

**2021 SENATE JUDICIARY**

**SB 2268**

# 2021 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2268  
1/27/2021  
AM

BILL for an Act to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to assault on a health care facility provider; and to provide a penalty.

**Chairwoman Larson** Calls committee work to order [9:56]  
Senators Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson were present.

## **Discussion Topics:**

- Assault on Healthcare workers
- Misdemeanor and felonies
- Work place violence
- Patient aggression

**Senator K Roers** [9:57] introduces bill in favor.

**Marnie Walth** [10:08] Sanford Health introduces Ernie Thurman.

**Ernie Thurman** [10:09] Director of Security, Sanford Health in favor #3685.

**Kayla Watson** [10:15] BRN Clinical Care Leader of the Behavioral Health Unit, Sanford Health in favor #3691.

**Dennis Pathroth** [10:18] Attorney, Zuger, Kermit and Smith Law Firm representing Essentia Health in favor.

**Courtney Koebele** [10:28] Executive Director ND Medical Association in favor #3633.

**Pat Bohn** [10:29] Director for North Dakota Parole and Probation, Department of Corrections in neutral #3725.

## **Additional written testimony:**

Melissa Hauer, General Counsel of the North Dakota Hospital Association in favor #3608.

**Chairwoman Larson** adjourns the hearing [10:43]

*Jamal Omar, Committee Clerk*

**#3685**

**Senate Judiciary Committee**  
**Sen. Diane Larson, Chair**  
**Jan. 27, 2021**  
**SB 2268**

Good morning, Chairwoman Larson and members of the committee. My name is Ernie Thurman and I serve as director of security for Sanford Health in Bismarck. I have led our security team for 14 years. Thank you for the opportunity to speak with you this morning.

I am here today to ask for your support of SB 2268. The purpose of this legislative change is to make it a felony if an individual assaults healthcare workers when those individuals are working within their scope of duties within a healthcare facility.

The law in its current state does protect those healthcare workers in an emergency department or as part of an emergency medical services personnel unit. It also includes as a felony an act where bodily fluids are made to come into contact with a healthcare worker. We are so grateful for these protections, but I'm asking that we send a message that those providing healthcare on the front lines, whether in an emergency department or elsewhere within a healthcare facility, are treated equally when it comes to being on the receiving end of workplace violence.

There may be a belief that assaults on healthcare workers is not commonplace, or that a felony is too severe a penalty for a patient coming to a hospital in need of care. I'm here to tell you that, unfortunately, you are four times more likely to be assaulted as a nurse than any other private industry employees according to the Occupational Safety and Health Administration.

Beyond nursing staff, those in the security services and other frontline healthcare roles, whether it is lab personnel or nutritional services, really any of those that come into contact with patients are unfortunately at risk for workplace violence.

I know that the felony designation works. We saw a noticeable decline in bodily fluid contacts after this legislature took action in 2017 and made that behavior a felony. From 2010-2018, the numbers for bodily fluid contacts ranged anywhere from 25-42/year. However, in 2018 we had 25, in 2019 we had 5 and in 2020 we had 1. This is a steady decrease since that legislative change.

As assaults have become more frequent and more violent, we are working to protect our workforce in as many ways as we can. We have invested in training and providing tools for staff to protect themselves and de-escalate

situations. One of these tools is MOAB training. MOAB training presents principles, techniques, and skills for recognizing, reducing, and managing violent and aggressive behavior both in and out of the workplace. While MOAB works and is a process and technique I believe in, the fact remains that there are situations that results in violent acts committed against our frontline healthcare workers. I believe the support of this legislature and making assaults on healthcare workers a felony will be instrumental in seeing a decrease much like we did after the increased penalty related to the intentional contact with bodily fluids.

I also want to be clear that we do not take reporting a patient lightly. When an assault occurs, there are discussions regarding what happened and why. If the situation is attributable to a patient's underlying condition, we do not make a report. It is only when behavior is purely that, bad behavior, we feel staff need to make a report and have the backing from this legislative body that this is unacceptable and such behavior is punishable by a felony.

In closing, let me say that I myself am a frontline worker and have experienced being assaulted by patients. I understand the concern and difference between a patient suffering from a behavioral health issue or a substance abuse disorder and when it is appropriate to refer a matter to law enforcement. We respectfully request that all healthcare workers providing care in a healthcare facility are treated the same and assaults on them by mentally stable patients are considered a felony.

