OFFENDERS IN 1998 WERE ARRESTED

**TABLE 10**  
Domestic Violence Subjects & Arrestees By County  
North Dakota 1995 - 1998

Reporting County	1995		1996		1997		1998	
	Subject	Arrested	Subject	Arrested	Subject	Arrested	Subject	Arrested
Adams	2	2	2	2	2	2	1	1
Barnes	24	17	24	17	21	16	31	29
Benson	1	1	4	2	2	2	0	0
Billings	0	0	4	1	0	0	0	0
Bottineau	7	4	4	4	3	3	10	5
Bowman	4	0	1	0	2	0	0	0
Burke	0	0	2	2	0	0	0	0
Butterfield	249	127	250	105	244	108	193	78
Cass	188	88	207	99	179	66	182	80
Cavalier	1	0	0	0	0	0	0	0
Dickey	1	0	6	3	9	8	3	2
Divide	3	3	1	1	2	2	1	1
Dunn	0	0	0	0	2	0	0	0
Eddy	1	1	2	2	5	4	2	2
Emmons	3	0	1	1	0	0	4	3
Foster	0	0	0	0	0	0	0	0
Gold Valley	1	1	1	1	5	3	0	0
Grand Forks	231	111	247	132	254	126	254	127
Grant	1	1	0	0	2	2	2	2
Griggs	0	0	0	0	3	2	2	1
Hettinger	0	0	2	0	0	0	0	0
Kidder	7	5	3	0	5	3	6	4
LaMoure	1	1	3	3	2	2	0	0
Logan	2	2	2	1	2	1	1	0
McHenry	6	2	16	2	6	1	8	2
McIntosh	0	0	1	0	2	1	1	0
McKenzie	3	0	1	1	12	6	5	5
McLean	8	2	10	2	16	4	6	2
Mercer	28	16	35	15	13	6	23	10
Morton	105	52	117	56	139	81	141	84
Mountrail	1	0	2	0	3	3	7	2
Nelson	2	1	0	0	7	4	2	2
Oliver	1	1	0	0	1	1	2	0
Pembina	16	13	16	15	24	20	18	17
Pierce	5	3	8	5	0	0	4	2
Ramsey	73	48	40	29	95	62	78	29
Ransom	7	4	14	5	9	5	10	4
Renville	6	3	2	1	4	3	4	3
Richland	48	29	42	28	28	14	45	26
Rolette	2	1	0	0	6	3	21	14
Sargent	3	3	6	4	6	5	3	2
Sheridan	0	0	0	0	0	0	0	0
Sioux	7	7	11	6	11	8	6	1
Slope	1	1	0	0	0	0	0	0
Stark	78	50	90	43	74	43	67	43
Steele	0	0	0	0	1	0	0	0
Stutsman	79	52	96	62	95	65	126	79
Towner	0	0	6	4	4	2	11	7
Trail	8	6	8	5	3	2	5	4
Walsh	29	16	30	25	35	23	42	25
Ward	233	121	257	129	212	141	279	168
Wells	1	0	6	6	7	2	9	6
Williams	78	62	68	62	72	65	54	43
Total	1,555	857	1,648	881	1,729	920	1,669	915

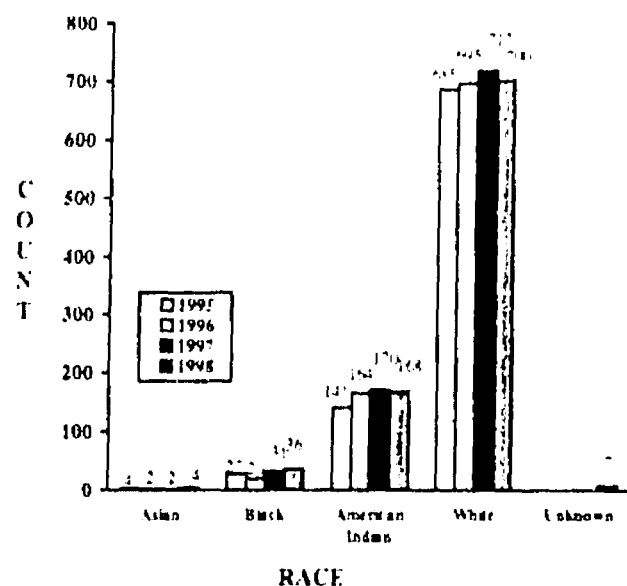
Source: ND Uniform Crime Reporting Program

Among the 1,629 subjects reported to the UCR program for domestic violence incidents in 1997, there were 920 arrestees. In 1998, there were 915 arrestees among the 1,669 subjects reported. In addition to the decrease in the number of domestic violence arrestees, the percent of subjects who were arrested for domestic violence offenses decreased by one percent in 1998.

