

2017 SENATE JUDICIARY

SB 2300

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2300
1/31/2017
27634

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravated assault of a peace officer; and to provide a penalty.

Minutes: No written testimony

Chairman Armstrong called the committee to order on SB 2300. All committee members were present.

Jonathan Casper, North Dakota Senator of District 27, introduced and testified in support of the bill. No written testimony.

"This bill is a penalty enhancement regarding aggravated assaults on a peace officer, this legislation will raise it from a Class C Felony to a Class B Felony, and raise the max prison sentence from five years to 10 years. I support this bill because peace officers do help the community and they work hard to do so. This is for aggravated assault and not simple assault, so there is a willful element to it."

Chairman Armstrong: "Is there any data that says these enhancements will reduce crime?"

Senator Casper: "I don't have any with me today, but others testifying today may have that information."

Senator Luick: "Can you explain what constitutes serious bodily injury? It's on line 8."

Senator Casper: "I think if you look in the code the interpretation is injuries to organs or, one second let me check the code quick, I have it here."

Senator Luick: "I guess what I'm getting at is how serious of a situation does it have to be to be considered serious bodily injury?"

Senator Casper: "For aggravated assault it deals with intent. What it says in the code is when a victim suffers permanent loss of impairment or function of a bodily member or organ."

Jonathon Byers, Attorney General's Office, testified in support of the bill. No written testimony.

"It's a Class C Felony right now to cause a peace officer pain, but it's also a Class C Felony to seriously hurt a peace officer that lead to permanent impairment of an organ or bodily function. This just recognizes that based upon the severity of the injury, we should treat aggravated assault on a peace officer more than we treat simple assault."

Senator Nelson: "How do we determine who is a peace officer? How far down the pecking order do we go for a peace officer?"

Jonathon Byers: "There are a number of different definitions for peace officers throughout the Century Code. It can vary, it can even include prosecutors."

Bruce Brichett, Lobbyist for North Dakota Peace Officer Association, testified in support of the bill. No written testimony.

"We believe this is an appropriate thing. Aggravated assault on a 12-year-old is a Class B felony but not on a peace officer."

Bruce Brichett described instances of how a life is changed after they experience permanent loss of a bodily organ or function.

Jonathon Byers was called back up to the podium.

Chairman Armstrong: "Why is this good public policy for law enforcement?"

Jonathon Byers: "It makes people think twice about, for example, if they were in a protest and started throwing bricks at officers. It will make them think twice that the crime will now be an enhancement and could lead to 10 years in prison. How bad an officer is injured should matter, a serious assault should be treated more severe than simple assault."

Chairman Armstrong: "Is this for cops, firemen, and ambulances as well?"

Jonathon Byers: "I believe so, yes."

Senator Nelson: "Is this bill in reaction to Dakota Access Protest?"

Jonathon Byers: "It's actually more in response to what we have been experiencing nationwide and not specifically a response to the Dakota Access protest."

Chairman Armstrong closed the hearing on SB 2302.

Senator Larson motioned Do Pass. **Senator Luick** seconded.

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

Senator Nelson carried the bill.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2300**

Senate 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 Senator Larson Seconded By Senator Luick

| Senators | Yes | No | Senators | Yes | No |
|--------------------|-----|----|----------------|-----|----|
| Chairman Armstrong | X | | Senator Osland | X | |
| Vice-Chair Larson | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Nelson | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

SB 2300: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2300 was placed on the
Eleventh order on the calendar.

2017 HOUSE JUDICIARY

SB 2300

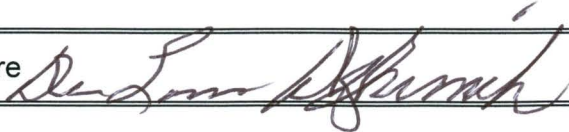
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2300
3/15/2017
29281

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravated assault of a peace officer; and to provide a penalty.

Minutes:

Chairman K. Koppelman: Opened the hearing on SB 2300.

Senator Casper: Introducing the bill. Went over it. (:020-1:40)

Representative Klemin: Define peace officer? Would it include a correctional officer?

Senator Casper: I don't know the answer to that.

Representative Nelson: Is a dog a peace officer?

Senator Casper: I think it is no.

Representative Magrum: What is the penalty now for this offense.

Senator Casper: It is up to five years now in prison; this would make it ten years.

Representative Magrum: We just had 1041 where we are reducing all the penalties. So we would be going against ourselves on this one then wouldn't we?

Senator Casper: This is very violent offenses that could result in death.

Representative Magrum: We are trying to reduce all the penalties because the prisons are full?

Chairman K. Koppelman: Most of those involved drug are non-violent crimes.

Senator Casper: This is something that was needed to protect peace officers. There has been an uprising in this country and we have decided that the State of ND will not tolerate this.

Chairman K. Koppelman: I remembered somewhere else in statute where there are some enhancements for these kinds of crimes against law enforcement. Did you do any research on that before introducing the bill.

Representative Vetter: Where do you see the 10 years?

Senator Casper: It would be outside of this bill. It is part of the code that would go with this.

Representative Vetter: Where do you see the ten years. What is under 12 years of age? It is more of a crime if a person is under that age.

