

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2185

2007 SENATE JUDICIARY

SB 2185

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2185

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1130

Committee Clerk Signature

Maria A. Solberg

Minutes: Relating to prohibition of strangulation to strangulation of another person.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Ralph Kilzer, Dist. # 47 (meter 1:05) Introduced the bill as approached by ND Council on Abused Women's center. Referred to the chapter the legislation is taken out of.

Rep. Dave Weiler, Dist. #30 (meter 3:29) Spoke in support of the bill. I do not understand why this is not in legislation currently.

Sen. Randy Christmann, Dist. #33 (meter 4:27) Stood up in support of the bill

Randi Roerick, ND Council on Abused Women's Services (meter 5:44) Gave Testimony Att. #1

Sen. Nelson asked for clarification between choking and strangulation (meter 4:27) Choking is when food is lodged and strangulation is the intentional cutting off of another's air passage- wither you survive or not.

Rep. Lee Kaldor, Dist. #20 (meter 13:42) Spoke in support of the bill. This is a brutal act.

Once this action is occurring there is a very strong intent. I was unaware that is treated the way it is and amazed on the effects this act can have.

Glen Hase, ND Council on Abused women's services. (meter 15:07) Advocate for 10 years in Fargo, ND helping victims of strangulation. Strangulation is intentional. Gave a client testimony.

Christal Sammons, Survivor of Domestic Violence (meter 23:50) Gave personal testimony – Att. #2

Chantelle Charging, Survivor of Domestic Violence (meter 23:50) Gave personal testimony – Att. #3

Dan Draovitch, Minot Police Chief (Retire) (meter 31:20) Gave testimony – Att. #4

Sen. Fiebiger asked if this language was the same as MN law (meter 36:04) Yes.

Shelly Carlson, ND Council on Abused Women's Service (meter 36:47) Gave testimony – Att.

#5. Also submitted testimony: **Jim Vigness**, Detective Grand Forks Police Dept. Att. #6, Sworn testimony of **Nicole Foster**, Williams Co State Attorney – Att. #7 and **Vikki Lorenz**, William Co. Victim Witness Ass. Program – Att. #8

Jon Byers, Attorney Generals Office (meter 45:05) Reviewed the previous two testimonials and why the outcomes were the way they were. Why this language is so important.

Testimony in Opposition of the Bill:

Ladd Erickson – McLean Co. States Attorney (meter 46:59) Discussed assessment of the law. Discussed several issues, from victim backing out to the testimony of the original prosecution and tend to not if they approach it with a different penalty. Sited other states use "specific crime prosecution" vs. ND's "general" crime approach. This bill will weaken our approach by; If we have the facts to charge attempted murder we want to charge attempted murder. We are creating a weaker system by making this a specific crime. It is weaker then attempted murder by being specific. Three current felonies: terrorism, reckless endangerment and aggravated assault. We do not think this is a law issue, we think it is a "fact finding" issue.

Proposed and reviewed a set of amendments (meter 51:57) Att. #9.

Cynthia Filend – Asst. Burleigh County States Attorney (meter 55:30) Been in Attorney Generals office since 1981 and sited her concerns on the problems this bill will create when you start using “specific” laws in a General Law system. She referred to the personal witness and stated that this is a “training issue” to the police departments and not a current law issue.

Sen Nething appointed **Sen. Nelson** to work with the Rand and the state attorney’s to come up with something they could hopefully agree on and meet back by next Monday.

The retired Minot Police chief spoke one last time on how the current system is not working (meter 103:19)

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2185**

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1840'

Committee Clerk Signature

Mona L. Salley

Minutes: Relating to strangulation of another person.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Nelson gave an overview her "sub-committee in the creation of her "Hog House" amendment – Att. #1 discussing what the current law of the definition of strangulation. Sen. Nelson stated that in the meeting they spoke of the problem being with the police officer and there training. The definition of strangulation should be in the aggravated assault section. (meter 2:14) Discussed if we do it the other way (in the general definitions) we would have to make 64 changes.

Sen. Nelson made the motion to Do Pass her amendment Att. #1 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Nelson made the motion to Do Pass SB 2185 as amended and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

JB
1-24-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2185

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 29 of section 12.1-01-04 of the North Dakota Century Code, relating to the definition of serious bodily injury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 29 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

29. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, ~~or a bone fracture~~, or impediment of air flow or blood flow to the brain or lungs."

Renumber accordingly

Date: 1-24-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2185

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass "Hog House" Amend. Att #1 1-24-07

Motion Made By Sen. Nelson Seconded By Sen. Fiebigler

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebigler	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2185

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

☐ Check here for Conference Committee

Legislative Council Amendment Number 78239. 0100

Action Taken Do Pass As Amended

Motion Made By Sen. Nelson Seconded By Sen. Fiebriger

[illegible]

Total Yes 6 No 8

Absent 0

Floor Assignment Sen. Nelson

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

2007 HOUSE JUDICIARY

SB 2185

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2185

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3962

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2185.

Sen. Ralph Kilzer: Sponsor of bill (see attached testimony).

Rep. Koppelman: As I read the current statute, wouldn't it be possible to prosecute strangulation under this definition, it says a serious bodily injury means bodily injury that creates a substantial risk of death. Is this something that they're not doing.

Sen. Ralph Kilzer: All strangulation does not result in death. Maybe some of you used to play those games in high school where you would actually take your arm and wrap it around someone's neck and they would actually faint or fall into unconsciousness. I don't think the intention there is to cause death, but it would cause a brief lapse of consciousness. In general, what the Adult Abused Resource Center is talking about, their intent is to do really serious bodily harm.

Rep. Koppelman: The statute now says creates a substantial risk of death, now it seems to me that leaves a little more room for evaluation of actual circumstances. The childhood game doesn't cause real risk of death and therefore wouldn't be prosecuted here, but someone attempting to kill somebody or seriously injure them, it would. Your amendment to the section here, basically says that impediment of air flow or blood flow to the brain or lungs. In the

childhood game, you shouldn't be charged with an offense like this. Is there a danger there the way it is written.

Sen. Ralph Kilzer: The idea was to bring out what strangulation really is. I don't know all the implications. But to put it in Code, that it is impeding either the carotid artery or the trachea, brings that aspect of it more to the forefront.

Rep. Koppelman: What prompted the Senate to amend the bill to this language from what you originally had. Was there discussion about that.

Sen. Ralph Kilzer: I'm not just sure why they changed it. I was not present at the discussion.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Lee Kaldor: Sponsor, I am here to add my voice of support to the bill. As was described, this was the strangulation bill. There are others who will explain what happened in the Senate, and explain the merits of the bill. When I first heard about this issue, it hadn't been something I had thought about much. In a case of domestic violence, where there is a strangulation attempted, I thought that's a pretty serious act. But I discovered from the people who are putting this forward, that law enforcement doesn't necessarily look upon that nor are they often aware of the consequences. Strangulation, apparently, can occur and death may occur much later as a result or consequence of that act. Then you don't have the nexus of the act and the result, and the consequential prosecution that needs to take place.

Chairman DeKrey: Thank you. Further testimony in support.

Randi Roerick, ND Council on Abused Women's Services, Campus Violence Prevention Program Coordinator: (see attached testimony).

Vikki Lorenz and Glen Hase (not present) but Randi presented their testimony (see attached testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Christal Sammons, victim: (see attached testimony).

Rep. Delmore: Thank you for taking the time to testify today.

Chairman DeKrey: Thank you. Further testimony in support.

Keith Witt, Deputy Chief, Bismarck Police Department: Support this bill. At the Department, we believe this is a good amendment to the definition of serious bodily injury. Our officers do commonly go to calls, certainly there are domestics but other assault cases as well, where there has been evidence or the victim says that they were choked, and of course we know that they were strangled. Quite often they don't have any significant bruising, there has been no unconsciousness. So it does give officers, based on current law, the ability to make an arrest for simple assault, sometimes there isn't sufficient evidence to show the threshold that there was an intent to commit a homicide, so generally they can only charge a simple assault. We think it is more appropriate in cases where somebody has been strangled, that they should in fact be charged with aggravated assault and modifying the definition of serious bodily injury to include that, would allow us to do that. This is a good measure.

Rep. Klemin: This is a question that some of us had about a simple assault. It seems that simple assault says bodily injury and aggravated assault says serious bodily injury. Is that correct.

Keith Witt: Yes, that is correct. The B misdemeanor assault is just bodily injury which doesn't reach the threshold of serious. It would put it into the category of a felony.

Rep. Koppelman: Mr. Williams, under the engrossed bill that we're looking at, it talks about the definition being changed to include "impediment of air flow or blood flow to the brain or lungs". I know you were here when Sen. Kilzer testified and he talked about the games kids play and I'm not advocating those games, but a strict reading would say that they're guilty of

this offense as well. How would you see, as a member of law enforcement, dealing with this if we passed it, would it just be prosecutorial discretion and not prosecuting cases that were, not as serious as what we've been hearing about.