Because an arrest is not always made in the same year that the incident occurs, the number of subjects reported through the UCR program for a given year does not necessarily coincide with the number of arrestees for that year.

Whites accounted for 77 percent of those arrested for domestic violence incidents. American Indians represented 18 percent, and blacks accounted for 4 percent of those arrested for domestic violence incidents.

**FIGURE 4**  
Domestic Violence Arrestees  
By Race  
North Dakota 1995 - 1998



Source: ND Uniform Crime Reporting Program

# Arrest Analysis by Reporting Jurisdiction

The table below contains arrest totals for each reporting agency in 1999. Juvenile and adult arrests as well as arrests reported without age information are included.

## Arrests by Reporting Jurisdiction, 1999

Agency	Murder/Non-Nez. Mansl.	Negligent Manslaughter	Forcible Rape	Robbery	Aggravated Assault	Burglary	Larceny/Theft	Motor Vehicle Theft	Other Assault	Arson	Forgery/Counterfeiting	Fraud	Embezzlement	Stolen Property Offenses	Vandalism	Weapons Offenses	Prostitution	Other Sex Offenses	Drug Abuse Violations	Gambling Violations	Off. Against Fam. & Children	DUI	Liquor Law Violations	Disorderly Conduct	Vagrancy	All Other Offenses	Suspicion	Car/Truck Littering	Runaways	Total	
Adams SO					1		9		1						3							7	26	2		3				5	
Barnes SO							2		1							2						4	12						1	2	
Valley City PD						5	23	1	12					1	14	2		4	6			39	86	1		47		6	8	274	
Benson SO	Did not report in 1999																														
Billings SO	Did not report in 1999																														
Botineau SO							4	1	3																					9	
Bowman SO	Did not report in 1999																														
Bowman PD																			5			9	45				24			92	
Burke SO						5			5							2			11				3	3			12		1	42	
Butte SO			2		5	7	1	2	24			161						4	52		2	68	152						24	918	
Butte PD	1	1			10	41	461	21	228	3	23	23	1	14	127	15	2	13	106		5	457	461	175		259		89	132	2648	
Cass SO						2	1	9	21			789		2	3				34		5	105	247	15		21			2	1256	
Fargo PD	2		11	17	21	113	448	78	271	8	27	30	1	11	66	11		3	227	1	109	806	89	140		306		2	36	2803	
West Fargo PD					2	4	38	4	54			7	2		4	9	4		1	62	15	177	136	43		97		26	27	707	
NDSU PD						1													1			14	4			2				22	
Cavalier SO						8	1	2			1											1								1	
Dickey SO						2	9		2			34									1	26	5			6			1	66	
Oakes PD																														1	
Divide SO*							1					2																		3	
Crosby PD	Did not report in 1999																														
Dunn SO																						13								13	
Eddy SO							2	2	3			5			2							6	3			2				82	
Emmons SO							7		2		1	19			3				2			2	55			21				112	
Lanton PD						2	3																5							13	
Foster SO																														1	
Carrington PD*																						2	2							4	
Golden Valley SO	Did not report in 1999																														
Grand Forks SO				1		1	60	3	23		1	13			7	2			7		22	23	61	1		855		21		1214	
Emerado PD									2																					2	
Grand Forks PD	2	1	3	1	9	23	311	37	161	1	16	6		13	51	18	1	6	153		15	476	567	301		301		17	158	2668	
Lanmore PD*																			2			10	6	4		12				34	
Northwood PD								1									1													2	
Thompson PD*																										1		1		2	