Senator Casper: That is a drafting change. Prior to this bill the code would lay out Section B would not be there. That is now in the code. We are maintaining that and adding the penalty to a B felony for a peace officer. Right now if you committed aggravated assault against a ten-year-old you can go to jail for ten years instead of five. Under this law the same thing.

Chairman K. Koppelman: Or if the victim suffered loss or impairment of the function of a bodily member or organ and that is also just being restated.

Representative Vetter: So we are not changing the status for Class B felony, just Class B felony for aggravated assault on an officer, is that correct?

Representative Hanson: You mentioned the justification of increase in aggravated assault against police officers over the last 24 to 36 months. Do you have statistics for aggravated assaults against peace officers in ND? Does the AG track that?

Representative Paur: This has nothing to do with your changes. At 12 years old caught my attention. That goes back to 1999. That was shaking babies and it was amended down to 6 years or lower but it is not in the code? What happened to it I don't know to it.

Chairman K. Koppelman: Back then it was to toughen up crimes on children.

Opposition: None

Neutral: None

Hearing closed.

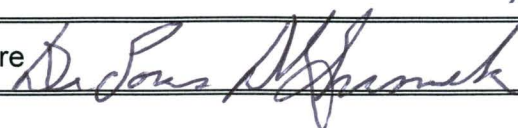
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2300
3/21/2017
29474

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravated assault of a peace officer; and to provide a penalty.

1,2

Chairman K. Koppelman: Opened the meeting on SB 2300. Kelly Johnson handed out a reference on peace officers. (#1 & #2)

Representative Klemin: Should we be including a correctional officer? Do we have an answer on that?

Chairman K. Koppelman: Went over the handout (#1).

Representative Klemin: We hear all the time about correctional officers at the state pen they even can fashion a knife out of a fork and stab somebody. What is the rational for just making the peace officers and not correctional officers every day?

Motion Made to Amend the bill on page 1, line 18 after peace officer add or correctional institution employee by Rep. Klemin; Seconded by Rep. Jones

Discussion:

Representative Klemin: Now the language is identical to what is in 12.1-17.01 on simple assault.

Representative Paur: In the prison system they have their own way of controlling this behavior. You are eligible for patrol sooner if you misbehave. Is there a way we could mess that up with this whole thing?

Representative Vetter: When this bill was presented to me; it was basically police officer. I am going to oppose this.

Representative Klemin: The standards are different simple assault versus aggravated assault. In order to be a class B it would have to meet these additional requirements that are under the standards for aggravated assault. Peace officers are still covered. It still does that.

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Maragos; Seconded by Rep. Klemin

Discussion:

Roll Call Vote: 10 Yes 5 No 0 Absent Carrier: Rep. Jones

Closed.

3/20/17 Df

17.8160.01001
Title.02000

Adopted by the Judiciary Committee

March 20, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2300

Page 1, line 18, after "officer" insert "or correctional institution employee"

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2300

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: on page 1, line 18 after peace officer add or correctional institution employee

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. Klemin Seconded By Rep. Jones

| 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 | | | | | |
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0
Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2300**

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. Maragos Seconded By Rep. Klemin

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | X | | Rep. Hanson | X | |
| Vice Chairman Karls | X | | Rep. Nelson | | X |
| Rep. Blum | X | | | | |
| Rep. Johnston | X | | | | |
| Rep. Jones | X | | | | |
| Rep. Klemin | X | | | | |
| Rep. Magrum | | X | | | |
| Rep. Maragos | x | | | | |
| Rep. Paur | | X | | | |
| Rep. Roers-Jones | X | | | | |
| Rep. Satrom | X | | | | |
| Rep. Simons | | X | | | |
| Rep. Vetter | | X | | | |
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0
Total (Yes) 10 No 5

Absent 0

Floor Assignment Rep. Jones

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

REPORT OF STANDING COMMITTEE

SB 2300: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2300 was placed on the Sixth order on the calendar.

Page 1, line 18, after "officer" insert "or correctional institution employee"

Renumber accordingly

2017 TESTIMONY

SB 2300

Kelly Johnson

#1
2300
3-21-57

SB 2300

1. Whether the definition of "peace officer" includes a "correctional officer."
 - a. NDCC 12.1-01-04: "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations
 - b. So under Chapter 12 of the NDCC, a correctional officer would not be included under the definition of "peace officer" because a correctional officer is not authorized by law or a government agency to enforce the law. A correctional officer falls under the definition of "correctional facility staff," whose duties include the ongoing supervision of inmates in a correctional facility.
2. There is a part of NDCC that includes enhanced penalties for peace officers or correctional institution employees. See NDCC 12.1-17.01(2)(a). [12.1-17-01(2)(a): simple assault is a class C felony when the victim is a peace officer or a correctional institution employee (otherwise, this is a class B misdemeanor)].

#2
2300
3-21-17
K. Johnson

CHAPTER 12.1-17
ASSAULTS - THREATS - COERCION - HARASSMENT

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and 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 the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission 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 any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
 - c. A class B misdemeanor except as provided in subdivision a or b.

12.1-17-01.1. Assault.

A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

1. Willfully causes substantial bodily injury to another human being; or
2. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

12.1-17-02. Aggravated assault.

1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:
 - a. Willfully causes serious bodily injury to another human being;
 - b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
 - c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
 - d. Fires a firearm or hurls a destructive device at another human being.
2. The person is guilty of a class B felony if the person violates subsection 1 and the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ.

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme