

2017 HOUSE JUDICIARY

HB 1402

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1402
2/7/2017
28001

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders.

Minutes:

1,2,3,4,5

Chairman K. Koppelman: Opened the hearing on HB1402.

Rep. Schneider: Introduced the bill. (#1,2,3,4,) Testimony and handouts. (:30-9:25)

Representative Nelson: The police in this situation do they know how many weapons they have?

Rep. Schneider: Often they do not know how many weapons there are.

Chairman K. Koppelman: Essentially what I am seeing it simply allows the local law enforcement officer to determine the time and date to surrender the weapon and arrest the individual if he doesn't comply.

Rep. Schneider: Yes, then they could trigger into the law that is already there.

Chairman K. Koppelman: What happens to these weapons when seized?

Rep. Schneider: They are generally returned. The judge might have some discretion.

Representative Vetter: These people have a restraining order against them; because of this they lose the right to have arms? Are they actually convicted of something?

Rep. Schneider: They don't automatically lose the weapons. There has to be a finding with probable cause. The order is a part usually of the domestic violence order.

Janelle Moos, Executive Director of the CAWS North Dakota: (#5) (14:12-19:35) Went over testimony If the order specifies firearms should be surrendered. Law enforcement will

retrieve them and house them. They are also turned over to family members too. This is just a small change and gives law enforcement safe.

Chairman K. Koppelman: The bill mainly changes and protects law enforcement.

Janelle Moos: This is a very simple bill that gives law enforcement another tool.

Chairman K. Koppelman: The tragic case in Fargo a year ago. Was there domestic violence in this case?

Janelle Moos: I don't know for sure. They were responding to a domestic violence call. I don't know if there was an active protection order, but I think there was past history of domestic violence there.

Opposition:

Neutral: None

Hearing closed

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1402
2/13/2017
28257

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1402. All it does is specify the manner in which the firearms surrender happens.

Representative Satrom: Are we doing something that is already in place?

Chairman K. Koppelman: It is the law enforcement officer that determines who and where the surrender takes place.

Representative Paur: That is where they can arrest without a warrant?

Representative Roers Jones: Why is this being directed by the court in their order for surrender of arms? We can use the court order as written. If they do not do this, they are in contempt of court.

Chairman K. Koppelman: It gives law enforcement a tool.

Representative Klemin: I think the problem with court orders is if you don't put it in there the clerk is going to order that it be turned over to the sheriff or the chief of police or whoever. We leave it up to them how, when and where.

Representative Simons: I have seen this many times in court. If they do sell a gun to a brother; then there better be a paper trail. I see no purpose for this bill.

Do Not Pass Motion Made by Rep. Johnston; Seconded by Representative Magrum

Discussion:

Representative Klemin: That reference with a rest without warrant is an important function here. I am going to recite the do not pass motion.

Representative Hanson: I am planning on resisting the do no pass motion because it could save lives in law enforcement officers. I like the details on how and win are important. I think it does fill in some gaps.

Representative Klemin: Section 14-07.1.11 deals with an arrest without a warrant under the section deal with domestic violence protection orders; but it doesn't specifically cover this situation where they turn over their firearms and arrest without a warrant. Then they don't have to go back to court to get it and I think this is a reasonable thing to do here.

Roll Call Vote: 6 Yes 9 No 0 Absent Failed

Do Pass Motion Made by Representative Hanson: Seconded by Rep. Satrom

Discussion: None

Roll Call Vote: 9 Yes 6 No 0 Absent Carrier: Representative Hanson:

Closed.

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1402**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Rep Johnston Seconded By Rep Magrum

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | ✓ | Rep. Hanson | | ✓ |
| Vice Chairman Karls | ✓ | | Rep. Nelson | | ✓ |
| Rep. Blum | | ✓ | | | |
| Rep. Johnston | ✓ | | | | |
| Rep. Jones | | ✓ | | | |
| Rep. Klemin | | ✓ | | | |
| Rep. Magrum | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Paur | | ✓ | | | |
| Rep. Roers-Jones | | ✓ | | | |
| Rep. Satrom | | ✓ | | | |
| Rep. Simons | ✓ | | | | |
| Rep. Vetter | ✓ | | | | |

Total (Yes) 6 No 9

Absent 0

Floor Assignment _____

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

Failed

Date: 2-13-17
 Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1402

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Rep. Hanson Seconded By Rep. Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | ✓ | | Rep. Hanson | ✓ | |
| Vice Chairman Karls | | ✓ | Rep. Nelson | ✓ | |
| Rep. Blum | ✓ | | | | |
| Rep. Johnston | | ✓ | | | |
| Rep. Jones | ✓ | | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Magrum | | ✓ | | | |
| Rep. Maragos | | ✓ | | | |
| Rep. Paur | ✓ | | | | |
| Rep. Roers-Jones | ✓ | | | | |
| Rep. Satrom | ✓ | | | | |
| Rep. Simons | | ✓ | | | |
| Rep. Vetter | | ✓ | | | |

Total (Yes) 9 No 6

Absent 0

Floor Assignment : Rep. Hanson

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

REPORT OF STANDING COMMITTEE

HB 1402: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1402 was placed on the
Eleventh order on the calendar.

2017 SENATE JUDICIARY

HB 1402

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1402
3/22/2017
29554

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders.

Minutes: Testimony attached #

| |
|-------|
| 1,2,3 |
|-------|

Chairman Armstrong called the committee to order on HB 1402. All committee members were present.

Mary Schneider, North Dakota State Representative District 21 (:00 - 6:40), testified in support of the bill. (see attachment 1,2)

Senator Luick (6:40): “When these calls come in of a domestic violence situation, and the particular agency that is closest to this situation, like the local law enforcement go out and they know this is a hot area; if they take the weapons away, what prevents those people from going out and buying another gun? If he tries purchasing another gun will law enforcement know?”

Representative Schneider: “Unless law enforcement gave a specific order that he can’t buy a gun, there would not be anything to stop that person from buying a gun.”

Janelle Moos, CAWS North Dakota (8:35 – 11:25), testified in support of the bill. (see attachment 3)

Senator Luick: “What’s the definition of a dangerous weapon in this bill?”

Janelle Moos: “It’s probably defined in a different section.”

Chairman Armstrong: “It is; it’s defined in the weapons section of the code.”

Senator Luick: “How far down the line does it go? Is a paring knife a dangerous weapon?”

Chairman Armstrong: “No, I think for blades there has to be certain length on them.”

Senator Luick: “So we’re looking at removing dangerous weapons but how far down the line do we go on this thing? We could call a shoe string a dangerous weapon if we wished. I could kill this thing right away, or pass it because of the intent behind it.”