Keith Witt, Bismarck PD: I think you're exactly right, I think it would be discretionary on two parts, first on the initial responding officers to recognize the circumstances, and obviously recognize the difference between what would truly be horseplay or kids' play, as opposed to a true situation where somebody had the intent to create serious injury. Not to say that kids would always be horseplay. There are serious fights on the playgrounds, after school or wherever it might be. I think it would be discretionary on both parts; law enforcement and prosecution.

Rep. Meyer: What is the penalty for serious bodily injury.

Keith Witt: Generally, it would be a C felony which would be a five year incarceration maximum and a monetary fine I don't know, it might be \$10,000.

Chairman DeKrey: Thank you. Further testimony in support.

John Olson, ND Peace Officers Association: Support. Our committee took a look at this bill and we do support.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Bonnie Palacek dropped off testimony on 2/28/07 {see attached testimony}).

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2185

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 4002

Committee Clerk Signature

W. Delmore

Minutes:

Chairman DeKrey: We will take a look at SB 2185.

Rep. Delmore: I move a Do Pass.

Rep. Meyer: Second.

10 YES 0 NO 4 ABSENT

DO PASS

CARRIER: Rep. Wolf

Date: 2/27/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2185

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin		
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad		
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep. Wolf

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

REPORT OF STANDING COMMITTEE

SB 2185, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2185 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2185

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

January 15, 2007

Chairman Nething and Members of the Senate Judiciary Committee:

Testimony in Support of SB 2185

Good morning, for the record my name is Randi Roerick and I am part of the ND Council on Abused Women's Services public policy team and the Campus Violence Prevention Program Coordinator. I am here today to provide information that will speak to the importance of SB 2185.

Over the past few years, the act of strangulation has come to the attention of many involved in domestic violence as a crucial area that needs to be addressed. In our own state domestic violence advocates have become increasingly concerned with the life threatening danger strangulation poses.

Strangulation is produced by a constant application of pressure to the neck or blocking the nose or mouth of a person. Although there are four types of strangulation, manual strangulation is the most frequent type seen in domestic violence incidents. The affects of non-fatal strangulation can include all of the following: parchment compression grooves from hands or ligature, petechial hemorrhages, scratch marks or abrasions, difficulty breathing, airway compromise, pneumonia, adult respiratory distress syndrome, post anoxic encephalopathy, psychosis, amnesia, cerebrovascular accident (stroke), and progressive dementia (The Journal of Emergency Medicine, 2001). Other less obvious effects include symptomatic voice changes, which may be as mild as simple hoarseness or a complete loss of voice. Many victims also report that it is difficult or painful to swallow. Difficulty in getting a breath is also common and may be secondary to underlying neck injuries. It is critical to know that breathing changes may initially appear to be mild, yet underlying injuries may kill the victim hours or days later due to decompensation of the injured structures. Involuntary urination and defecation are also common side effects. However, without a critical understanding of strangulation, law enforcement and victims themselves may not appropriately attribute these symptoms as evidence of strangulation and evidence will be lost.

It is also possible to survive a strangulation and have no immediate visible injuries, especially at the time that law enforcement first respond. This makes it more difficult for health care and law enforcement to detect findings or determine the actual severity of the attack and injuries suffered according to Dr. Peggy Goodman, Director of Violence Prevention Resources and Vice Chair of Emergency Medicine at East Carolina University. Gael Strack, an Assistant District Attorney in San Diego and a national expert on Strangulation, states that part of the problem is that perceptions and knowledge about strangulation need to be changed. For instance, how often does law enforcement, prosecutors, media, even advocates, refer to strangulation as "choking"? How often do

we "want to ring someone's neck" or say, "I could have strangled him"? We decrease the severity of the crime when we present it in such a casual light. Prosecutors need to realize what a successful investigation will look like. For instance, since victims often do not seek medical help, law enforcement needs to be trained to document strangulation injuries and encourage medical treatment, which then becomes the medical record. In addition, prosecutors need to bring medical experts into court to testify to the seriousness and potential for internal injuries as a result of strangulation.

Strangulation is a very convenient and serious form of attack. The only weapons needed are the hands and it requires very little force to compromise the blood vessels in the neck. Only eleven pounds of pressure placed upon both carotid arteries for ten seconds is necessary to cause unconsciousness. After 50 seconds of continuous oxygen deprivation the victim rarely recovers (Detecting and Investigating Strangulation Cases, 2003). Very few studies have been done to measure the prevalence of strangulation in domestic violence relationships. However, women in abusive relationships tend to experience more frequent and more severe violence the longer the abuse continues. Abusers tend to perpetrate the same type of violence over and over with ever-increasing rage and worsening injury toward the victim. The act of strangulation is a serious indicator that eventually a victim may die at the hands of their perpetrator.

Several other states across the country have already begun to recognize the importance of specific strangulation statutes including; Minnesota, Oklahoma, Idaho, Missouri, and Nebraska.

Currently, in North Dakota a non-lethal assault by strangulation is most often charged as a misdemeanor simple assault. In a perfect world we dream of a day when the only suitable charge for this crime is attempted murder. Unfortunately, we aren't there yet. We do believe very strongly however, that equating strangulation to simple assault is unacceptable. It fails to acknowledge the severity of this crime, it fails to protect victims from further violence and it binds the hands of those who are seeking to intervene in these dangerous situations. Finally, it sends a message that unless there are extreme injuries, which can be documented immediately, you aren't a victim at all.

In Grand Forks advocates use the Domestic Abuse Information Network database to collect information on domestic incident reports from the Grand Forks Police Department, the Grand Forks County Sheriff's Office and the University Police Department. Because of the growing concern and seriousness of strangulation, advocates at the Community Violence Intervention Center track all reports when there is mention of strangulation or "choking" in incident reports. In 2004, there were 40 reports collected that noted strangulation, which equated to 5% of all reports that year. In 2005 there were 34 (4%) reports that noted strangulation. In 2006, of the 32 reports noting strangulation, 15 had charges of simple assault filed and 5 cases were charged as aggravated assaults. In 3 of the 5 aggravated assault cases, law enforcement sent affidavits of probable cause to the states attorney as simple assaults, but these cases were subsequently filed or amended by the states attorney as aggravated assault charges. In Bismarck, the Abused Assault Resource Center tracks reports much like they do in Grand Forks. In 2006, there

were 58 police reports that indicated strangulation had occurred, which equated to 6% of all reports this year. Of these 58 reports one was charged as attempted murder, 11 were charged as simple assaults and in 25 cases no charges were filed at all. (The complete breakdown of Bismarck's statistics are labeled Appendix A at the end of this testimony.)

Today you will hear from an advocate, two survivors, a retired police chief and the Criminal Justice Project Coordinator at the ND Council on Abused Women's Services. Each will provide you with insight into how strangulation affects how they live their lives or do their jobs. Because while it may seem that we are immune to the effects of such severe violence unfortunately, as you will find out, we are not. At this time I will answer any questions that the committee might have. Thank you.

Randi Roerick
Campus Violence Prevention Program Coordinator/Public Policy Team
ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND
418 E. Rosser Suite #320
Bismarck, ND 58501
701-255-6240 ext. 23
rroerick@ndcaws.org

References

- Detecting and Investigating Strangulation Cases.
(<http://www.daclute.com/Resourcematerials/strangulationinvestigation.htm>), 2003.
- McCool, A. (2003). The severity of domestic violence strangulation and the need for stricter penalties for perpetrators in North Carolina.
- Strack, G.B., McClane, G. E., & Hawley, D. (2001). A review of 300 attempted strangulation cases part I: Criminal legal issues. The Journal of Emergency Medicine, 21(3), pp.303-309.
- Wilbur, L., Higley, M., Hatfield, J., Surprenant, Z., Taliaferro, E., Smith, D. J., Jr., & Paolo, A. (2001). Survey results of women who have been strangled while in an abusive relationship. The Journal of Emergency Medicine, 21(3), pp. 297-302.

APPENDIX A:

2006 Strangulation Statistics

Abused Adult Resource Center, Bismarck ND

Reports

Total number of police reports:	987
Reports indicating physical violence:	470
Reports indicating strangulation:	58
Total number of initial arrests:	21

Offenses (written by officers)

Attempted Murder:	1
Aggravated Assault:	8
Reckless Endangerment:	1
Interference with 911 call:	1
Simple Assault:	39
Criminal Mischief:	1
Domestic Dispute:	7

Charges:

Attempted Murder:	1
Aggravated Assault:	0
Simple Assault:	11
Disorderly Conduct:	1
No charges filed:	25
Report not forwarded:	10
Dismissed:	2
Pending/unknown:	8

Review:

- 6% of all police reports indicated strangulation (58/987)
- 12% of all police reports that reported physical violence also reported strangulation. (58/470)

78239.0100 This is a Mock-up; it is not an official copy

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2185

Introduced by

Senators Kilzer, Christmann

Representatives Kaldor, Weiler

A BILL for an Act to amend and reenact section 12.1-01-04 of the North Dakota Century Code, relating to the definition of "Serious Bodily Injury" ~~create and enact a new section to chapter 12.1-17 of the North Dakota~~
Century Code, relating to the prohibition of strangulation of another person; and to provide a penalty.