I would be happy to answer any questions. Thank you for your time and your consideration.

Ernie Thurman,  
Security Director  
Sanford Health Bismarck  
[Ernie.Thurman@SanfordHealth.org](mailto:Ernie.Thurman@SanfordHealth.org)  
701-323-2980

### *Sanford assault incident rates*

2010 - 2020 SECURITY INCIDENT STATS											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>TOTAL WORKPLACE VIOLENCE</b>	342	210	156	132	122	515	202	237	239	166	168
<b>TOTAL STAFF ASSAULTS/YR</b>	58	44	24	2	11	12	3	12	17	36	41
<b>TOTAL OFFICER ASSAULTS/YR</b>	25	24	9	5	6	142	24	15	10	7	5

### *Sanford intentional bodily fluid contact events*

2010	38
2011	42
2012	32
2013	39
2014	35
2015	27
2016	33
2017	29
2018	25
2019	5
2020	1

Fact Sheet | Workplace Violence in Healthcare, 2018 | April 2020

<b>Chart 1. Incidence rate of nonfatal workplace violence to healthcare workers, 2011-18</b>	
<b>Year</b>	<b>Incidence Rate (per 10,000 full-time workers)</b>
<b>2011</b>	6.4
<b>2012</b>	7.0
<b>2013</b>	7.8
<b>2014</b>	8.2
<b>2015</b>	8.0
<b>2016</b>	8.4
<b>2017</b>	9.1
<b>2018</b>	10.4

**Last Modified Date:** April 8, 2020 (Source: BUREAU OF LABOR AND STATISTICS WEB SITE)  
<https://www.bls.gov/iif/oshwc/cfoi/workplace-violence-healthcare-2018-chart1-data.htm>

**Senate Judiciary Committee**  
**Sen. Diane Larson, Chair**  
**Jan. 27, 2021**  
**SB 2268**

Good morning, Chairwoman Larson and members of the committee. My name is Kayla Watson and I am an inpatient clinical care leader at Sanford Health in Bismarck. I am testifying in support of SB 2268.

Thank you for the opportunity to share my experiences with you. I have both been assaulted and witnessed assaults in my healthcare role. I will share my story with you during the bill hearing and will be happy to answer any questions you may have.

Thank you for your time and your consideration.

Kayla Watson  
Clinical Care Leader  
Sanford Health Bismarck  
[Kayla.Watson@SanfordHealth.org](mailto:Kayla.Watson@SanfordHealth.org)  
(701) 323-2854



#3633

**Senate Judiciary Committee**

**SB 2268**

**January 27, 2021**

Chair Larson and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association is in strong support of SB 2268. This issue was originally brought to the medical association by the North Dakota Chapter of Emergency Physicians in 2014. Although they were already in a protected class under the statute, they were seeing a large increase in assaults in the workplace and wanted a higher level of penalty to apply to all health care workers. The NDMA House of Delegates reviewed this issue and adopted a resolution to move forward in protecting all healthcare providers.

Currently, North Dakota law provides for an assault classification of Class C Felony when the victim is:

1. a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact;
2. 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;
3. a person engaged in a judicial proceeding; or
4. a member of a municipal or volunteer fire department or emergency medical services personnel unit or an emergency department worker in the performance of the member's duties.

This bill would add to that list a victim employed or contracted by a health care facility, which the actor knows to be a fact, and the assault occurs on the health care facility property.

Assaults against healthcare workers are rising. According to OSHA, 48% of all non-fatal injuries from occupational assaults and violent acts occurred in healthcare and social services settings. This law would make the punishment



for assaulting a healthcare provider just as severe as the penalty for assaulting a law enforcement officer, employee at the state hospital, a person engaged in a judicial proceeding, volunteer firefighter, or EMT. This will send a clear message that we are serious about protecting the professionals who make it their life's work to protect others. Identical to the currently protected professional individuals, healthcare providers are obligated to offer assistance, therefore, we believe the same protections should be in place.

For all of the above stated reasons, we request your support for SB 2268.

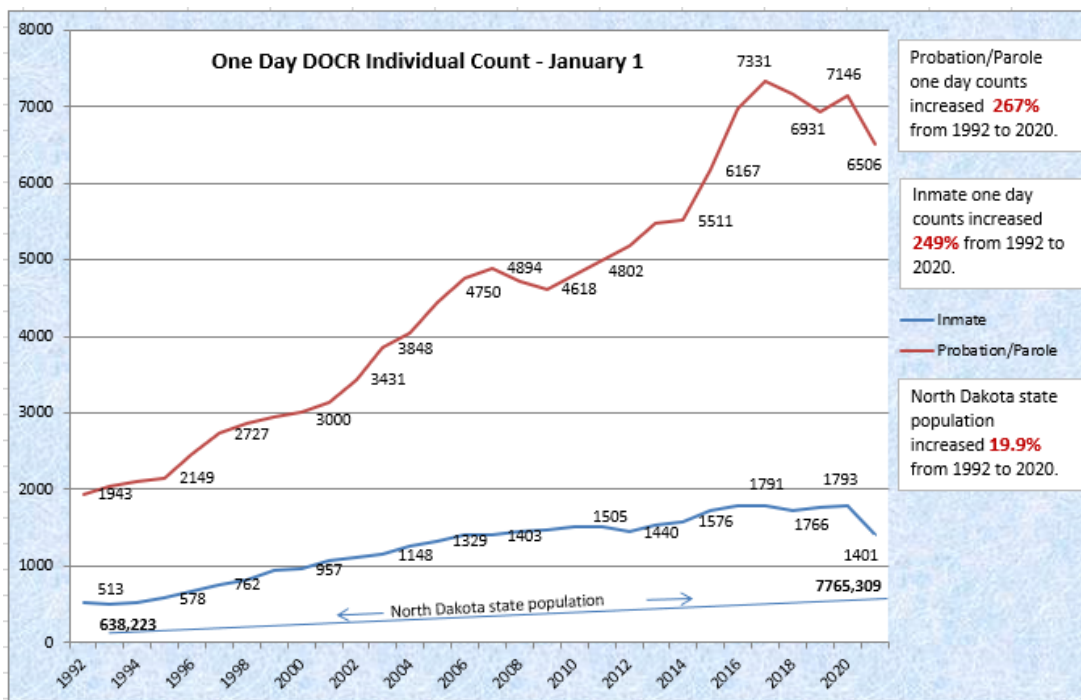
Thank you.

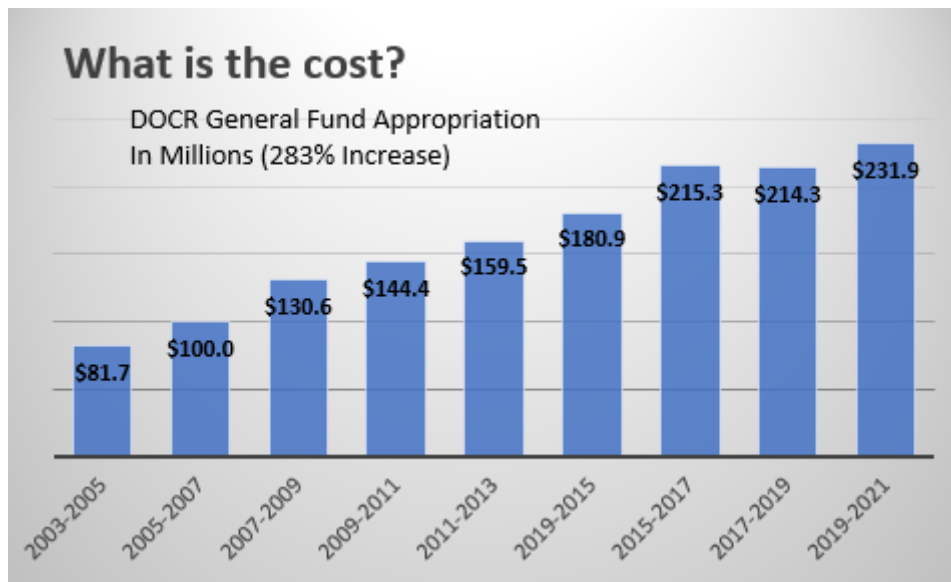
**SENATE JUDICIARY COMMITTEE  
SENATOR DIANE LARSON, CHAIRMAN  
JANUARY 27, 2021**

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**PATRICK N. BOHN, DIRECTOR FOR NORTH DAKOTA PAROLE & PROBATION,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: SB 2268**

My name is Pat Bohn and I am the Director for North Dakota Parole and Probation, a division of North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify neutral on behalf of the department on SB 2268.