Janelle Moos: “I don’t disagree with you, but what I think this is intended to look at are cases in which firearms have been used to threaten or harass a victim. What this bill does is give guidance to law enforcement to arrest the offender for not handing over a firearm, or be able to take the firearm. I think that is a tool law enforcement needs because if you gave the accused a couple days to get his firearm, well, they could do a lot of damage in those couple days while law enforcement is waiting. This is just a cleanup bill that will protect victims as well law enforcement.”

Susan Beehler, North Dakota citizen (16:00 – 21:30), testified in support of the bill. No written testimony.

Susan discussed how she was a victim of domestic violence at the hands of her father and how it is terrifying to be a victim of domestic violence. She discussed how it is the duty of the legislators to protect the people of the state, especially those who are already victims of domestic violence and those who could still be alive if their abuser’s weapons were taken the first time police came.

“To Senator Luick, they aren’t talking about a paring knife. They are talking about a dangerous weapon, something that the victim can’t recover from, and that is usually a gun. Even without ammo guns are dangerous. I know people that have been raped by guns. Domestic violence is a control and dominance issue, and a gun is a dangerous tool for that issue. These victims need help.”

Bruce Burkett, North Dakota Peace Officers Association (21:45 – 23:15), testified in support of the bill. No written testimony.

“This is a bill we have to support.”

Bruce told a story about a domestic violence issue where an officer was hurt by a weapon when responding to a domestic disturbance call.

Senator Luick: “Do you know if there is a logical way to create a system where if a police officer takes someone’s gun, and that person then goes out and tries to buy a new one, that law enforcement can figure that out?”

Bruce Burkett: “Well, if they have already been convicted of domestic violence and they try to buy a gun, it should show up in the background check and they probably wouldn’t be able to buy the gun. But if they buy one from their neighbor or their brother or something, then it can be a problem.”

Chairman Armstrong closed the hearing on HB 1402.

Senator Larson motioned for a Do Pass. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson carried the bill.

REPORT OF STANDING COMMITTEE

HB 1402: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1402 was placed on the
Fourteenth order on the calendar.

2017 TESTIMONY

HB 1402

#1
1402
2-7-17

Presentation of House Bill 1402 to the House Judiciary Committee

February 7, 2017

Rep. Mary Schneider, District 21

Good morning Chairman Koppelman and Members of the Judiciary Committee. I am Representative Mary Schneider from District 21--the Heart of Fargo. I am here today to present and endorse HB 1402. The bill provides just an additional sentence and a half intended to:

- (1) give law enforcement officers some discretion and control in how and when firearms, that have been ordered by a court to be surrendered, are presented for surrender (when the court's order has not specified those details);
- (2) clarify that an arrest by law enforcement may be made pursuant to 14-07.1-11 in the event of non-compliance with the court order to surrender firearms or other dangerous weapons; and
- (3) make it clear that if the firearms or other dangerous weapons are not surrendered pursuant to the specifics of a court order, or as requested by law enforcement, that law enforcement personnel may take possession of the weapon or weapons.

The bill doesn't mandate that law enforcement dictate terms for weapon surrender. It doesn't require seizure of weapons. It simply allows a law enforcement officer the option to gain compliance with a court's directive to surrender arms in a way that might work best under circumstances that a law enforcement official is often best-positioned to assess. It allows the use of good judgment and common sense to gain compliance in a manner that is most safe and effective.

The bill is solely for the enhanced protection of law enforcement officials and the domestic violence victims that the law enforcement officers, and the court, are trying to protect. It is a life safety bill.

For decades more law enforcement officers have been killed in the line of duty in domestic violence cases than any other single type of service call.

Last year at this time, in a six-day period from February 5 through February 11, six officers and deputies were fatally shot in 5 states. At least three were domestic violence related. One was officer Moszer from the Fargo Police Department.

/

In the 2013 Report of the North Dakota Domestic Violence Fatality Review Commission are some frightening statistics for domestic violence victims in the state:

- Between 1992 and 2012, 51% of homicide deaths involved domestic violence;
- During the 20 years covered by the report, there were 114 domestic violence homicides;
- 76% of female homicide victims were killed in domestic violence incidents, compared to 35% of males; and
- 54% of female deaths in domestic violence incidents involved firearms.

The Report shows the type of weapons involved.

Current law provides at 14-07.1-02, 4.g, that a respondent can be required to surrender weapons for safekeeping.

Courts do that, but often don't included specifics about how that should happen, or what happens if the weapons aren't surrendered. This bill is designed to fill those gaps.

In order to minimize exposure to deadly domestic violence-related risk, this bill would allow the trained professional closest to the situation to have some options in how ordered weapons should be surrendered. Hopefully, that flexibility will reduce the likelihood of injury or death.

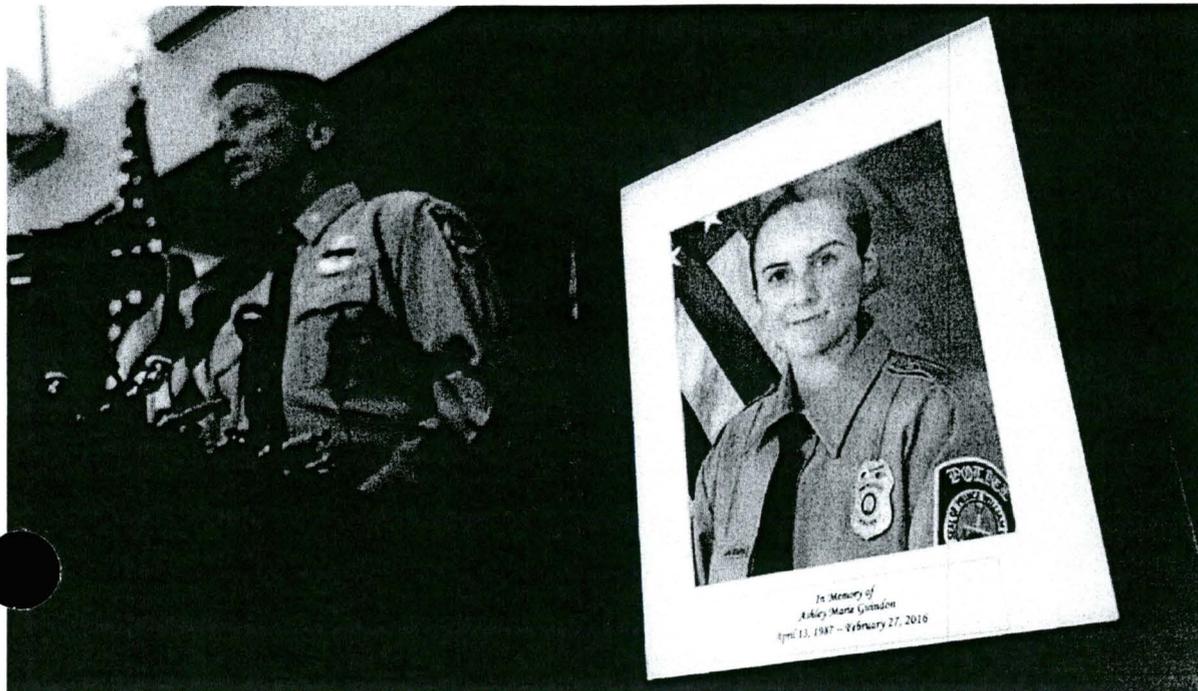
It also sets out that the law enforcement officer may make an arrest without a warrant or further court process if the respondent doesn't surrender the weapon(s).