\* Partial Year



Agency	Murder/Non-Fatal	Sexual Assault	Robbery	Aggravated Assault	Burglary	Larceny/Theft	Motor Vehicle Theft	Other Assault	Arson	Forgery/Counterfeiting	Fraud	Embezzlement	Stolen Property Offenses	Vandalism	Weapons Offenses	Prostitution	Other Sex Offenses	Drug Abuse Violations	Gambling Violations	Off. Against Fam & Children	DUI	Liquor Law Violations	Disorderly Conduct	Vagrancy	All Other Offenses	Negligence	Curfew/Licensing	Revenue	Total
UND PD				1		4	2	1							2			5		2	1	21	11		14				41
Grant SO						1		6														6							12
Carson PD								2										2				2							6
Elgin PD																													
Gryggs SO					6			1																					
Cooperstown PD	Did not report in 1999																												
Hettinger SO																													0
Kidder SO								1			16											1	4			1			21
Steele PD																													0
LaMoure SO																													2
Logan SO						1															3	4			2				11
Napoleon PD	Did not report in 1999																												
McHenry SO							1	5							4			1			32	31	1		19				94
McIntosh SO						1		2						5							1								9
Wishak PD	Did not report in 1999																												
McKenzie SO								3						3			1				8	12			1				24
Watford City PD											1				1						2	13	3		1				21
McLean SO				1		1												1			23	15	2		5				44
Mercer SO	1							2										2			17	24	1		1				52
PD						5	1	3		1								5			27	16	4		12				74
PD				1				2													2	13							18
Stanton PD																		1				1							2
Morton SO				6	1	9		2		1	3			14	3			21			33	135	14		145				407
Mandan PD				3	5	81	17	98	1	9				22	7		2	66			446	146	46		354				1397
Mountrail SO			1	2		5		3						22				3			5	4			6				51
Parshall PD																									2				2
Nelson SO	Did not report in 1999																												
Lakota PD	Did not report in 1999																												
Oliver SO						1		5									3				1		1						11
Pembina SO				2	6	1	21			1			10	5		1	1				26	65	5		34	6	6		194
Cavalier PD					4	6	4							6	1			2			27	53	10		28	6			147
Pierce SO								1			4							1			6	11	3	1	9				37
Rugby PD					2	1				1				4							4	12	3				3		37
Ramsey SO*			1		4	3		1		2			1	4	1			1		1	16	21	5		38				90
Devils Lake PD			1	17	54	129	12	86		6			20	51	2			40		1	96	394	251		93	82	6		1347
Ransom SO				4	1		5				33			4			2	3			20	60	4		31				177
Lashon PD	Did not report in 1999																												
Renville SO					4			6			14			1				4			5				24				51
Richland SO			1		11	8		9		1	190			22				2			33	128	9		4		6		427
Wahpeton PD				2	3	32	13	24			2			8			3	14	2		34	185	15		20	9	14		340
Rolene SO				1	4	12	6	19					6	5				1			3	24	7		17		4		107
Sargent SO					5	3	1	7			37			6			3	15		1	64	72	3		38				255
Shendan SO						2		3						11			1	5			1	10	3		10		1		3
SO	Did not report in 1999																												

al Year

Agency	Murder/Non-Neg. Misd.	Negligent Manslaughter	Forcible Rape	Robbery	Aggravated Assault	Burglary	Larceny/Theft	Motor Vehicle Theft	Other Assault	Arson	Forgery/Counterfeiting	Fraud	Embezzlement	Stolen Property Offenses	Vandalism	Weapons Offenses	Prostitution	Other Sex Offenses	Drug Abuse Violations	Gambling Violations	Off. Against Fam. & Children	PTU	Liquor Law Violations	Disorderly Conduct	Vagrancy	All Other Offenses	Suspicion	Curfew/Litering	Runaway	Total	
Slope SO																															
Stark SO							2	1	2			403							3			19	8			256					785
Dickinson PD					2	13	74	16	68	1	6	19		7	33	3			17		2	170	308	116	1	108		7	140	1743	
Steele SO	Did not report in 1999																														
Stutsman SO						8	2	1	16			112			5				6			21	65	4		25			3	264	
Jamestown PD		1		4	2	8	124	14	104		19	6			4	5			4	9			113	261	41		440		18	40	1270
Towner SO																															
Cando PD							1														1	1	4	2		5				14	
Trail SO						1	4	1	4		2	99			2				2		1	29	6	2		6				154	
Mayville PD					1	3	9		6										11	1		25	41	4		2				94	
Hutton PD						2			3		1								2											4	
Hillsboro PD	Did not report in 1999																														
Portland PD									1										1			5	14	1						22	
Walsh SO					2	6	5		2	1				1	9				2	2	1		15	10			10				64
Grafton PD				1	3	5	26	11	14		13		2		20	2				9			18	38	4	1	16	1		1	184
Ward SO						4	15	1	22			226			9				1			51	142	25	1	156		2	24	720	
Minot PD		2	2		10	17	269	24	153	1	13	7	1	4	34	1			2	47		5	143	356	221	4	469		60	127	1983
Wells SO			1				2	2	5		1	35							5	1			4	37			27				117
Harvey PD						3																								3	
Fessenden PD	Did not report in 1999																														
SO			1		4	14	5		16			353		1	5	3			2	3			28	160	4		190			2	
PD			1		3	6	87	2	89		6		1		13	7			8	7	1	4	61	278	36		151		25	19	805
Highway Patrol																			156			1700	872			49					2777
Drug Task Forces						2		1			1					3				218			9	1		133					464
Total	6	4	24	28	108	409	2327	289	1651	16	160	3274	6	84	709	107	3	76	1456	5	200	5179	6377	1568	8	4998	1	382	803	30258	