The department has generally sought to educate policymakers on criminal penalty expansion or enhancements. We are not aware of any evidence indicating that carving out and enhancing a criminal penalty to a class C Felony for simple assault on a health care facility worker will result in a reduction in assaults on healthcare facility workers in this state. It is these types of enhancements that can incrementally





contribute to the growth in not only corrections but our broader criminal justice system. It also has life-long implications to those convicted of a Felony. The very reason the person has sought or is need of healthcare could be the issue that contributes to the assault. According to the data of the [National Inventory of Collateral Consequences of Conviction](#), North Dakota has 542 collateral consequences to a conviction compiled in century and administrative code. During the 2017 legislative session, SB 2216 had a provision to bring simple assault on a healthcare facility worker to the C Felony level. Ultimately that provision was removed; however, in the final passage of the bill it did bring healthcare facility workers into the Contact by Bodily Fluids statute in [NDCC 12.1-17-11](#), which includes a provision of a class C felony if the individual knowingly causes the contact and is a class A misdemeanor if the individual recklessly causes the contact. Do we know how many people have been charged and convicted under this statute since inception in 2017? Is it helping reduce the behavior because isn't that what we ultimately want to happen? Do we have any data on the frequency of criminal assaults on healthcare workers in this state and have we taken a deeper dive into trying to understand what drives the problem? If you enact such a policy, I'd encourage you to

establish some performance measures and notice requirements that could be revisited by future legislatures. I want to be clear that by no means are we condoning these types of behaviors.

In closing we understand the concerns of the medical community and the incredible work they do for all of us. We also respect your decision and will execute our responsibilities accordingly. If you have any questions, I'd be glad to try and answer them.



**2021 SB 2268**  
**Senate Judiciary Committee**  
**Senator Diane Larson, Chairman**  
**January 27, 2021**

Good morning Chairman Larson and members of the Senate Judiciary Committee. I am Melissa Hauer, General Counsel of the North Dakota Hospital Association (NDHA). I ask that you give 2021 Senate Bill 2268 a **Do Pass** recommendation.

NDHA supports the protection of all health care workers from violence in the workplace. Health care workers experience workplace violence at a rate far higher than the national average. The health care industry is statistically the most violent non-law-enforcement industry in the United States. For example, in mental health settings, 70 percent of employees are physically assaulted every year, 82 percent of emergency department nurses reported being physically assaulted last year and 100 percent reporting being verbally assaulted, and 40 percent of physicians practicing in a psychiatric setting report being physically assaulted at work.

Health care workers who leave the industry because of assaults and threats of violence contribute to health care worker shortages. Retention of workers in the health care field can be increased by supporting specific protection for any health care workers assaulted on the job. Enhanced criminal penalties against those who commit assault in a health care setting send a strong message that such violence will not be tolerated.

All people who work in a health care setting, whether it is a nurse in a hospital, a maintenance technician in a clinic, or a food service worker in a nursing home, as well as those who work in an emergency department setting, deserve such protection. These laws serve as another

deterrent to abusive, violent behavior toward people working in the health care setting and let them know that they are valued and will be protected.

This bill is a way to show our health care workers their safety matters. NDHA supports enhanced criminal penalties against those who commit assault against anyone who works in a health care setting and we appreciate your efforts to send a strong message that violence in this setting will not be tolerated.

We support this bill and ask that you give it a **Do Pass** recommendation. I would be happy to try to answer any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association

# 2021 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2268  
1/27/2021  
PM

A BILL for an Act to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to assault on a health care facility provider; and to provide a penalty.

**Chairwoman Larson** Calls committee work to order [2:36]  
Senators Heitkamp, Fors, Myrdal, Luick, Dwyer, Bakke and Larson were present.

**Discussion Topics:**

- Healthcare worker assault
- Felony assault
- Interventions

**Senator Heitkamp** [2:38] moved for a DO NOT PASS  
**Senator Myrdal** seconded the motion

Roll Call Vote

Motion passes 6-1-0

**Senator Fors** will carry the bill.

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	N
Senator Janne Myrdal	Y

**Chairwoman Larson** adjourns the meeting [2:51]

*Jamal Omar, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2268: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2268 was placed on the Eleventh order on the calendar.