Thank you for considering passage of HB 1402, and I will answer the questions I can.

#2
1402
2-7-17

Police officer shooting deaths on rise in 2016 amid anti-law enforcement rhetoric

Funeral held for Prince William County, Va., officer killed on first day of work



Prince William County Police Chief Stephan Hudson speaks during a news conference next to a picture of Officer Ashley Guindon at Western District Station in Manassas, Va., on Sunday. Saturday's killing of Guindon marks the most recent line of duty ... more >

By Andrea Noble - The Washington Times - Monday, February 29, 2016

The funeral Tuesday for a Virginia police officer killed on her first day of work serves as the latest reminder of an uptick of fatal police shootings so far this year.

Of 14 line-of-duty deaths of law enforcement officers recorded in the first two months of 2016, 11 were the result of a gun being used against the officer. As of this time last year, only one of the 15 officers' deaths was firearm-related, which implies greater willingness on the part of offenders to go after the cops.

Shootings are generally the leading cause of death each year for officers killed in the line of duty, but a quick succession of shooting deaths in February coupled with recent anti-police rhetoric has heightened some law enforcement officials concern over deaths this year.

"I cannot recall any time in recent years when six law enforcement professionals have been murdered by gunfire in multiple incidents in a single week," said Craig Floyd, CEO of the Law Enforcement Officers Memorial Fund, remarking on a particularly violent week in February.

Six officers and deputies were fatally shot in incidents in Georgia, North Dakota, Maryland, Oregon and Colorado between Feb. 5 and 11.

Though the recent spate of fatal shootings produces a dramatic 1000 percent increase in the number of officers fatally shot in the first two months of 2016 compared to 2015 — 11 deaths compared to one death — the data appears to reflect an abnormally low number of shootings in the beginning of 2015.

Data from the full first quarter of 2015 shows seven police officers were fatally shot during the first three months of the year, according to the Law Enforcement Officers Memorial Fund.

The 42 total firearms-related fatalities recorded in 2015 also represents a 19 percent decrease from the average annual number of firearm-related police fatalities for the last decade, according to data from the fund.

Saturday's killing of Prince William County Police Officer Ashley Guindon marks the most recent line of duty death this year. The 28-year-old officer was gunned down on her first day on the job as she and two other officers responded to a call for a domestic altercation at a Woodbridge home.

Two other officers, Jesse Hempen and David McKeown, were shot and injured in the incident.

Police said active-duty Army staff sergeant Ronald Hamilton opened fire on the officers as they approached his front door to investigate a 911 call placed by his wife, Crystal Sheree Hamilton, who they believe he also shot and killed.

In the wake of the fatal string of shootings, the National Fraternal Order of Police has sought to reignite its campaign to expand federal hate crimes laws so that attacks targeting law enforcement officers could be prosecuted as such.

"It is time for the Congress to get serious about this senseless violence in this country and pass meaningful legislation that not only protects the rights of every citizen but also recognizes that law enforcement officers are citizens and deserve the protection that they are counted on to preserve," said National FOP President Chuck Canterbury last month in announcements posted on the organization's Facebook page.

Law enforcement associations have also doubled down on calls for officers to be vigilant in following safety precautions so as not to expose themselves to unnecessary risk.

"We have to be vigilant and have to make sure our officer are following all the safety protocols," said Jonathan Thompson, executive director of the National Sheriff's Association. "Use your training, follow your procedures, and above all do your job as you are expected."

Police leaders and unions from across the country have had varied reactions, with some lashing out at pop singer Beyonce over her performance at the Super Bowl that involved dancers clad in Black Panther Party costumes. Some Black Lives Matter members have also called for killing police officers, though the inchoate group's most-prominent figures have disavowed such talk.

Though the recent spate of fatal shootings of law enforcement officers has heightened agency concern over officer safety, it's unclear whether the incidents are indicative of police officers being sought out by attackers with anti-police views, though at least one case was.

At least three of the fatal police shootings this year — including the death of Officer Guindon — stemmed from domestic violence calls, and two occurred while officers attempted to serve warrants, according to media reports.

In Maryland, two Harford County Sheriff's deputies were killed Feb. 10 by a man with an open warrant. Deputy Patrick Dailey had responded to a restaurant for a report of a wanted man and was talking to the suspect when he pulled out a gun and abruptly shot the deputy. Deputy Mark Logsdon was killed in a shootout with the suspect in the parking lot.

"It's our belief that because he knew there was a warrant out for his arrest and what the ultimate outcome of that encounter would be, his arrest, and that is why he took the action against the police officer," Harford County Sheriff Jeffrey Gahler said at the time. "We don't believe he laid in wait to ambush, but certainly the officer was target to the extent that he didn't want to be apprehended and that is the course of action he wanted to take."

At least one of this year's killings appears to be an ambush attack. Officer Thomas Cottrell of the Danville Police Department in Ohio was fatally shot Jan. 17 by a man who officials said was "looking to kill an officer."

As part of its annual analysis of officer deaths, the Law Enforcement Officers Memorial Fund classifies the circumstances of firearms-related deaths. Preliminary data regarding this year's deaths was not available, but in 2014 and 2012 organization has tallied as many as 15 ambush-style fatal shootings.

Police associations say there is a real fear that anti-police rhetoric is translating to real world consequences.

"It is not just talk; it is not just rhetoric. Those spewing this hatred and those calling for violence are having an impact," Mr. Canterbury wrote in an FOP announcement. "They have been given a platform by the media to convey the message that police officers are their enemy and it is time to attack that enemy. There is a very real and very deliberate campaign to terrorize our nation's law enforcement officers."