# *Dickinson Municipal Court*

P.O. Box 1037  
122 2nd Avenue West  
Dickinson, North Dakota 58601  
Phone: (701) 264-7726  
Fax: (701) 264-7723

Robert A. Keogh  
Judge

March 1, 2001

Sen. Jack Traynor, Chairman  
Senate Judiciary Committee  
State Capital Building  
Bismarck, ND 58501

RE: HB 1363

Dear Senator Traynor:

I write with respect to the above bill which changes the penalty structure for simple assault-domestic violence crimes. That bill has passed the house and is now before your committee. I do not as yet know when your committee will hold a hearing on this bill or if I will be able to testify before the committee. I trust that you will make this letter available to the other committee members and consider it as part of testimony on the bill.

I write from the experience of more than 19 years as Dickinson Municipal Judge and during that time I have handled countless numbers of complaints of simple assault-domestic violence. These have all been up to now Class B Misdemeanors, and thus the Municipal Courts have had jurisdiction. On an average I probably handle one new charge of simple assault-domestic violence every week or so.

It's perhaps evident that the bulk of all assault-domestic violence crimes are charged out in the cities of this state. Thus it seems likely that up to now most of those cases have been handled by Municipal Judges. Simple assaults that have occurred outside of city limits would have been processed in the District Courts. Cases involving an aggravated assault-domestic violence would also have been handled by the District Court since that would be a Class A Misdemeanor.

These particular cases are very much "hands on" as far as I'm concerned and I expect most other Municipal Judges agree. Under the law, the person charged with the commission of this crime cannot be released from custody until he/she has been seen by a judge, so that appropriate conditions, such as no contact orders, can be attached to the release. This often means that either the defendant spends some time in jail, perhaps no more than a day or two.

While I consider domestic violence to be a particularly loathsome crime, I would like to make the following observations based upon my experience:

1. In perhaps 75-90% of the cases the person charged with the assault has either been drinking with the victim or is intoxicated.
2. In at least 50% of the cases, the victim has likewise either been drinking with the aggressor or is intoxicated.
3. In at least 50% of the cases, the person charged is allowed to return home to live with the victim at the request of the victim, sometimes contrary to court order.
4. Perhaps 30-40% of these cases are dismissed upon motion of the prosecution because the victim refuses to testify against the aggressor or cooperate with the prosecution.
5. In no case that I've dealt with as judge has the sentence included more than a 3-4 days of jail sentence actually served. The sentence might include more days but it's suspended. I can say that's true whether the sentence is the result of a plea bargain or simply my own sentencing.
6. In no more than 10% of the cases that proceed to conviction does a "no contact" order continue after the entry of judgment.
7. In perhaps 50% of the cases that do result in conviction, some type of treatment whether it be for alcohol addiction or anger management/domestic violence is required.

It is a little disconcerting to me that in so many of these domestic violence cases where the police have had extensive involvement with the particular type of domestic problem occurring, sometimes at great risk to themselves, resulting in the criminal charge being filed and the incarceration of the apparent aggressor and then after I become extensively involved with what occasionally may be a visit to the jail on weekends to attempt to determine the situation and make the appropriate judgment as to how best to handle the situation for the time being, to find that within a very short time, perhaps just a day or two, the victim has forgiven the conduct and wants the aggressor home. What we are dealing with is a very complex, and perhaps no doubt troubling relationship between typically a man and a woman that present a myriad of problems and issues that are often way beyond the capability of the criminal court to resolve. Whether the crime should be a Class A Misdemeanor or a Class B Misdemeanor, with the difference in penalties, is really almost insignificant compared to the challenging emotional issues the couple faces that they may need to address.