~~BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:~~

~~SECTION 1.~~ A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

~~Strangulation.~~

1. ~~An individual is guilty of an offense if that individual willfully impedes the normal breathing or circulation of the blood of another individual by:~~
 - a. ~~Applying pressure on the throat or neck; or~~
 - b. ~~Blocking the nose or mouth of the other individual.~~
2. ~~The offense is:~~
 - a. ~~A class C felony except as provided in subdivision b or c.~~
 - b. ~~A class B felony when the actor used or attempted to use anything but the actor's own hands.~~
 - c. ~~A class B felony when it is the actor's second or subsequent strangulation offense.~~

Amend
1-24-07
Att #1

Chairperson Nething and Members of the Senate Judiciary Committee

Re: Testimony in Support of SB 2185

Date: Monday, January 15, 2007

Good Morning Chairperson Nething and members of the Senate Judiciary Committee:

My name is Christal Sammons and I am here to testify in support of SB 2185 because I am a survivor of Domestic Violence.

Domestic violence is intentional or reckless causing or attempting to cause bodily injury to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury to himself or herself or another. The FBI indicates that 20% of all homicides occurred during domestic disturbances and that police had previously been called at least once to 85% of the victims homes. I believe that Senate Bill 2185 can help change this horrible fact and in doing so give victims some of their dignity back along with peace of mind knowing that the attacker won't be out in just 30 days with a slap on the wrist but do some real time for what they have done.

While researching the law for today, I looked at the Assault laws in North Dakota. It scared me because everything listed in there had been done to me. The person who abused me kept escalating the violence he did to me.

On May 18th 2006 at 9:00 p.m. I was attacked by a man who I had tried repeatedly to break off a relationship with. He didn't care that I had a restraining order against him. He came to my home and wanted to talk. I agreed thinking it would hopefully be the end of it and I could get on with my life. We started to argue and he shoved me, as he did so I reached for my cell phone and told him I was calling the police. He took my cell phone from me and threw it across the room. I turned around to bend over to pick up my phone to put it back together so that I could call the cops. He grabbed me from behind; he put his arms around my neck and began to shake back and forth as he shoved me to the ground. No matter how much I tugged at his arms, he just kept squeezing harder and harder. He kept telling me that he was going to kill me to make me pay for what I had done. I had ruined his life so he was going to take mine. I tried pleading with him as I gasped for air, it did no good. Things got blurry, I involuntarily wet my pants and things went black. The last thought in my mind was not being able to tell my kids goodbye or see them grow old. I don't know how much time went by, I started to wake up and he would be there standing over me tossing things at me as I tried to get up, busting house plants, lamps etc. over my head. I would try to stand up and he would start strangling me again and again with his knees in my back as he pulled and twisted on my neck. I tried grabbing him between the legs, biting his arms and he still wouldn't stop until I stopped breathing. This went on a total of 3 times that night before I was able to try and escape out of my own house. When I did get outside and locked myself in my car, he broke the window and tried pulling me out to finish the job.

I crawled out the other side and ran to the neighbors in my skirt and bra all bloody and bruised and called the police. The police came as quickly as they could but it didn't stop him from trashing my house. I know that he is in jail, but it doesn't stop the nightmares or the flashbacks. The other day a dog jumped on my car window and I screamed and started crying, I thought it was him again.

The man that attacked me was convicted of attempted murder, criminal mischief, interfering with a 911 phone call and violation of a disorderly conduct restraining order. Judge Wefald denied the plea agreement made by a Burleigh County Assistant State's Attorney and instead sentenced him to 23 years with 5 suspended.

One goes through life thinking that this will never happen to them. I find the statistics of Domestic Violence very alarming and the punishment for these crimes not more than just a slap on the wrist. Pass Senate Bill 2185 and make them pay for what they have done. Give victims in North Dakota some justice.

AH #3
1-15-07

HELLO MY NAME IS CHANTELE CHARGING I AM 26 YEARS OLD I AM A SINGLE MOTHER OF THREE CHILDREN TWO SONS 3YRS OF AGE AND 4YRS OF AGE AND ONE DAUGHTER 11 MONTHS OF AGE. I AM ALSO A SURVIVOR OF DOMESTIC VIOLENCE. I AM HERE BEFORE YOU TODAY TO SHARE SOME OF MY STORY WITH YOU AND TO EXPRESS HOW TRULY IMPORTANT IT IS TO HAVE A BILL RELATING TO "THE PROHIBITION OF STRANGULATION OF ANOTHER PERSON; AND TO PROVIDE A PENALTY."

IVE DEALT WITH DOMESTIC VIOLENCE IN MY LIFE FOR THE LAST SIX YEARS SOME OF THESE INCIDENTS HAVE BEEN LIFE THREATNING AND HAVING A BILL LIKE THIS COULD OF TRULLY CHANGED WHAT HAD HAPPENED TO MY ABUSER AND MAYBE FOR ONE TIME I COULD OF FELT LIKE I WAS GIVEN JUSTICE IN THE FACT THAT IT IS NOT OK TO SRANGLE SOMEONE AND TODAY BY BEING BEFORE YOU IM SPEAKING FOR ALL THOSE WHO HAVE BEEN THROUGH WHAT I HAVE BUT DID NOT SURVIVE OR ARE TO SCARED TO COME FORWARD AND ALSO FOR ALL OF THE CHILDREN OF DOMESTIC VIOLENCE.

IN MY RELATIONSHIP WITH MY ABUSER STRANGULATION WAS SOMETHING THAT HAPPENED ALOT BUT TODAY I WILL TELL YOU ABOUT ONE SITUATION THAT CHANGED MY LIFE DRAMATICALLY AND ALMOST KILLED ME AND MY YOUNGEST SON AND ALSO WOULD OF RESULTED IN MY OLDEST SON NOT HAVING A MOTHER. IN 2003 I WAS 3 MONTHS ALONG WITH MY YOUNGEST SON AND AT HOME BY MYSELF WITH MY OLDEST SON COOKING SUPPER AND

WAITING FOR MY HUSBAND TO COME HOME FROM WORK. I WAS ALREADY FEELING STRESSED OUT BEFORE HE GOT HOME BECAUSE HE HAD CALLED HOME EARLIER DURING THE DAY TO HOLLER AT ME BECAUSE SOMETHING HAD HAPPENED TO HIM AT WORK AND HE CHOOSE TO TAKE HIS ANGER OUT ON ME EVEN THOUGH THE SITUATION HAD NOTHING TO DO WITH ME. I REMEMBER THINKING GOD I HOPE HES IN A GOOD MOOD WHEN HE GETS HOME BUT I ALSO REMEMBER THINKING JUST IN CASE HES NOT I NEED TO HAVE A PLAN SO I CALLED MY IN-LAWS TO SEE IF THEY COULD GET MY OLDEST SON FOR THE NIGHT. THEY SAID THEY COULD BUT IT WOULD BE IN AN HOUR WHICH WAS FINE BECAUSE WOULDN'T BE HOME BY THEN AND THAT WOULD GIVE THEM TIME TO COME GET MY SON. LITTLE DID I KNOW THAT WHEN I CALLED MY IN LAWS MY ABUSER WAS ALREADY ON HIS WAY HOME BECAUSE HE GOT SENT HOME EARLY IT STARTED AS SOON AS HE WALKED THROUGH THE DOOR. THE FIRST THING HE HIT ME FOR WAS NOT HAVING SUPPER DONE. THEN HE HIT ME FOR HAVING MY SON IN MY ARMS WHEN HE HIT ME AND AGAIN HE HIT ME AND IT WAS HARD ENOUGH TO MAKE ME FALL BACKWARDS AND MY SON FEEL WITH ME MY HUSBAND CAME UP TO ME IN ALL THIS AND KICKED MY SON OUT OF HIS WAY PINNED ME DOWN SO THAT I COULDN'T MOVE MY ARMS AND STARTED TO STRANGLE ME I REMEMBER HEARING MY SON CRYING HE WAS ONLY A BABY AND MY HUSBAND SAYING STOP FIGHTING IT WILL ONLY TAKE A MINUTE AND THEN ITS DONE AND WHEN I DIDN'T QUIT KICKING

MY LEGS HE LET GO OF MY NECK AND PUNCHED ME IN MY FACE AND THEN TRIED PUTTING A LOT OF PRESSURE ON MY TEMPLES WITH HIS THUMBS THEN HE STARTED TO STRANGLE ME AGAIN THIS TIME HE DIDN'T LET GO I REMEMEBER WHILE HE WAS STRANGLING ME HE KEPT TELLING ME TO SAY I LOVED HIM BUT EVERY TIME I TRIED TO I COULDN'T SAY ANYTHING I COULDN'T BREATH OR NOTHING AND USAULLY ALL THE OTHER TIMES I COULD KINDA BREATH A TINY BIT BUT THIS TIME I COULDN'T I COULDN'T EVEN MOVE MY TOUNGUE. I REMEMBER TRYING TO GET OUT OF HIS HOLD BUT I COULDN'T ALL I COULD REMEMBER THINKING ABOUT WAS HES GONNA KILL ME AND TO TRY MY BEST NOT TO PASS OUT THIS TIME. I REMEMBER HEARING MY SON CRY AND MY HUSBAND YELLING AND THEN I PASSED OUT I DON'T REMEMBER PASSING OUT I REMEMBER COMING TO BECAUSE MY HUSBAND WAS GIVING ME MOUTH TO MOUTH. I GUESS I HAD QUIT BREATHING AND HE THOUGHT HE WAS A HERO BECAUSE HE STARTED UP MY BREATHINH FOR ME AGAIN. I REMEMBER AFTER I CAME TO I FELT REALLY DISORIENTED AND MY HEAD EYES AND NECK HURT HORRIBLY. I REMEMBER MY ABUSER TAKING ME TO THE BEDROOM TO SIT ON THE BED TO COMPOSE MYSELF AFTER WHAT HE HAD JUST DONE IT TOOK ME ABOUT A HALF HOUR TO NOT FEEL DIZZY BUT I COULDN'T TALK I SAT AND THOUGHT OF A WAY TO GO TO THE POLICE TO REPORT WHAT HAD HAPPENED SINCE HE WOULDN'T DREAM OF LETTING ME NEAR THE PHONE AFTER THAT SO I TOLD HIM I NEEDED A FEW THINGS FOR DINNER

HE SAID IT WAS OK TO GO IN THE CAR AND TAKE OUR SON WITH ME HE NEEDED A BRAKE FROM US I GOT UP TO GO AND REALIZED I HAD WET MY PANTS I THINK IT HAPPENED WHEN I PASSED OUT IM NOT SURE BUT I CHANGED MY PANTS AND GOT MY SON AND MY PURSE AND HAD NO INTENSIONS OF GOING TO THE STORE I DROVE ABOUT A MILE PARKED MY CAR AND SAT THERE AND CRIED WHILE I HELD MY SON AND HOPED AT THE SAME TIME THAT MY UNBORN CHILD WAS OK. I THEN LAYED MY SON BACK IN HIS CAR SEAT AND DROVE TO THE POLICE DEPARTMENT. AS SOON AS I WALKED THROUGH THE DOOR OF THE POLICE DEPARTMENT AND SEEN AN OFFICER I CHICKNED OUT I THOUGHT ILL GO HOME AND EVERYTHING WILL BE OK MY HUSBAND STILL LOVES ME BUT THE OFFICER STOPPED ME HE SAID WHAT HAPPENED TO YOU. I STARTED CRYING AND WROTE DOWN WHAT HAPPENED CAUSE I COULDN'T TALK HE HAD TO TAKE THE PICTURES OF MY NECK BECAUSE THE FEMALE OFFICER WHO WAS TAKING MY PICTURES STARTED TO CRY WHILE SHE TOOK MY PHOTOS. I HAD BRUISES ON MY NECK IN ALMOST THE SHAPE OF MY HUSBANDS HANDS AROUND MY NECK AND A BLACK EYE AND THE WHITES OF ^{My} RIGHT EYES ^{was} ~~WHERE~~ BLOODSHOT AND THE WHITE OF MY LEFT EYE WAS BLOODY LOOKING. I ALSO HAD BRUISES ON MY TEMPLES AND ARMS. THEY LATER ARRESTED HIM HE GOT CHARGED WITH DOMESTIC VIOLENCE SIMPLE ASSUALT AND GOT SENTENCED TO 5 DAYS WITH CREDIT FOR TIME SERVED AND TO ATTEND ANGER MANAGEMENT AND DRUG AND ALCOHOL TREATMENT EVEN

THOUGH HE WAS SOBER WHEN HE DID THAT. BUT BECAUSE OF THIS INCIDENT MY LIFE WAS AFFECTED PROFOUNDLY IM SCARED TO SLEEP AT NIGHT BECAUSE I DREAM ABOUT THAT AND OTHER INCIDENTS WITH MY ABUSER. I SOMETIMES LOOK AT MY SONS AND THINK WHAT IF I DIDN'T MAKE IT THAT TIME. IT AFFECTED ME IN WAYS YOU COULDN'T EVEN IMAGINE. ALL I CAN SAY IS THIS.... THAT DAY I ALMOST DIED BECAUSE MY ABUSER THOUGHT IT WAS OK TO PUT MY LIFE IN HIS HANDS LITERALLY WHEN HE PUT HIS HANDS ON MY THROAT IN AN EFFORT TO STOP MY BREATHING. I NEVER FELT SO HELPLESS AND SMALL AND PETRIFIED IN ALL MY LIFE AND I WOULD NEVER WISH THAT HORRIBLE FEELING ON ANYBODY. SO TODAY I AM ASKING YOU TO PASS THIS BILL NOT FOR ME OR THE PEOPLE WHO LOST THE FIGHT TO DOMESTIC VIOLENCE BUT ^{also} FOR THOSE WHO MAY GO THROUGH WHAT I DID AND IN AN EFFORT TO ENFORCE THIS ONE BILL STATING THAT IT IS NOT RIGHT TO STRANGLE ANYONE MAN WOMEN OR CHILD AND THAT THE MOMENT YOU DECIDE TO PUT YOUR HANDS ON ANYONE IN THAT MANNER YOU WILL BE CHARGED WITH A FELONY AND YOU WILL BE INCARCERATED. THANKYOU FOR LISTENING AND IF THIS BILL IS PASSED THANK YOU THEN FOR SPEAKING FOR THOSE WHO COULDN'T AND FOR GIVING ME BACK THE POWER I LOST THE DAY THAT HAPPENED TO ME.

CHANTELLE CHARGING

Monday, January 15, 2007

AA # 4

1-15-07

To: Senator Nething and Members of this Legislative Committee

From: Dan Draovitch, Minot Police Chief (Retired)

Re: Strangulation Law

As I'm sure you're well aware, choking or any loss of air is terrifying and certainly can be fatal. I've been there to see the breath of life both leave a person or be restored. It's a joy to see a child or adult to begin breathing again after losing consciousness and I've seen the sheer terror in the eyes of someone choking or not being able to breath because of choking or a collapsed or restricted windpipe. It has to be one of the worst ways to lose your life or even endure this type of trauma.

Keeping this in mind and as I've come to you so many times, in my 38 years of Law Enforcement, to ask for the tools only you can provide us to impact crime such as these. Strangulation is a frequent method of breaking the law, by instilling great fear and affecting death especially in cases of Domestic Violence. We can clearly attribute about 60% of all of our murders (ND) directly to domestic violence. We need another tool..Not just a generic tool as some may propose but a specific tool to raise strangulation to a felony under our state statutes.

As a veteran police officer and now as a retired Minot Police Chief, I know how important it is to be specific and not expect law enforcement to try to "dig a definition out" of a law which does not spell out important elements such as strangulation. If it did, that tool would be used to more thoroughly investigate a domestic violence case adding another avenue for law enforcement to investigate and properly conclude such a case in a complete and thorough manner. Strangulation is very often a part of domestic violence, yet a part without clear definition.

Our Minnesota counterparts find their felony strangulation law very helpful as bruises or other marks on the face or neck can add evidence to a fair and thorough investigation. Red marks, swelling, raspy voice, difficult swallowing can now (in MN) enter into the formula to meet the probable cause element to affect the arrest. Often, for no more reason than it's not properly spelled out. It is often overlooked or not thoroughly investigated.

We need that specificity!!! We need to save lives! To do that we need to be very clear-not buried in non specific language which may or may not help the officer on the street make an arrest and put a person who would take away this last gasp of air from a victim can make the difference between life or death. Can you feel (with me) the terror of not being able to breathe, yet finding it is not clearly nor even a footnote in our current aggravated assault statute. Please, on behalf of our Law Enforcement folks who want to do a good job and especially for our victims who only want to continue to breathe, please modify this law to specifically add Strangulation, and strengthen our laws and give us a well defined law to better protect the victims of Domestic Violence and aggravated assault. This change only makes sense.

AH #5 1-15-07

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson Nething and Members of the Senate Judiciary Committee

Re: Testimony in support of an SB 2185

Date: Monday, January 15, 2007

For the record, my name is Shelly Carlson and I am the Criminal Justice Project Coordinator at the ND Council on Abused Women's Services, hereinafter referred to as CAWS. I am here to provide testimony in support SB 2185.