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#3
1402

2-7-17

against the father and had been defending herself and her unborn child when she slapped the father; while encouraging her not to smoke while pregnant was a good idea, holding her to the ground and sitting on her stomach while trying to choke her and then kicking her three times, twice in the left ribs and once in the hip area, left side, gave her a self-defense right to force him off of her. *Thompson v. Olson*, 2006 ND 54, 711 N.W.2d 226 (2006).

DECISIONS UNDER PRIOR LAW

Forms of Abuse.

Adult abuse is not limited to physical harm, bodily injury and assault or the imminent threat thereof, but includes all forms of abuse, including mental harm. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

In a proceeding under this chapter, consideration of abuse is not limited to the abuse against the complaining adult; abuse of the complaining adult is only one of the abuses that is within the contemplation of the adult abuse statute. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Incest.

Incest constitutes adult abuse and consent

to such relationship by all parties involved provides no defense. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Question of Fact.

Whether or not there was adult abuse directed against the complaining adult is an issue of fact to be determined by the trier of fact. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Collateral References.

Ineffective assistance of counsel: battered spouse syndrome as defense to homicide or other criminal offense, 11 A.L.R.5th 871.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children, 51 A.L.R.5th 241.

"Cohabitation" for purposes of domestic violence statutes, 71 A.L.R.5th 285.

Law Reviews.

The Lautenberg Amendment: An Essential Tool for Combatting Domestic Violence, 75 N.D.L.Rev. 365 (1999).

Protecting Victims by Working Around the System and Within the System: Statutory Protection for Emotional Abuse in the Domestic Violence Context, 81 N.D.L.Rev. 837 (2005).

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this

- exclusion is necessary to the physical or mental well-being of the applicant or others.
- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
 6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 7. No order or agreement under this section affects title to any real property in any matter.
 8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
 9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the

actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

Source: S.L. 1979, ch. 193, § 2; 1981, ch. 167, § 1; 1985, ch. 194, § 1; 1987, ch. 177, § 1; 1989, ch. 177, § 3; 1991, ch. 149, § 2; 1991, ch. 326, § 52; 1995, ch. 150, § 2; 1997, ch. 148, § 1; 2001, ch. 151, § 1.

In General.

A domestic violence protection order under the "Adult Abuse" statutes is a civil action primarily for injunctive relief, in which the party who has the burden of proof must establish the essential elements of the claim by a preponderance of the evidence. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

A domestic violence proceeding is not a plenary action that requires a full-blown trial; rather, this section creates a special summary proceeding and directs a motion hearing noticed by order of the court. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

Applicability.

—In General.

A permanent domestic violence protection order is appealable. *Selland v. Selland*, 494 N.W.2d 367 (N.D. 1992).

—Children.

This section has been liberally construed to protect victims other than adults; thus, a child could be protected if the requisite showing of abuse was made. *Brandt v. Brandt*, 523 N.W.2d 264 (N.D. 1994).

Where mother appealed from an order allowing her former husband supervised visitation with their minor child, contending her former husband sexually abused their child, the trial court found that the evidence did not establish abuse by the former husband and mother was not entitled to protection order. *Brandt v. Brandt*, 523 N.W.2d 264 (N.D. 1994).

Divorce Decree.

A protection order was not an impermissible modification of a divorce decree where the decree granted father certain visitation rights whereby he would give mother 24 hours advance notice of his request for visitation, but through the granting of the protec-

tion order would be unable to contact mother directly to arrange visitation and would have to go through a third party (his parents) to pick up and deliver the children. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

Evidence.

—Admissible.

In an action to determine whether to issue a domestic violence protection order, evidence of previous domestic violence is relevant and properly considered. *Lovcik v. Ellingson*, 1997 ND 201, 569 N.W.2d 697 (1997).

—Held Sufficient.

Former girlfriend's evidence justified protection order for domestic violation protection from former boyfriend where he mistreated and threatened her. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

The trial court did not err in issuing a domestic violence protection order where the court specifically found that the former wife was placed in fear for her safety as a result of the former husband's phone calls and verbal statements and that her fear was reasonable based on her past experience with her former husband. *Lovcik v. Ellingson*, 1997 ND 201, 569 N.W.2d 697 (1997).

—Relevant Factors.

Party seeking domestic violence protection order must prove actual or imminent domestic violence by a preponderance of the evidence. Past abusive behavior is a relevant factor to consider in determining whether domestic violence is actual or imminent; the context and history of the relationship between the parties is also a relevant factor to consider. *Ficklin v. Ficklin*, 2006 ND 40, 710 N.W.2d 387 (2006).

Exclusion From Residence.

Because husband was only temporarily excluded from the parties' shared dwelling, he was not deprived of his property without due process. *Peters-Riemers v. Riemers*, 2001 ND 62, 624 N.W.2d 83 (2001).

Extension of Order.

Once a petitioner has succeeded in obtain-

ing a permanent domestic violence protection order, the petitioner is not required to further prove actual or imminent domestic violence in order to succeed on a motion to extend that order. *Gaab v. Ochsner*, 2001 ND 195, 636 N.W.2d 669 (2001).

When trial court extended a domestic violence protection order, additional findings were needed to determine whether there was actual or imminent domestic violence because the original order was based on the parties' stipulation, and the trial court made no findings. *Frisk v. Frisk*, 2005 ND 154, 703 N.W.2d 341 (2005).

In continuing a domestic violence protection order against a husband, a trial court erred in interpreting the domestic violence statute, N.D.C.C. § 14-07.1-02(4), because, rather than basing the order on fear of imminent harm, the trial court's focus appeared to be the elimination of the possibility of harm by removing the husband from the home. *Ficklin v. Ficklin*, 2006 ND 40, 710 N.W.2d 387 (2006).

Based on defendant's e-mail to plaintiff, even though it was sent via a mass-mailing, his message board postings about her that detailed their custody dispute at length, and the turbulent history between the parties, the district court reasonably determined that an extension of a domestic violence protection order against defendant for two additional years was warranted. *Odden v. Rath*, 2007 ND 51, 730 N.W.2d 590 (2007).

Failure to Present Testimony.

Where plaintiff deliberately decided not to present testimony in a protection order hearing and did not move for a continuance until after the court indicated its decision, and the extensive affidavits and briefs gave the trial judge sufficient bases upon which to decide the case, thereby making an extension for the purpose of admitting evidence unnecessary, the trial judge's denial of the motion for continuance was proper. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

Fear of Actual or Imminent Harm.

Amended domestic violence protection order entered against the husband was affirmed because the district court made sufficient findings of actual or imminent domestic violence to support the amended order under N.D.C.C. § 14-07.1-02, when the district court found that there were threatening statements to the wife that the husband would blow up her parents' boat and that she would find them floating in the lake, and the husband continued "harassment" type behavior and "taunting" behavior toward the wife; the purpose of N.D.C.C. § 14-07.1-02 was

best promoted if a petitioner was only required to apply for an extension before the original order expired, and not to require a court to enter the amended order before the expiration. *Frisk v. Frisk*, 2006 ND 165, 719 N.W.2d 332 (2006).

When the type of domestic violence justifying a domestic violence protection order is based upon fear, the harm feared by the petitioner must be "actual or imminent," as required by N.D.C.C. § 14-07.1-02(4). *Ficklin v. Ficklin*, 2006 ND 40, 710 N.W.2d 387 (2006).

Fear of Potential Harm Insufficient.

Fear of potential harm alone is not sufficient for the issuance of a domestic violence protection order. The statute clearly requires actual or imminent domestic violence. *Ficklin v. Ficklin*, 2006 ND 40, 710 N.W.2d 387 (2006).

Hearing.

—Adequate.

Former boyfriend accused of domestic violence had the "full hearing" required by the statute and applicable rules for entering a protection order; although the trial court had discretion under the rules to expand the hearing by allowing more evidence or testimony, if persuaded that it was necessary for the particular dispute, considering the narrow subject of the private dispute between only two people and pro se boyfriend's failure to follow the rules of evidence, the brevity of the hearing was understandable. *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994).

Proper Grant of Order.

Court was correct to grant protection order where there was a history of visitation violations and allegations of abuse. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

Service of Protective Order.

State's failure to comply with N.D.C.C. § 14-07.1-03.1, by failing to include a copy of N.D.C.C. § 12.1-17-07.1 with an order issued under this section or N.D.C.C. § 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

Failure of order issued pursuant to this section to include or have attached a copy of N.D.C.C. § 12.1-14-07.1 was not an obvious error which would deprive the trial court of jurisdiction to try defendant for a violation of this section or which defendant could raise for the first time on appeal under N.D.R.Crim.P.

52(b). *State v. Keller*, 550 N.W.2d 411 (N.D. 1996).

Violation.

Where defendant followed his former wife to her place of employment and attempted to open the door, he "communicated" with her, and he violated protection order that directed defendant to have no contact with former wife. *State v. Zurmiller*, 544 N.W.2d 139 (N.D. 1996).

E-mail that was sent to plaintiff violated a domestic violence protection order even though it was generated by a mobile networking company. After plaintiff obtained a protective order, defendant had a duty to ensure that he did not send plaintiff any e-mail messages, even through mass mailings. *Odden v. Rath*, 2007 ND 51, 730 N.W.2d 590 (2007).

Waivable Right to Present Testimony.

The right to present testimony at a hearing for a protection order is waivable. *Steckler v. Steckler*, 492 N.W.2d 76 (N.D. 1992).

DECISIONS UNDER PRIOR LAW

Issuance of Protective Order.

Consent of an abused adult is not required

for issuance of a protective order provided that a spouse or family member is the applicant for such order. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Physical or Mental Examinations.

Rule 35, North Dakota Rules of Civil Procedure, concerning trial court's authority to order a party to submit to a physical or mental examination, is applicable to an adult abuse proceeding under this chapter. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Relief Available.

The restraining of action which is prohibited by the penal laws is specifically authorized when the activity constitutes adult abuse. *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980).

Law Reviews.

The Lautenberg Amendment: An Essential Tool for Combatting Domestic Violence, 75 N.D.L.Rev. 365 (1999).

Protecting Victims by Working Around the System and Within the System: Statutory Protection for Emotional Abuse in the Domestic Violence Context, 81 N.D.L.Rev. 837 (2005).

14-07.1-02.1. Allegation of domestic violence — Effect. If the court finds that a party's allegation of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding is false and not made in good faith, the court shall order the party making the false allegation to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

Source: S.L. 1999, ch. 137, § 1.

14-07.1-02.2. Foreign domestic violence protection orders — Full faith and credit recognition and enforcement. Repealed by S.L. 2003, ch. 123, § 3.

14-07.1-03. Temporary protection order — Copy to law enforcement agency.

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from having contact with or committing acts of domestic violence on another person.

- b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.
3. Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect until an order issued under section 14-07.1-02 is served.
 4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
 5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.
 6. Fees for filing and service of process may not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

Source: S.L. 1979, ch. 193, § 3; 1981, ch. 167, § 2; 1985, ch. 194, § 2; 1989, ch. 177, § 4; 1991, ch. 149, § 3; 1995, ch. 150, § 3; 1997, ch. 148, § 2; 2001, ch. 137, § 2.

Challenge to Validity.

Party may not collaterally challenge the validity of a protection order without first raising the matter with the trial court that issued it; therefore, where defendant failed to

appear at hearings to challenge the issuance of an order, and there was no showing that the issuing court lacked jurisdiction, this issue was meritless on appeal. *State v. Zahn*, 2007 ND 2, 725 N.W.2d 894 (2007).

Service of Protective Order.

State's failure to comply with N.D.C.C. § 14-07.1-03.1, by failing to include a copy of N.D.C.C. § 12.1-17-07.1 with an order issued

under N.D.C.C. § 14-07.1-02 or this section, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

Copy of an application for a protective order is not required to be served for criminal prosecution purposes; therefore, defendant

was held criminally responsible for violating the order, even though the application was never served on him. *State v. Zahn*, 2007 ND 2, 725 N.W.2d 894 (2007).

Law Reviews.

The Lautenberg Amendment: An Essential Tool for Combatting Domestic Violence, 75 N.D.L.Rev. 365 (1999).

14-07.1-03.1. Notification of stalking law. When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 12.1-17-07.1.

Source: S.L. 1993, ch. 120, § 2.

Compliance.

State's failure to comply with this section, by failing to include a copy of N.D.C.C. § 12.1-17-07.1 with an order issued under N.D.C.C. §§ 14-07.1-02 or 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

Failure of order issued pursuant to N.D.C.C. § 14-07.1-02 to include or have at-

tached a copy of N.D.C.C. § 12.1-14-07.1 was not an obvious error which would deprive the trial court of jurisdiction to try defendant for a violation of N.D.C.C. § 14-07.1-02 or which defendant could raise for the first time on appeal under N.D.R.Crim.P. 52(b). *State v. Keller*, 550 N.W.2d 411 (N.D. 1996).

Purpose.

This section is intended to protect potential victims by emphasizing to the restrained party the potential consequences of violating a protection order. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

14-07.1-04. Assistance of law enforcement officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to a domestic violence shelter care facility.