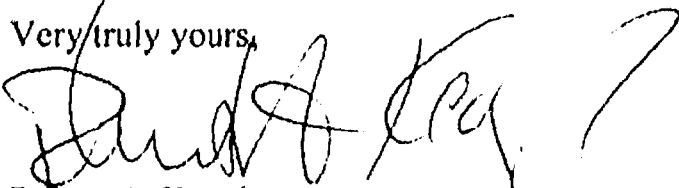
At least from my experience, the criminal procedure and penalties have limited value in resolving the problems that have led to the domestic violence in the first place. Certainly we punish the offender, and whether it's 30 or 60 days in jail really doesn't do anything to solve the basic underlying problems that the Defendant and/or the couple have which will impact society

in one way or the other.

The way the bill is now framed, the charge of simple assault could either be a Class B Misdemeanor, Class A Misdemeanor, or a Class C Felony depending on the situation. It may not be possible for the arresting officers to know whether a defendant has any prior convictions of this particular crime. Because not all municipal courts are connected to the uniform court information system or any other statewide reporting system, it may not be possible for a court even to know if a defendant has had a prior conviction of a simple assault-domestic violence unless that conviction has occurred in the same court, it would be almost impossible to know of an out of state conviction.

In short, I'm opposed to this bill. I think the penalties available to the court upon a conviction of a Class B Misdemeanor are significant enough, if used by the court, to adequately provide a severe penalty, a deterrent and rehabilitation as needed. I frankly believe the domestic violence situation has been well handled in the Municipal Courts and will be continue to be handled properly and seriously. I'm not sure generally the District Courts are excited about taking on this additional burden which could exist. And I would also suggest that in those cases of extreme violence the charge of aggravated assault could be filed instead, that being a Class A Misdemeanor.

Very truly yours,



Robert A. Keogh  
RAK: tk

c: Sen. Rich Wardner  
Sen. Herb Urlacher  
Sen. Bill Bowman  
Sen. Aaron Krauter  
Sen. Tim Mathern  
Sen. Michael Polovitz  
Sen. Randy Schobinger

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 DICKINSON  
 Domestic Violence and  
 Rape Crisis Center  
 225-4506  
 ELLENDALE  
 Kedish House  
 349-4729  
 FARGO  
 Rape and Abuse Crisis Center  
 800-344-7273  
 FORT BERTHOLD RESERVATION  
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 Domestic Violence  
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 FORT YATES  
 Tender Heart Against  
 Domestic Violence  
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 GRAFTON  
 Tri-County Crisis  
 Intervention Center  
 854-3861 Ext. 228  
 GRAND FORKS  
 Family Violence  
 Action Center  
 7078  
 JAMESTOWN  
 S.A.F.E. Shelter  
 888-353-7233  
 McLEAN COUNTY  
 McLean Family  
 Resource Center  
 800-651-8643  
 MERCER COUNTY  
 Women's Action and  
 Resource Center  
 873-2274  
 MINOT  
 Domestic Violence Crisis  
 Center  
 852-2258  
 RANSOM COUNTY  
 Abuse Resource Network  
 683-5061  
 STANLEY  
 Domestic Violence Program,  
 NW, ND  
 628-3233  
 VALLEY CITY  
 Abused Persons Outreach  
 Center  
 7078  
 WYOMING  
 Women's Crisis Center  
 642-2115  
 WILLISTON  
 Family Crisis Shelter  
 572-0757

Testimony of Diane Zanhofsky  
 To the Senate Judiciary Committee  
 In Support of House Bill 1363  
 March 5, 2001

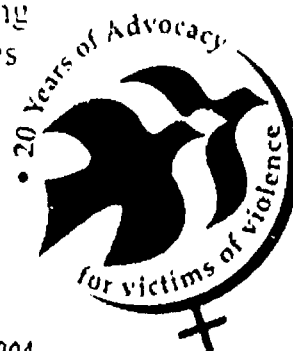
Chairman Traynor and members of the Committee, my name is Diane Zanhofsky. I am the Executive Director of the Abused Adult Resource Center in Bismarck and Treasurer of the North Dakota Council on Abused Women's Services. I am here today to testify in favor of House Bill 1363.