For 12 years prior to my current position at CAWS, I worked with domestic violence victims in victim/witness roles, as a domestic violence program advocate, and as a legal advocate. During the last 2 ½ years at CAWS, I have worked with ND law enforcement to develop a model domestic violence policy for law enforcement in North Dakota and have provided technical assistance in 12 locations throughout the state to aid law enforcement agencies in adapting the model policy to meet the individual needs of their communities. I also conduct trainings across the nation for the Federal Law Enforcement Training Center on the subject of domestic violence and have recently been recruited to conduct similar trainings for the National Sheriff's Association.

Based on my experience assisting domestic violence victims in ND added to the knowledge I have gained over the past 2 ½ years specifically working with ND law enforcement, I strongly believe strangulation statute would be a tremendous tool for ND criminal justice personnel seeking to combat domestic violence in our state.

You have heard statistics today that provide insight into the fact the potentially fatal crime of strangulation is not taken seriously in ND and that strangulation is a control tactic used much more frequently than any of us could have imagined. More often than not, it is charged out as a misdemeanor. This needs to change and this bill would do just that.

At this point I would also like to present written testimony from Grand Forks Detective Jim Vigness. Detective Vigness also explains how potentially lethal strangulation can be and urges you to support this bill. Detective Vigness concurs that it takes only 11 pounds of pressure for 10 seconds to render an individual unconscious. Detective Vigness supports this bill and believes it will lead officers to recognize the potentially lethal crime.

As previously stated in Ms. Roerick's testimony, there are several other states that have a strangulation statute. In order to prepare for this testimony today, I sought information from Moorhead MN law enforcement to ascertain what, if anything, had changed with their law enforcement domestic violence investigations and collection of evidence since the MN strangulation law was put into effect. Please note I sought information from this particular community due its close proximity to ND.

I spoke with two patrol lieutenants who both stated unequivocally that they had observed a difference in the procedures utilized by their patrol officers. Both stated officers now ask very specific questions to ascertain if strangulation has occurred, and if the victim states it has, officers then conduct a series of questions to gather more evidence. The lieutenants stated the felony level MN strangulation law sent a message that law enforcement officers have the responsibility to take these crimes seriously and investigate thoroughly. Both stated that when there was not a specific law, officers did not place much emphasis on the crime. In reviewing reports, the lieutenants observe officers taking more pictures, and documenting more general observations that speak to the crime of strangulation such as observing the victim has a raspy voice, difficulty breathing and swallowing, and has red marks about the neck. Officers also take recorded statements from the victim at the scene to utilize later if the victim recants.

Similar to the research I conducted with MN law enforcement, I also contacted the prosecutor in Moorhead MN – Pam Harris - who has successfully prosecuted and

convicted individuals on the MN strangulation charge. I specifically asked what type of information she receives from law enforcement that enables her achieve strangulation convictions. She stated that in approx. ½ of her cases the officers take pictures of red marks on the victim's neck. The officers also describe in their written reports when they observe the victim is having difficulty swallowing, breathing, and/or drinking, a raspy voice, and whether they see scratches on the suspect. She stated that officer's tape recorded statement from the victim which she utilizes if the victim recants. Additionally, she stated many times the suspect has a prior history of domestic violence to provide credibility to the victim's statement.

At this time, I would also like to provide written testimony from one of North Dakota's states attorneys who supports this bill - Williams County States Attorney Nicole Foster. States Attorney Foster believes that law enforcement, when properly trained in strangulation investigations, would be able to corroborate the testimony of a victim who discloses strangulation. She also believes, in those situations where there are few or no marks and an uncooperative victim, she still would be able to achieve conviction based on the investigative skill of the law enforcement officers in Williams County.

Lastly, I would like to submit written testimony from Victim/Witness Program Coordinator Vikki Lorenz who has worked with domestic violence victims for 21 years and testimony from the Williams County. She also strongly supports SB 2185 and describes the difficulty of explaining to a victim that a life threatening incident is most often, currently only charged as a misdemeanor crime.

This bill is needed in ND to assist law enforcement and prosecutors in taking a strong stance on this under investigated, potentially lethal crime. It would send a strong message to domestic violence perpetrators, criminal justice personnel and medical practitioners that this form of assault will be taken seriously and met with serious consequences.

As it stands now, ND law allows a domestic violence offender to come within seconds of strangling their victim to death and get by with a slap on the wrist. Essentially, in our state we are saying "Lucky you. She lived. You're going to get by real easy, even though everything we know suggests next time, you may kill her."

We have heard recently that there may be questions about the placement of such a law in the Century Code. Prior to preparing this bill draft we were able to discuss it with the CAWS Grants to Encourage Arrest statewide advisory committee which includes 20 law enforcement, 5 prosecutors, 2 judges, 8 advocates, and 2 dispatchers and they approved this bill draft. However, as long as the elements of strangulation are specified, there is a felony level penalty, and the actual word "strangulation" appears in statute, we believe it would serve the needs of victims across the state. We do feel strongly the many victims of this insidious crime need law enforcement and prosecution to have this tool in order to facilitate justice. And the time to do it is now.

Thank you.

Sincerely,


Shelly Carlson



AA #6 1-15-07

POLICE DEPARTMENT

122 South Fifth Street • P.O. Box 5548 • Grand Forks, ND 58206-5548

John D. Packett
Chief of Police

Phone: (701) 787-8000
Fax: (701) 780-8253

January 14, 2007

Chairman Nething and Members of the Senate Judiciary Committee,

Hello, my name is Jim Vigness and I am a detective with the Grand Forks Police Department. I've been an officer for over 20 years and have been investigating domestic violence crimes for the last 8 years.

I am in support of addressing the issue of strangulation in North Dakota State Law. Strangulation is being recognized around the country as one of the most lethal forms of domestic violence. Many states have enacted laws making strangulation a felony.

How lethal is strangulation? 11 pounds of pressure placed on both carotid arteries for 10 seconds will cause unconsciousness. By comparison, it takes only 8 pounds of pressure to pull the trigger of a gun. Strangulation can cause irreversible brain damage, miscarriages, and of course death. Death has occurred in victims up to 36 hours after being strangled. Dr. Dean Hawley, a professor at Indiana University School of Medicine says that if an attacker squeezes hard enough, death can occur within 15 seconds. Dr. Hawley also states that it is easier to explain why somebody died from strangulation than it is to explain how they survived.

How common is strangulation? Jacqueline Campbell, of John's Hopkins conducted a study of intimate partner violence in 12 cities in 2002. She found that between 10 and 44% of battered women reported having been strangled by a current or former partner.

Strangulation is a very powerful type of assault and tactic that batterers use. They are able to look their victim in the eyes as they are strangling them. The message being sent, whether spoken or not, is that they have the power over whether they live or die.

By adding strangulation to state law, North Dakota's police officers, prosecutors, and courts will be able to better recognize and combat this very lethal form of violence.

I strongly urge you to consider this issue.

Thank you very much for your attention to my testimony.

Sincerely submitted,


Jim Vigness - Detective
Grand Forks Police Department

Att #7
1-15-07SWORN TESTIMONY OF NICOLE E. FOSTER.
WILLIAMS COUNTY STATE'S ATTORNEY
IN SUPPORT OF STRANGULATION LAWState of North Dakota }
 }ss
County of Williams }

Nicole E. Foster, being first duly sworn, does depose and say: That she is a citizen of the United States, over the age of eighteen years:

I am the Williams County State's Attorney. I have held this position since July 2003. Through the course of my duties, I have seen many incidents of domestic violence. I have witnessed the effects on the victim, the defendant, and the children that are often involved in these violent households. I offer my testimony in support of SB 2185.

Strangulation is a serious offense. It is not a crime to be taken lightly. It is not a crime to be charged as a misdemeanor. I was recently at a conference entitled "National Institute on the Prosecution of Domestic Violence" in Charleston, South Carolina. At the conference, a forensic nurse examiner explained the evidence of strangulation that law enforcement can gather, and how quickly someone could be murdered in this manner. Some of the evidence to look for includes red marks on the victim's neck, the victim experiencing difficulty swallowing, the victim's voice becoming raspy, blood vessels bursting in the white areas of the eyes and pain within the victim's neck area. The nurse examiner explained that with the right amount of pressure, a victim could be unconscious in 7 seconds and dead in 90 seconds. The nurse examiner explained the total feeling of helplessness and panic that a victim feels when being strangled by her/his partner. A feeling, that luckily, most of us will never have to experience.

In my position I have seen offenders who are charged with misdemeanor simple assault over and over again, where often times, the police reports will reflect such language as "he choked me, he strangled me." When these


offenses are charged as misdemeanor simple assault crimes, the prosecutors are confined to sentences within the misdemeanor perimeters. I believe that these crimes of strangulation are often charged as misdemeanor simple assault, because typically a victim will not be rendered unconscious. Typically a perpetrator uses strangulation as a method of control, sending a message to the victim that the perpetrator can kill the victim at any time, if the victim does not obey the perpetrator.