Source: S.L. 1979, ch. 193, § 4; 1989, ch. 177, § 5.

14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 is not affected if the person leaves the residence or dwelling to avoid domestic violence. The court may not require security or bond from any party unless the court deems it necessary in exceptional cases.

Source: S.L. 1979, ch. 193, § 5; 1989, ch. 177, § 6.

14-07.1-05.1. Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor

concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Source: S.L. 1987, ch. 178, § 1; 1995, ch. 151, § 1.

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or individual to be restrained has been served a copy of the order, the first violation of any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

Source: S.L. 1979, ch. 193, § 6; 1983, ch. 177, § 1; 1985, ch. 82, § 25; 1987, ch. 179, § 1; 1989, ch. 177, § 7; 1993, ch. 89, § 4; 1993, ch. 147, § 2; 1999, ch. 138, § 2; 2003, ch. 105, § 3; 2003, ch. 123, § 1.

Cross-References.

Offenders subject to arrest without warrant, see N.D.C.C. § 29-06-15.

Culpability.

Because this statute does not specify a culpability requirement, it is a strict liability offense for which no proof of intent is required; however, a Michlitsch-type affirmative defense instruction may be given under appropriate circumstances. *State v. Holte*, 2001 ND 133, 631 N.W.2d 595 (2001).

Service.

—Application for Order.

Copy of an application for a protective order

is not required to be served for criminal prosecution purposes; therefore, defendant was held criminally responsible for violating the order, even though the application was never served on him. *State v. Zahn*, 2007 ND 2, 725 N.W.2d 894 (2007).

—Evidence.

There was sufficient evidence to find that an amended adult abuse protection order was, in fact, mailed, and therefore was delivered, or executed, or that defendant had notice of the geographical restriction included in the amended order, especially since there was no evidence of lack of receipt. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

There was sufficient evidence in the record to support the jury's finding of service where there was an affidavit of mailing, and the affiant personally testified in court. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

—Jurisdiction.

State's failure to comply with N.D.C.C. § 14-07.1-03.1, by failing to include a copy of N.D.C.C. § 12.1-17-07.1 with an order issued under N.D.C.C. § 14-07.1-02 or N.D.C.C. § 14-07.1-03, does not deprive the trial court of jurisdiction to hear the charge against one accused of violating a domestic violence protection order; however dismissal might be appropriate if actual prejudice is shown. *State v. Sundquist*, 542 N.W.2d 90 (N.D. 1996).

—Legal Issue.

Proof of the element of service of an adult abuse protection order is a legal, rather than a factual, consideration. *State v. Wolff*, 512 N.W.2d 670 (N.D. 1994).

Law Reviews.

The Lautenberg Amendment: An Essential Tool for Combatting Domestic Violence, 75 N.D.L.Rev. 365 (1999).

14-07.1-07. Nonexclusive remedy. Any proceeding under sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

Source: S.L. 1979, ch. 193, § 7; 1989, ch. 177, § 8.

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from domestic violence. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section. Any order issued under this section expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support of the order must be immediately certified to the court. The certification to the court has the effect of commencing proceedings under section 14-07.1-02.

Source: S.L. 1979, ch. 193, § 8; 1987, ch. 177, § 2; 1989, ch. 177, § 9.

Certification of Order to District Court.

This section requires that a protection order issued by a municipal judge be immediately forwarded to district court so that a court of general jurisdiction has opportunity to review order when that court is again available; certification is a procedural step subsequent to jurisdictional requirements, and failure to certify does not result in a loss of jurisdiction by a municipal judge who has

satisfied jurisdictional requirements. *Patten v. Beauchamp*, 599 F. Supp. 288 (D.N.D. 1984).

Immunity from Civil Liability.

Municipal court judge was immune from civil liability with regard to issuance of a protection order where order was issued in accordance with jurisdictional requirements of this section; failure to certify order to district court did not result in a loss of subject matter jurisdiction. *Patten v. Beauchamp*, 599 F. Supp. 288 (D.N.D. 1984).

14-07.1-09. Immunity from liability — Penalty for false reports.
Repealed by S.L. 1989, ch. 589, § 16.

14-07.1-10. Arrest procedures.

1. If a law enforcement officer has probable cause to believe that a

person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer shall consider which party was the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence, or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm.
3. An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

Source: S.L. 1989, ch. 177, § 10; 1991, ch. 149, § 4; 1993, ch. 148, § 1; 1995, ch. 150, § 4; 2005, ch. 133, § 1; 2007, ch. 146, § 2.

System and Within the System: Statutory Protection for Emotional Abuse in the Domestic Violence Context, 81 N.D.L.Rev. 837 (2005).

Law Reviews.

Protecting Victims by Working Around the

14-07.1-11. Arrest without warrant.

1. A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer.
2. A law enforcement officer may arrest a person without a warrant if the arrest is made within twelve hours from the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, whether or not the assault took place in the presence of the officer. After twelve hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

Source: S.L. 1989, ch. 177, § 11; 1993, ch. 147, § 3; 1995, ch. 150, § 5; 1999, ch. 139, § 1.

Law Reviews.

The Lautenberg Amendment: An Essential Tool for Combatting Domestic Violence, 75 N.D.L.Rev. 365 (1999).

Cross-References.

Offenders subject to arrest without warrant, see N.D.C.C. § 29-06-15.

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If an officer determines through the course of an investigation that one of the individuals was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

Source: S.L. 1989, ch. 177, § 12; 2005, ch. 133, § 2; 2007, ch. 146, § 3.

14-07.1-13. Order prohibiting contact — Penalty. Repealed by S.L. 2009, ch. 134, § 3.

Effective Date.

The repeal of this section by section 3 of chapter 134, S.L. 2009 became effective August 1, 2009.

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.
2. The peace officer standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

Source: S.L. 1989, ch. 177, § 14.

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Office of Attorney General
600 E. Boulevard Avenue #125
Bismarck ND 58505
(701) 328-2210

2-7-17

2013 REPORT OF THE NORTH DAKOTA DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION

DECEMBER 31, 2013

Domestic violence deaths include "those involving a spouse, former spouse, parent, child, persons related by blood or marriage, persons in a present or former dating relationship, persons who are presently residing together or have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, other persons on premises when a domestic incident occurs, and romantic triangle situations."

Between 1992 and 2012, 51% of homicide deaths involved domestic violence.

(Office of Attorney General)

The **Domestic Violence Fatality Review (DVFR)** Commission was created by the 62nd Legislative Assembly and established within the Office of Attorney General. N.D.C.C. § 14-07.1-20. The Commission is charged with reviewing domestic violence deaths that have occurred in the state, recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.