This bill, if successful, will increase the maximum penalty for second and subsequent simple assaults in domestic violence cases by raising the charge from a B misdemeanor to an A misdemeanor.

We have several reasons for supporting this bill, the most compelling of which is the seriousness and lethality of domestic violence. The one question I have been asked most often is why I think a person who has assaulted his wife or girlfriend should be charged with a different class of crime than a person who, let's say, is involved in a bar fight. There are several factors that separate simple assaults in domestic violence cases from other types of simple assaults such as assaults that take place in bars.

1. A domestic assault is rarely a random act of violence. Instead, it is usually a deliberate and often repeated action, which is part of a pattern of behavior. The goal of that pattern of behavior is to establish and maintain power and control in the relationship. By the time an assault is reported to law enforcement, it is likely that several other assaults have preceded it over the course of the relationship. That pattern of behavior also includes other kinds of repeated abuses, such as threatening the victim, intimidating the victim by destroying property, punching holes in walls, etc.
2. The recurrence of domestic violence is probably the most predictable of crimes. Although statistics tell us that people who assault their partners do not usually assault other people, they pose a greater threat because their assaults are likely to be repetitive. And they are able to repeat the assaults because they have constant access to their victims. People who assault each other in a bar rarely have that kind of access to their victims.
3. In most domestic violence cases, there are other inequities aside from the unequal balance of power. For example, the assailant is usually bigger and more willing to do harm. The domestic violence victim most often does not fight back for fear of making her assailant even angrier. In bar fights, generally, each participant is likely to be willing or able to harm the other, or they have mutually picked the fight.
4. Domestic assaults usually become more and more serious over time. The first incidents may involve yelling and pushing, but it usually does not take long for them to escalate to slapping, punching, kicking, strangling, and injuries such as broken bones. Some escalate to murder. In at least four of the seven homicides in North Dakota last year, the victim and assailant were involved in a relationship of some kind. I myself have worked with seven families over the last 20 years in which a domestic violence homicide occurred.

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota  
 418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-800-472-2911 • Fax: 255-1904



In short, it is the dynamics of domestic violence and the context in which these assaults take place, that set them apart from other assaults.

In the fact sheets attached to my testimony you can see that nearly 4,000 new victims of domestic violence seek services from our centers each year. Over 5,000 children are impacted. We need to do better. We need to work toward more accountability for perpetrators, including stiffer penalties and more referrals to treatment. And we need to continue to be inclusive of all parts of our community in that response.

HB1363 is a small step toward that goal. We ask your favorable consideration.

# FACTS ABOUT DOMESTIC VIOLENCE IN NORTH DAKOTA FOR THE YEAR 2000

JANUARY--DECEMBER 2000

- ☐ 3,867 new victims (new = unduplicated for the year) received services from crisis intervention centers in North Dakota.
- ☐ 6,011 incidents of domestic violence were reported to crisis intervention centers in North Dakota.
- ☐ At least 5,016 children were directly impacted by these incidents.
- ☐ 964 orders of protection were filed with the assistance of domestic violence program staff.
- ☐ 94% of the victims were women.
- ☐ At least 37% of the victims were under the age of 30. At least 4% were under the age of 18.
- ☐ 10 percent of the new victims were disabled. Of those disabled, 37% were mentally ill and 58% were physically disabled.
- ☐ Weapons were used in at least 18% of the cases identified. Guns were used in 23% of the cases involving weapons and knives were used in 27% of the cases involving weapons.
- ☐ Law enforcement officers were called to respond in 47% of the incidents. In at least 37% of these incidents, an arrest was made.
- ☐ Alcohol use by abuser only was indicated in 34% of the new cases. Alcohol use by both victim and offender was indicated in 10% of the cases.
- ☐ The abuser had a history of abusive behavior with other adults in at least 37% of the cases.
- ☐ Victims reported that 132 batterers violated their protection orders. 60 were arrested for an initial violation and 34 were arrested for a subsequent violation.