While anger management, counseling, domestic violence mens group, chemical evaluations, and no contact orders can be made part of sentences, when the offense is a misdemeanor, there are not heavy consequences for failure to follow through with treatment, as there would be if the offense was a felony, as it should be classified.

If this crime was properly classified as a felony law enforcement could be and would be properly trained to gather evidence to support a conviction even with a recanting victim. I would make it my personal mission to see that law enforcement across the state received the necessary training to collect pictures, statements, and history from the victim to support the prosecution of this offense.

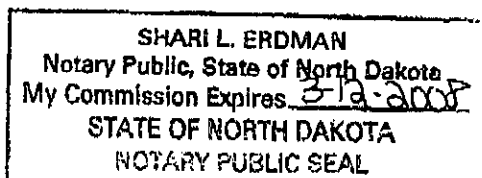
North Dakota needs to be a proactive state. In North Dakota, our incidents of domestic violence are astonishing for such a small state. By giving this bill a do pass recommendation, you are sending a message to victims, defendants, law enforcement, prosecutors, judges, and the general public. The message that you care about what happens to victims and that officials within the judicial system should view this crime as the serious violation that it is.

Dated this 15 day of January, 2007.


Nicole E. Foster

Subscribed and sworn to before me this 15 day of January, 2007.


Notary Public



HH #8 1-15-07
WILLIAMS COUNTY STATE'S ATTORNEY

Nicole E. Foster

STATE'S ATTORNEY

Shari L. Erdman

PARALEGAL

Marlyce Wilder

ASSISTANT STATE'S ATTORNEY

Vikki Lorenz

VICTIM/WITNESS COORDINATOR

Chairperson Nething and Members of the Senate Judiciary Committee

RE: Testimony in support of SB 2185

Date: Monday, January 15, 2007

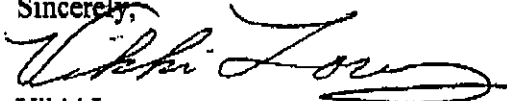
My name is Vikki Lorenz. I am the director of the Williams County Victim Witness Assistance Program a position I have held for 21 years. I am giving this testimony to support a criminal offense of Strangulation.

While I don't have an exact number of cases that could have benefited from such an offense, I do have stories of victims who were strangled to the point of being "passed out". I can tell you stories of victims who felt like they were going to die from the pressure around their neck. I can also tell you how hard it is to explain to a victim of strangulation that the person who about ended their life could only be charged with a "simple assault" because the victim only had a red mark on their neck and no other visible injury. Imagine having to explain to this person that the maximum penalty for this offense is only 30 days in jail. Does that seem like the punishment fits the crime? It has never made sense to me and I would guess it doesn't to you either.

Strangulation can end a life immediately or slowly over a period of weeks due to the lack of oxygen to the brain or from suffocation from swelling of the trachea. I urge you and members of your committee to support this bill or other legislation that recognizes the seriousness of such an offense.

Thank you

Sincerely,



Vikki Lorenz

Williams County Victim Witness Assistance Program

PO Box 2047

Williston, ND 58802-2047

PROPOSED AMENDMENTS TO SB2185

1. Retitle the Act to amend and reenact N.D.C.C. §12.1-01-04(29)
2. Delete lines 7 through 17.
3. On line 7 insert:

29. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, or a bone fracture, or impediment of air or blood flow to the brain.

To the Judicial Committee,

My name is Glen Hase. I am the Criminal Justice Advocate for the Rape & Abuse Crisis Center of Fargo. I have worked there for the past eleven years. It is an honor to speak to this Committee. When asked to speak to this Committee regarding the Strangulation Bill the question that came to mind was what is the difference between Strangulation and Choking? I would have to say Strangulation is intentional and Choking is accidental.

A few stories did come to mind when thinking of this bill that I would like to share with you today.

Connie

The last thing Connie remembers of her attack by her ex-husband was how he used his knee to put pressure on her throat until she blacked out.
Connie never called the police

Molly

Molly was shaking uncontrollably when police arrived at her apartment. She had nasty red scratches and finger marks were visible on her neck and throat. Molly told the police that her boyfriend became enraged grabbed her around the neck and strangled her to the point where she blacked out. When she regained consciousness he was dumping garbage on her and threatening her. Molly managed to run out of the apartment and scream for help.

The Abuser was later charged with Simple Assault, a B misdemeanor, that was later amended to Disorderly Conduct.

Sarah

Sarah was home with her two small children when her boyfriend came home looking for money. An argument was soon underway. Sarah reported that the last thing she could remember was her abuser putting his hands around her neck and lifting her off the ground. Sarah awoke to her abuser kicking her and laughing at her for wetting her pants. The Abuser was charged with Simple Assault, a B misdemeanor.

These women were lucky to survive! A person being strangled can lose consciousness in just seconds and die in just minutes.

In domestic assault situations, strangulation is one of the most effective ways an abuser can exercise power and control over his victim. A person who has his hands around a victim's neck is looking straight into her eyes and watching her come within a hair of dying.

A felony strangulation law will help us to save lives by intervening in some of the most abusive, violent relationships and seeking tough consequences for the offenders.

This change also will encourage the criminal justice system to pay more attention to strangulation in domestic assault cases.

Historically the fact that a domestic abuser strangled his victim might not even be mentioned in a police report or included in a charging document.

Evidence of Strangulation just hasn't been necessary to prove a misdemeanor case. As a result we haven't even asked victims the right questions. And so we've missed the telltale warnings signs for future homicides.

The proposed law would send a message to everyone in the criminal justice system

"Wait a minute!

This isn't a misdemeanor it's a case that deserves further investigation

We need to ask more **QUESTIONS!"**

The lethality is being over looked! The right questions are not being asked!

As it stands now our laws allow a domestic abuser to come within seconds of strangling someone to death and get by with a slap on the wrist.

Essentially, we're saying, "Lucky you, she lived. Even though everything we know suggests you may kill her the next time!"

NORTH DAKOTA CENTURY CODE

TITLE 12.1. CRIMINAL CODE

CHAPTER 12.1-01. APPLICATION - PURPOSES - PROOF - DEFINITIONS.

12.1-01-04 General definitions..

As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
9. Repealed by S.L. 1975, ch. 116, § 33.

10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

11. "Force" means physical action.

12. "Government" means:

a. The government of this state or any political subdivision of this state;

b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;

c. Any corporation or other entity established by law to carry on any governmental function; and

d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.

14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.

15. "Included offense" means an offense:

a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;

b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or

c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.

17. "Law enforcement officer" or "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 or prosecutions for violations of law.

18. "Local" means of or pertaining to any political subdivision of the state.

19. Repealed by S.L. 1975, ch. 116, § 33.

20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.

21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.

22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

23. "Omission" means a failure to act.

24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.

25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

26. "Property" includes both real and personal property.

27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.

28. "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

29. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, or a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

30. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

31. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

32. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

33. "Writing" includes printing, typewriting, and copying.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

SB 2185
For House Judiciary Committee
Senator Kilzer
February 27, 2007

Good Morning Chairman DeKrey and members of the House Judiciary Committee. For the record I am Ralph Kilzer, state senator from District 47 in Bismarck. I'm happy to be the sponsor and speak in favor of SB 2185, which is known as the strangulation bill.

I submitted this bill through the request of the Abused Adult Resource Center in Bismarck. They presented the problem to me in the way that strangulation was only being charged as a misdemeanor. The original version of the bill would have made strangulation a Class C felony and of course increased the possible sentence for people who were convicted of this crime.

As you can see on the present bill before you, the bill has been hog-housed by the Senate and now it comes under the 'serious bodily injury' area of the Century Code. I agree with this new category of strangulation. It just seems to me that someone who is the victim of strangulation to the point of threatening their life by causing an impediment of airflow and/or blood flow to the brain or lungs with the resulting unconsciousness and death needs to be charged with something more serious than simple assault. I'm not sure of the level of the crime; whether it's a Class C felony or not is important. At any rate, I would urge that you support the idea of categorizing strangulation as being something more serious than a misdemeanor. I urge you to support and pass the bill. Thank you.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

February 27, 2007

Chairman DeKrey and Members of the House Judiciary Committee:

Testimony in Support of SB 2185

Good morning, for the record my name is Randi Roerick and I am part of the ND Council on Abused Women's Services public policy team and the Campus Violence Prevention Program Coordinator. I am here today to provide information that will speak to the importance of SB 2185.

This bill has undergone considerable change since its first draft. We first proposed adding an entirely new, entirely separate chapter in the century code which would define strangulation and classify it as a felony. After consultation with the Attorney General's office as well as the State's Attorney's Association the compromise that emerged was to define strangulation within the definition of serious bodily injury. We believe this greater application will provide prosecutors with more tools to prosecute a variety of offenses, a spring board to train law enforcement and the ability for victims of strangulation to see justice.