DOMESTIC VIOLENCE STATISTICS

The ND Council on Abused Women's Services (www.ndcaws.org) reports that in 2012:

- **4,624 new victims** of domestic violence received services from crisis intervention centers in North Dakota.
- **29%** of victims were abused by a *former* spouse or partner.
- Alcohol use by abuser only was indicated in **38%** of the new cases. Alcohol use by both victim and offender was indicated in 11% of the cases.
- The abuser had a history of abusive behavior with other adults, including prior partners, in at least **48%** of the cases.

DOMESTIC VIOLENCE FATALITIES

During the last 20 years, there have been 114 homicide deaths related to domestic violence.

- **54%** of female deaths in domestic violence incidents involved firearms, while 33% of female deaths in non-domestic violence incidents involved firearms.
- **76%** of female homicide victims were killed in domestic violence incidents, compared to 35% of males.

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COMMISSION ACTIVITIES

Building on the information collected and reported in 2012¹, the Commission held two additional case reviews in 2013.

For all cases, the commission reviewed available personal background information for the victim and the offender, as well as criminal and court records relating to prior domestic abuse incidents involving either the victim or the offender, other criminal records, and the case file relating to the investigation of the domestic violence homicide.

FINDINGS

The commission identified several factors common to all the cases reviewed to date, including:

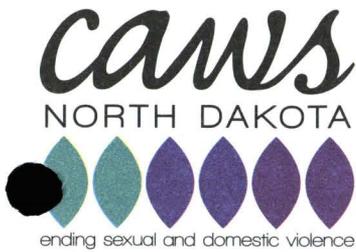
- There was a history of prior domestic violence incidents in the relationship, the majority of which generated a response from law enforcement;
- Alcohol use by the offender only, or by both offender and victim, was a contributing factor in the previous domestic violence incidents and also in the events on the night of the murder.
- In all of the cases reviewed, the offender, the victim, or both, had a history of treatment for a mental illness.
- In the majority of cases reviewed:
 - The offender had a prior history of alcohol and/or substance abuse (e.g. DUI convictions), and
 - On the night of the murder, the offender had a current prescription for at least one controlled substance (i.e. pain control, anti-anxiety).
- When offenders were criminally charged in the prior domestic violence incidents, the Commission felt that additional efforts need to be made by the criminal justice system
 - To ensure proper compliance with state and/or federal laws relating to the requirements for an offender to surrender any firearms; and
 - To provide follow up and consequences for an offender's failure to fully complete required batterer's treatment/substance abuse/mental health assessments.



NEXT STEPS

The commission will review one additional case in 2014, but thereafter will meet to review the issues common to all of the reviewed cases and to develop recommendations for proposed legislation, policies, and procedures with a view to preventing the incidence of domestic violence fatalities.

¹ See 2012 Report, at <http://www.ag.nd.gov/Reports/Reports.htm>



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525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
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Testimony on HB 1402
House Judiciary Committee
February 7, 2017

Chairman Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1402.

In 2011, the ND Legislature passed a law that allowed the ND Attorney General to establish a Domestic Violence Fatality Review Commission (DVFR) under NDCC 14-07.1-20. The DVFR Commission reviews domestic violence deaths that have occurred in the state, recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence. The DVFR Commission is co-chaired by me and Assistant AG Jon Byers and together we've facilitated six cases reviews with the other members of the Commission. Reports summarizing our findings and recommendations are submitted annually.

Prior to the start of the 2017 session, we convened a meeting of the DVFR to review all of our recommendations and to draft legislation in order to address gaps in the criminal justice system or policies in order to prevent future domestic violence homicides. As you can see from the DVFR report from 2014 between 1992 and 2014, 136 people were murdered during incidents of domestic violence. In those 59 (43%) of those incidents a firearm was used to commit the homicide. In many instances, the perpetrator should not have possessed a firearm at the time they committed the offense either because they had a misdemeanor conviction of domestic violence or were the respondent in a domestic violence protection order.

The presence of a gun in a domestic violence situation makes it five times more likely that the victim will be killed. Common sense laws that require offenders to relinquish the guns in their possession make sense and keep victims safe and ultimately prevents the ultimate form of domestic violence: homicide.

Ultimately, I believe the changes recommended in HB 1402 is a small change with potentially significant impacts on the lives of victims and offenders in DV cases, and therefore urge a DO PASS recommendation.

Thank you.

Senate Presentation of House Bill 1402

March 22, 2017

Rep. Mary Schneider

Good morning Chairman Armstrong and Members of the Senate Judiciary Committee. I am Representative Mary Schneider from District 21--the Heart of Fargo. I am here today to present HB 1402. It's just a little bill, but it has some larger potential to save lives. The bill provides just an additional sentence and a half intended to do three things:

1. give law enforcement officers some discretion and control in how and when firearms or other dangerous weapons, that have been ordered by a court to be surrendered, are presented for surrender (when the court's order has not specified those details);
2. clarify that an arrest by law enforcement may be made pursuant to 14-07.1-11 in the event of non-compliance with the court order to surrender firearms or other dangerous weapons, and
3. make it clear that if the firearms or other dangerous weapons are not surrendered pursuant to the specifics of a court order, or as requested by law enforcement, that law enforcement personnel may take possession of the weapon or weapons.

The bill doesn't mandate that law enforcement dictate terms for weapon surrender. It doesn't require seizure of weapons. It simply allows a law enforcement officer the option to gain compliance with a court's directive to surrender arms in a way that might work best under circumstances that a law enforcement official is often best positioned to assess. It allows the use of good judgment and common sense to gain compliance in a manner that is most safe and effective.

The bill is solely for the enhanced protection of law enforcement officials and the domestic violence victims that those law enforcement officers, and the court, are trying to protect. It is a life safety bill.

Domestic violence is a real killer for those involved. For decades, more law enforcement officers have been killed in the line of duty in domestic violence cases than any other single type of service call.

Last year, for example, in a six-day period from February 5 through February 11, six officers and deputies were fatally shot in 5 states. At least three were domestic violence related. One was officer Moszer from the Fargo Police Department who left behind a wife, children and a shocked and grieving community. He was shot from inside a house where a domestic dispute

had just taken place, and from which his wife and disabled son had escaped after he threatened his wife with a gun.

The bill might not have saved Officer Moszer, but it might save another officer. In the 2013 Report of the North Dakota Domestic Violence Fatality Review Commission, I've distributed to you, are some frightening statistics for domestic violence victims in the state:

- Between 1992 and 2012, 51% of homicide deaths involved domestic violence;
- During the 20 years covered by the report, there were 114 domestic violence homicides;
- 76% of female homicide victims were killed in domestic violence incidents, compared to 35% of males; and
- 54% of female deaths in domestic violence incidents involved firearms.