*Domestic Violence Statistics are compiled by the ND Council on Abused Women's Services/  
Coalition Against Sexual Assault in ND for the State Health Department.*



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 Abused Adult Resource Center  
 222-8370  
**BOTTINEAU**  
 Family Crisis Center  
 2028  
**DAKOTA LAKE**  
 Safe Alternatives for  
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 Community Violence  
 Intervention Center  
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**RANSOM COUNTY**  
 Abuse Resource Network  
 683-5061  
**STANLEY**  
 Domestic Violence Program,  
 NW, ND  
 628-3233  
**VALLEY CITY**  
 Abused Persons Outreach  
 Center  
 0078  
**WAMPETON**  
 Three Rivers Crisis Center  
 642-2115  
**WILLISTON**  
 Family Crisis Shelter  
 572-0757

Senator Jack Traynor  
 Chair, Senate Judiciary  
 HB1363  
 March 5, 2001

Senator Traynor and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services in favor of HB1363.

I wish to present a brief description of our rationale in bringing forward this legislation as well as identifying some areas of positive change which could result from its passage, even in its current, very modest, form.

First of all, our coalition began discussions about the benefits of a separate crime of domestic violence well over two years ago. Although historically we have held that domestic violence should be treated as a crime like any other, it has become apparent that in effect that has allowed the minimization of domestic violence assaults to continue. Domestic assault is in many ways, as Ms. Zainhofsky has testified, more insidious and dangerous than other assaults, and must therefore be treated differently.

We studied what other states have done. The attached list from the National Council of Juvenile and Family Court Judges reveals that 24 other states have "separate crimes" legislation of one sort or another.

Some, such as Minnesota, have a complicated, integrated set of statutes which include virtually every kind of crime which could be perpetrated against a family member. Others are straightforward and create a separate crime altogether.

After much discussion, not only among ourselves, but with others we worked with in the criminal justice system, we felt that there was the most support for enhancing the penalty on existing simple assaults from a Class B to a Class A misdemeanor when a family or household member was involved.

We realized that this shift would impact some district courts, but after contacting clerks in each of the 53 counties, we discovered that in 38 of the 53 counties, these cases are already being heard in District Courts. In fact, many rural counties do not have municipal courts at all.

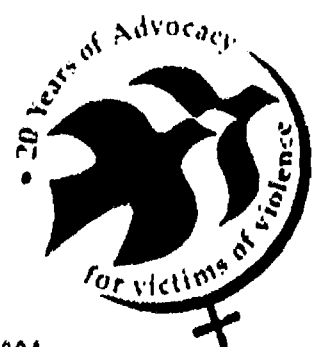
Only 15 counties have municipal courts in which simple assault cases that take place within a city would be heard. In 2 of those 15 counties, Ward and Merton, the State's Attorney's Office already contracts with the city to prosecute offenses. We have recently learned that Dickinson is planning to do the same thing. So passage of this bill would impact only 15 of the 53 counties, and 12 State's Attorney's Offices.

To give you a sense of the impact on one large judicial district, centered in Bismarck, the Burleigh County victim/witness coordinator said that she identified 82 domestic violence simple assaults in municipal court in the year 2000. She was not able to tell us how many of these cases involved second or subsequent offenses, but obviously that number

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HB1363

March 3, 2001



would be significantly less than 82. And so although we cannot say an enhanced penalty would have no effect on district courts, we believe the impact would be manageable, probably far less of an impact than the shift in penalties for DUI's imposed a few years ago. More importantly, we feel the benefits of the shift in terms of more accountability, more than justify a temporary blip of increased caseloads.

Nonetheless fears were raised that these increased numbers would overwhelm district courts and probation services. Hence the amended bill you have before you moves only second and subsequent offenses to Class A status, and parole and probation is exempted from providing supervision of the offenders.

These amendments were a disappointment to us, but we can live with them. Unfortunately, right now we do not have either prosecution data or specific law enforcement data to prove our points further. In two years hopefully we will.

Conversations with BCI director Jerry Kemmet have resulted in the positive step of identifying relationships in all crimes on the arrest level, so that we can see the impact of family violence across the board. Our thanks to Senator Lyson for initiating that discussion.

And furthermore, just within the last two weeks we have learned that parole and probation supervision of domestic violence offenders has been made a national priority, and eventually funding for pilot projects will be available. Our Division of Field Services has indicated a willingness to work with us on such a project.

And so we ask your support of HB1363, as amended. We feel it is a small, but significant step toward more accountability for offenders and will provide needed leverage for getting those who offend into treatment programs which may help them break the patterns of their violent and controlling behavior.