Over the past few years, the act of strangulation has come to the attention of many involved in domestic violence as a crucial area that needs to be addressed. In our own state domestic violence advocates have become increasingly concerned with the life threatening danger strangulation poses.

Strangulation is produced by a constant application of pressure to the neck or blocking the nose or mouth of a person. Although there are four types of strangulation, manual strangulation is the most frequent type seen in domestic violence incidents. The affects of non-fatal strangulation can include all of the following: parchment compression grooves from hands or ligature, petechial hemorrhages, scratch marks or abrasions, difficulty breathing, airway compromise, pneumonia, adult respiratory distress syndrome, post anoxic encephalopathy, psychosis, amnesia, cerebrovascular accident (stroke), and progressive dementia (The Journal of Emergency Medicine, 2001). Other less obvious effects include symptomatic voice changes, which may be as mild as simple hoarseness or a complete loss of voice. Many victims also report that it is difficult or painful to swallow. Difficulty in getting a breath is also common and may be secondary to underlying neck injuries. It is critical to know that breathing changes may initially appear to be mild, yet underlying injuries may kill the victim hours or days later due to decompensation of the injured structures. Involuntary urination and defecation are also common side effects. However, without a critical understanding of strangulation, law enforcement and victims themselves may not appropriately attribute these symptoms as evidence of strangulation and evidence will be lost.

It is also possible to survive a strangulation and have no immediate visible injuries, especially at the time that law enforcement first respond. This makes it more difficult for health care and law enforcement to detect findings or determine the actual severity of the attack and injuries suffered according to Dr. Peggy Goodman, Director of Violence Prevention Resources and Vice Chair of Emergency Medicine at East Carolina University. Gael Strack, an Assistant District Attorney in San Diego and a national expert on Strangulation, states that part of the problem is that perceptions and knowledge about strangulation need to be changed. For instance, how often does law enforcement, prosecutors, media, even advocates, refer to strangulation as "choking"? How often do we "want to ring someone's neck" or say, "I could have strangled him"? We decrease the severity of the crime when we present it in such a casual light. Prosecutors need to realize what a successful investigation will look like. For instance, since victims often do not seek medical help, law enforcement needs to be trained to document strangulation injuries and encourage medical treatment, which then becomes the medical record. In addition, prosecutors need to bring medical experts into court to testify to the seriousness and potential for internal injuries as a result of strangulation.

Strangulation is a very convenient and serious form of attack. The only weapons needed are the hands and it requires very little force to compromise the blood vessels in the neck. Only eleven pounds of pressure placed upon both carotid arteries for ten seconds is necessary to cause unconsciousness. After 50 seconds of continuous oxygen deprivation the victim rarely recovers (Detecting and Investigating Strangulation Cases, 2003). Very few studies have been done to measure the prevalence of strangulation in domestic violence relationships. However, women in abusive relationships tend to experience more frequent and more severe violence the longer the abuse continues. Abusers tend to perpetrate the same type of violence over and over with ever-increasing rage and worsening injury toward the victim. The act of strangulation is a serious indicator that eventually a victim may die at the hands of their perpetrator.

Currently, in North Dakota a non-lethal assault by strangulation is most often charged as a misdemeanor simple assault. In a perfect world we dream of a day when the only suitable charge for this crime is attempted murder. Unfortunately, we aren't there yet. We do believe very strongly however, that equating strangulation to simple assault is unacceptable. It fails to acknowledge the severity of this crime, it fails to protect victims from further violence and it binds the hands of those who are seeking to intervene in these dangerous situations. Finally, it sends a message that unless there are extreme injuries, which can be documented immediately, you aren't a victim at all.

In Grand Forks advocates use the Domestic Abuse Information Network database to collect information on domestic incident reports from the Grand Forks Police Department, the Grand Forks County Sheriff's Office and the University Police Department. Because of the growing concern and seriousness of strangulation, advocates at the Community Violence Intervention Center track all reports when there is mention of strangulation or "choking" in incident reports. In 2004, there were 40 reports collected that noted strangulation, which equated to 5% of all reports that year. In 2005 there were 34 (4%) reports that noted strangulation. In 2006, of the 32 reports noting strangulation,

15 had charges of simple assault filed and 5 cases were charged as aggravated assaults. In 3 of the 5 aggravated assault cases, law enforcement sent affidavits of probable cause to the states attorney as simple assaults, but these cases were subsequently filed or amended by the states attorney as aggravated assault charges. In Bismarck, the Abused Assault Resource Center tracks reports much like they do in Grand Forks. In 2006, there were 58 police reports that indicated strangulation had occurred, which equated to 6% of all reports this year. Of these 58 reports one was charged as attempted murder, 11 were charged as simple assaults and in 25 cases no charges were filed at all. (The complete breakdown of Bismarck's statistics is labeled Appendix A at the end of this testimony.)

I would like to take this opportunity to submit written testimony on behalf of Vikki Lorenz, the Williams County Victim Witness Coordinator and Christal Sammons, a survivor of strangulation, each will provide you with insight into how strangulation affects how they do their jobs and live their lives. Because while it may seem that we are immune to the effects of such severe violence unfortunately, as you will find out, we are not. At this time I will answer any questions that the committee might have. Thank you.



Randi Roerick
Campus Violence Prevention Program Coordinator/Public Policy Team
ND Council on Abused Women's Services/Coalition Against Sexual Assault in ND
418 E. Rosser Suite #320
Bismarck, ND 58501
701-255-6240 ext. 23
rroerick@ndcaws.org

References

Detecting and Investigating Strangulation Cases.

(<http://www.daclute.com/Resourcematerials/strangulationinvestigation.htm>), 2003.

McCool, A. (2003). The severity of domestic violence strangulation and the need for stricter penalties for perpetrators in North Carolina.

Strack, G.B., McClane, G. E., & Hawley, D. (2001). A review of 300 attempted strangulation cases part I: Criminal legal issues. The Journal of Emergency Medicine, 21(3), pp.303-309.

Wilbur, L., Higley, M., Hatfield, J., Surprenant, Z., Taliaferro, E., Smith, D. J., Jr., & Paolo, A. (2001). Survey results of women who have been strangled while in an abusive relationship. The Journal of Emergency Medicine, 21(3), pp. 297-302.

February 27, 2007

Chairman DeKrey and members of the Judiciary Committee,

My name is Glen Hase. I am the Criminal Justice Advocate for the Rape & Abuse Crisis Center of Fargo. I have worked there for the past eleven years. It is an honor to speak to this Committee. When asked to speak to this Committee regarding the Strangulation Bill the question that came to mind was what is the difference between Strangulation and Choking? I would have to say Strangulation is intentional and Choking is accidental.

A few stories did come to mind when thinking of this bill that I would like to share with you today.

Connie

The last thing Connie remembers of her attack by her ex-husband was how he used his knee to put pressure on her throat until she blacked out. Connie never called the police

Molly

Molly was shaking uncontrollably when police arrived at her apartment. She had nasty red scratches and finger marks were visible on her neck and throat. Molly told the police that her boyfriend became enraged grabbed her around the neck and strangled her to the point where she blacked out. When she regained consciousness he was dumping garbage on her and threatening her. Molly managed to run out of the apartment and scream for help.

The Abuser was later charged with Simple Assault, a B misdemeanor that was later amended to Disorderly Conduct.

Sarah

Sarah was home with her two small children when her boyfriend came home looking for money. An argument was soon underway. Sarah reported that the last thing she could remember was her abuser putting his hands around her neck and lifting her off the ground. Sarah awoke to her abuser kicking her and laughing at her for wetting her pants. The Abuser was charged with Simple Assault, a B misdemeanor.

These women were lucky to survive! A person being strangled can lose consciousness in just seconds and die in just minutes.

In domestic assault situations, strangulation is one of the most effective ways an abuser can exercise power and control over his victim. A person who has his hands around a victim's neck is looking straight into her eyes and watching her come within a hair of dying.

Defining strangulation will help us to save lives by intervening in some of the most abusive, violent relationships and seeking tough consequences for the offenders.

This change also will encourage the criminal justice system to pay more attention to strangulation in domestic assault cases. Historically the fact that a domestic abuser strangled his victim might not even be mentioned in a police report or included in a charging document. Evidence of Strangulation just hasn't been necessary to prove a misdemeanor case. As a result we haven't even asked victims the right questions. And so we've missed the telltale warnings signs for future homicides.

The proposed law would send a message to everyone in the criminal justice system The lethality is being over looked! The right questions are not being asked! As it stands now our laws allow a domestic abuser to come within seconds of strangling someone to death and get by with a slap on the wrist. Essentially, we're saying, "Lucky you, she lived. Even though everything we know suggests you may kill her the next time!"

I had the honor of providing testimony to the Judicial Committee regarding the Strangulation Bill January 15th 2007. After that hearing that a consensus was reached that the strangulation bill should be re-drafted and put into the serious bodily injury definition under aggravated assault.