The Report handout shows the type of weapons involve.

Current law provides at 14-07.1-02, 4.g, that a respondent can be required to surrender weapons for safekeeping.

Courts do order that, but often don't include specifics, about how that should happen, or what happens if the weapons aren't surrendered. This bill is designed to fill those gaps.

In order to minimize exposure to deadly domestic violence-related risk, this bill would allow the trained professional closest to the situation to have some options in how ordered weapons should be surrendered. Hopefully, that flexibility will reduce the likelihood of injury or death.

It also sets out that the law enforcement officer may make an arrest without a warrant or further court process if the respondent doesn't surrender the weapon(s). There has been confusion in some jurisdictions about whether a contempt action was a necessary step, requiring that a party would have to go back to court to obtain a subsequent order, causing dangerous delay, and unnecessary judicial time to take needed action.

In the House, there were questions about the length of time weapons could be kept, and how they might be returned. This bill creates no changes in those areas, and has no effect on either of those issues. The court still retains control over the temporary nature of the surrender, and can return the weapons at any time they don't pose a threat to the life, health or safety of the domestic violence victim.

3/22/17

2

HB 1402

2013 REPORT OF THE NORTH DAKOTA DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION

Office of Attorney General
600 E. Boulevard Avenue #125
Bismarck ND 58505
(701) 328-2210

DECEMBER 31, 2013

Domestic violence deaths include "those involving a spouse, former spouse, parent, child, persons related by blood or marriage, persons in a present or former dating relationship, persons who are presently residing together or have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, other persons on premises when a domestic incident occurs, and romantic triangle situations."

Between 1992 and 2012, 51% of homicide deaths involved domestic violence.

(Office of Attorney General)

The **Domestic Violence Fatality Review (DVFR)** Commission was created by the 62nd Legislative Assembly and established within the Office of Attorney General. N.D.C.C. § 14-07.1-20. The Commission is charged with reviewing domestic violence deaths that have occurred in the state, recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.

DOMESTIC VIOLENCE STATISTICS

The ND Council on Abused Women's Services (www.ndcaws.org) reports that in 2012:

- **4,624 new victims** of domestic violence received services from crisis intervention centers in North Dakota.
- **29%** of victims were abused by a *former* spouse or partner.
- Alcohol use by abuser only was indicated in **38%** of the new cases. Alcohol use by both victim and offender was indicated in **11%** of the cases.
- The abuser had a history of abusive behavior with other adults, including prior partners, in at least **48%** of the cases.

DOMESTIC VIOLENCE FATALITIES

During the last 20 years, there have been 114 homicide deaths related to domestic violence.

- **54%** of female deaths in domestic violence incidents involved firearms, while **33%** of female deaths in non-domestic violence incidents involved firearms.
- **76%** of female homicide victims were killed in domestic violence incidents, compared to **35%** of males.

COMMISSION ACTIVITIES

Building on the information collected and reported in 2012¹, the Commission held two additional case reviews in 2013.

For all cases, the commission reviewed available personal background information for the victim and the offender, as well as criminal and court records relating to prior domestic abuse incidents involving either the victim or the offender, other criminal records, and the case file relating to the investigation of the domestic violence homicide.

FINDINGS

The commission identified several factors common to all the cases reviewed to date, including:

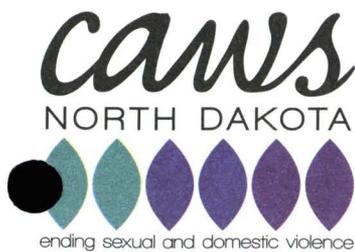
- There was a history of prior domestic violence incidents in the relationship, the majority of which generated a response from law enforcement;
- Alcohol use by the offender only, or by both offender and victim, was a contributing factor in the previous domestic violence incidents and also in the events on the night of the murder.
- In all of the cases reviewed, the offender, the victim, or both, had a history of treatment for a mental illness.
- In the majority of cases reviewed:
 - The offender had a prior history of alcohol and/or substance abuse (e.g. DUI convictions), and
 - On the night of the murder, the offender had a current prescription for at least one controlled substance (i.e. pain control, anti-anxiety).
- When offenders were criminally charged in the prior domestic violence incidents, the Commission felt that additional efforts need to be made by the criminal justice system
 - To ensure proper compliance with state and/or federal laws relating to the requirements for an offender to surrender any firearms; and
 - To provide follow up and consequences for an offender's failure to fully complete required batterer's treatment/substance abuse/mental health assessments.



NEXT STEPS

The commission will review one additional case in 2014, but thereafter will meet to review the issues common to all of the reviewed cases and to develop recommendations for proposed legislation, policies, and procedures with a view to preventing the incidence of domestic violence fatalities.

¹ See 2012 Report, at <http://www.ag.nd.gov/Reports/Reports.htm>



3/22/17

3

HB 1402

525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
www.ndcaws.org • facebook.com/NDCAWS • Twitter @NDCAWS

Testimony on HB 1402
Senate Judiciary Committee
March 22, 2017

Chairman Armstrong and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1402.

In 2011, the ND Legislature passed a law that allowed the ND Attorney General to establish a Domestic Violence Fatality Review Commission (DVFR) under NDCC 14-07.1-20. The DVFR Commission reviews domestic violence deaths that have occurred in the state, recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence. The DVFR Commission is co-chaired by me and Assistant AG Jon Byers and together we've facilitated six cases reviews with the other members of the Commission. Reports summarizing our findings and recommendations are submitted annually.

Prior to the start of the 2017 session, we convened a meeting of the DVFR to review all of our recommendations and to draft legislation in order to address gaps in the criminal justice system or policies in order to prevent future domestic violence homicides. As you can see from the DVFR report from 2014 between 1992 and 2014, 136 people were murdered during incidents of domestic violence. In those 59 (43%) of those incidents a firearm was used to commit the homicide. In many instances, the perpetrator should not have possessed a firearm at the time they committed the offense either because they had a misdemeanor conviction of domestic violence or were the respondent in a domestic violence protection order.

The presence of a gun in a domestic violence situation makes it five times more likely that the victim will be killed. Common sense laws that require offenders to relinquish the guns in their possession make sense and keep victims safe and ultimately prevents the ultimate form of domestic violence: homicide.

Ultimately, I believe the changes recommended in HB 1402 is a small change with potentially significant impacts on the lives of victims and offenders in DV cases, and therefore urge a DO PASS recommendation.

Thank you.