Thank you

Bonnie Palecek  
Executive Director  
NDCAWS/CASAND

**State Legislation:** Separate crime of domestic violence or separate crime against a family or household member

[Current: 1999 Legislative Session]

ALA. CODE §§ 13A-6-130-132 (domestic violence in the first, second, and third degree)  
ARIZ. REV. STAT. § 13-1406.01 (sexual assault of a spouse)  
ARK. CODE ANN. §§ 5-26-303, 304, 305 (domestic battering); §§ 5-26-306, 307, 308, 309  
(assault on family or household member)  
CAL. PENAL CODE §§ 262 (rape of a spouse), 273.5 (willful infliction of corporal injury)  
COL. REV. STAT. ANN. § 18-6-800.3 (destroying property to intimidate a spouse)  
CONN. GEN. STAT. § 53a-70b (sexual assault in spousal or cohabiting relationship)  
9 GUAM CODE ANN. § 30.20 (family violence)  
HAW. REV. STAT. § 709-906 (abuse of family or household member)  
IDAHO CODE § 18-918 (domestic violence)  
720 ILL. COMP. STAT. § 5/12-3.2 (domestic battery)  
IOWA CODE § 708.2A (domestic abuse assault)  
MICH. STAT. ANN. § 750.81 (domestic assault)  
MISS. CODE ANN. § 97-3-7 (simple assault; aggravated assault; domestic violence)  
MISSOURI REV. STAT. § 565.074 (domestic assault)  
MONT. CODE ANN. § 45-5-206 (partner or family member assault)  
N.M. STAT. ANN. §§ 30-3-12, 13, 14 (assault against a household member);  
§§ 30-3-15, 16 (battery against a household member)  
OHIO REV. CODE ANN. § 2919.25 (domestic violence)  
S. C. CODE ANN. § 16-25-20 (crime of domestic violence)  
TENN. CODE ANN. § 39-13-111 (domestic assault)  
UTAH CODE ANN. § 76-5109.1 (commission of domestic violence in the presence of a child)  
VT. STAT. ANN. tit. 13 §§ 1042, 1043, 1044 (domestic assault)  
VA. CODE ANN. § 18.2-57.2 (assault and battery against a family or household member);  
§ 18.2-67.2:1 (marital sexual assault)  
W. VA. CODE § 61-8B-6 (sexual assault of spouse)

*See also,* ALASKA STAT. § 11.56.745 (interfering with a report of a crime involving domestic violence); WASH. REV. CODE § 9A.36.150 (interfering with the reporting of domestic violence)

NCJFCJ--Family Violence Department

01/29/01

*Please be advised that this list contains dated information and is intended for educational and research purposes only. Although we try to maintain these lists on a regular basis, it is the responsibility of each party receiving this information to verify the laws for accuracy and currency of legislation. Please advise us of any discrepancies.*



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## Protecting Victims Through Community Supervision of Batterers A Planning Grant

Domestic violence offenders are being arrested, prosecuted, and sentenced in greater numbers than ever before. However, not enough attention has yet been focused on the supervision of these offenders when they are released in the community on probation or parole. Attention to appropriate sentencing, effective judicial oversight, and vigorous supervision of offenders is a vital part of a comprehensive approach to protecting victims and holding batterers accountable.

The Violence Against Women Office of the U. S. Department of Justice recently awarded funding to the American Probation and Parole Association (APPA) for the planning phase of a project that will:

- compile information on sentencing and community supervision practices for domestic violence cases,
- convene a Working Group to assist with the development of practice principles and standards for community supervision of batterers,
- develop a training and technical assistance curriculum based on these practice principles and standards,
- recruit jurisdictional teams willing to implement the practice principles and standards, and
- provide the jurisdictional teams with training and technical assistance to enhance their supervision of batterers.



APPA forged a partnership with the National Center for State Courts (NCSC) and the Pennsylvania Coalition Against Domestic Violence (PCADV) to conduct this project. During this initial planning phase (to run through 2001), the project will collect information on court and community corrections practices in sentencing and supervising batterers. Project staff also will identify members for the Working Group that will meet during the implementation phase of the project to develop practice principles and standards for effective sentencing decisions, judicial oversight, and supervision of domestic violence offenders released in the community.

Please respond to the following request for information if you participate in or are aware of a court or community corrections program that is effectively working to protect domestic violence victims through the sentencing and supervision of batterers.