I have been working as the Criminal Justice Advocate for the Rape & Abuse Crisis Center now for the past 11 years and I can tell you that strangulation is not being charged any other way other than, Simple Assault or Disorderly Conduct. Since my testimony there have been seven potential strangulation cases in Cass County and only one was charged as Aggravated Assault. One was never even charged and the rest were Simple Assault. Why is that? The lethality is being over looked! The proposed law would be a step in the right direction for everyone in the criminal justice system and the victims seeking justice.



Glen Hase
Criminal Justice Advocate
Rape and Abuse Crisis Center
1-701-352-4242

WILLIAMS COUNTY STATE'S ATTORNEY**Nicole E. Foster**

STATE'S ATTORNEY

Shari L. Erdman

PARALEGAL

Marlyce Wilder

ASSISTANT STATE'S ATTORNEY

Vikki Lorenz

VICTIM/WITNESS COORDINATOR

Chairperson DeKrey and Members of the House Judiciary Committee

RE: Testimony in support of SB 2185

Date: Tuesday, February 27th, 2007

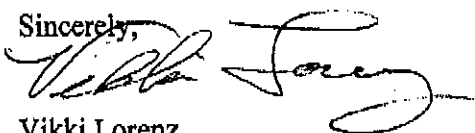
My name is Vikki Lorenz. I am the director of the Williams County Victim Witness Assistance Program a position I have held for 21 years. I am giving this testimony to support the amended version of the proposed Strangulation law.

While I don't have an exact number of cases that could have benefited from such an offense, I do have stories of victims who were strangled to the point of being "passed out". I can tell you stories of victims who felt like they were going to die from the pressure around their neck. I can also tell you how hard it is to explain to a victim of strangulation that the person who about ended their life could only be charged with a "simple assault" because the victim only had a red mark on their neck and no other visible injury. Imagine having to explain to this person that the maximum penalty for this offense is only 30 days in jail. Does that seem like the punishment fits the crime? It has never made sense to me and I would guess it doesn't to you either.

Strangulation can end a life immediately or slowly over a period of weeks due to the lack of oxygen to the brain or from suffocation from swelling of the trachea. I urge you and members of your committee to support this bill or other legislation that recognizes the seriousness of such an offense.

Thank you

Sincerely,



Vikki Lorenz

Williams County Victim Witness Assistance Program

PO Box 2047

Williston, ND 58802-2047

Chairman DeKrey and Members of the House Judiciary Committee

Re: Testimony in Support of SB 2185

Date: Tuesday, February 27, 2007

Good Morning Representative DeKrey and members of the House Judiciary Committee:

My name is Christal Sammons and I am here to testify in support of SB 2185 because I am a survivor of Domestic Violence.

Domestic violence is intentional or reckless causing or attempting to cause bodily injury to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury to himself or herself or another. The FBI indicates that 20% of all homicides occurred during domestic disturbances and that police had previously been called at least once to 85% of the victims homes. I believe that Senate Bill 2185 can help change this horrible fact and in doing so give victims some of their dignity back along with peace of mind knowing that the attacker won't be out in just 30 days with a slap on the wrist but do some real time for what they have done.

While researching the law for today, I looked at the Assault laws in North Dakota. It scared me because everything listed in there had been done to me. The person who abused me kept escalating the violence he did to me.

On May 18th 2006 at 9:00 p.m. I was attacked by a man who I had tried repeatedly to break off a relationship with. He didn't care that I had a restraining order against him. He came to my home and wanted to talk. I agreed thinking it would hopefully be the end of it and I could get on with my life. We started to argue and he shoved me, as he did so I reached for my cell phone and told him I was calling the police. He took my cell phone from me and threw it across the room. I turned around to bend over to pick up my phone to put it back together so that I could call the cops. He grabbed me from behind; he put his arms around my neck and began to shake back and forth as he shoved me to the ground. No matter how much I tugged at his arms, he just kept squeezing harder and harder. He kept telling me that he was going to kill me to make me pay for what I had done. I had ruined his life so he was going to take mine. I tried pleading with him as I gasped for air, it did no good. Things got blurry, I involuntarily wet my pants and things went black. The last thought in my mind was not being able to tell my kids goodbye or see them grow old. I don't know how much time went by, I started to wake up and he would be there standing over me tossing things at me as I tried to get up, busting house plants, lamps etc. over my head. I would try to stand up and he would start strangling me again and again with his knees in my back as he pulled and twisted on my neck. I tried grabbing him between the legs, biting his arms and he still wouldn't stop until I stopped breathing. This went on a total of 3 times that night before I was able to try and escape out of my own house. When I did get outside and locked myself in my car, he broke the window and tried pulling me out to finish the job.

I crawled out the other side and ran to the neighbors in my skirt and bra all bloody and bruised and called the police. The police came as quickly as they could but it didn't stop him from trashing my house. I know that he is in jail, but it doesn't stop the nightmares or the flashbacks. The other day a dog jumped on my car window and I screamed and started crying, I thought it was him again.

The man that attacked me was convicted of attempted murder, criminal mischief, interfering with a 911 phone call and violation of a disorderly conduct restraining order. Judge Wefald denied the plea agreement made by a Burleigh County Assistant State's Attorney and instead sentenced him to 23 years with 5 suspended.

One goes through life thinking that this will never happen to them. I find the statistics of Domestic Violence very alarming and the punishment for these crimes not more than just a slap on the wrist. Pass Senate Bill 2185 and make them pay for what they have done. Give victims in North Dakota some justice.

Christal Sammons
Bismarck Resident

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Representative Duane DeKrey
Chair, House Judiciary Committee
Testimony on SB2185, as amended
February 27, 2007

Members of the House Judiciary Committee:

I am Bonnie Palecek, speaking on behalf of the ND Council on Abused Women's Services, and I respectfully submit the following clarifying information relating to SB2185, heard in your committee on Tuesday, February 27.

The original intent of SB 2185 was to create a separate statute identifying strangulation as a felony crime in North Dakota. As you now know from the testimony presented, strangulation is a potentially lethal crime which apparently is often unprosecuted or underprosecuted in North Dakota because it is not specifically identified in statute. It was our hope that by identifying this crime, law enforcement officers could be more effectively trained to look for signs of strangulation in the investigation of domestic violence and other personal violence crimes, and prosecutors could be encouraged to prosecute such crimes with the seriousness they deserve. We acknowledge that not all such crimes rise to the level of intent required for an attempted murder charge (for example, domestic violence perpetrators often only want to intimidate and punish, not kill their victims, and have even been known to administer CPR to revive a strangulation victim). And so, in other words, we needed a charge more serious than simple assault, but less burdensome to prove than attempted murder.

On the Senate side, the ND States Attorneys' Association objected to the approach of creating a separate crime because they pointed out that our Criminal Code is organized in such a way that all definitions are presented at the beginning of the Code (12.1), and so it would be problematic to insert a crime with its own specific definitions, as is routine in the civil code. And so, even though a separate crime of strangulation exists in a number of other states, apparently it wouldn't work well here.

After a subcommittee meeting chaired by Senator Carolyn Nelson and a subsequent meeting with Attorney General Wayne Stenehjem and Assistant Attorney General Jon Byers, an amendment evolved. It was pointed out that expanding the definition of "serious" bodily injury," would 1) give prosecutors an additional specific criminal behavior with which to charge offenders and 2) automatically make the definition applicable to some 60 plus crimes in the Criminal Code which include reference to "serious bodily injury." For example, in a Gross Sexual Imposition case, if a perpetrator sexually assaulted someone and in the course of that crime restrained the victim and "impeded air flow or blood flow to the brain or lungs" by covering the mouth and nose or

even by sitting on someone or lying across him/her, an additional charge of "serious bodily injury" could be applied. This may very well move some crimes from the misdemeanor simple assault category to the felony status we believe they deserve.

A similar argument was made a few years ago when "bone fracture" was added to the serious bodily injury definition because compound fractures were routinely being charged as simple assaults and it seemed that common sense dictated such injuries deserved a much more serious penalty. By adding that injury to the definition, states attorneys were able to pursue prosecution of those crimes more aggressively, and it is our hope the same thing will happen with strangulation.

Although initially disappointed that the word "strangulation" would not appear in the Century Code, we had to concede that opening over 60 criminal offenses to the prosecution of strangulation was better than limiting it to only one, felony aggravated assault. Therefore we not only agreed with the amendment, but embraced it.

This is my layperson's understanding of what gave rise to the language in Engrossed SB2185. It was our understanding that the State's Attorneys' Association would be testifying at yesterday's hearing to clarify the intent and context of the amendment from a more legal perspective. I hope this statement provides a better understanding, if not an in-depth legal explanation, of SB2185 as it stands.

Of course, we continue to urge your support. Thank you.

Bonnie Palecek
NDCAWS