North Dakota House of Representatives

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Madam Chair and Members of the Senate Judiciary Committee:

For the record, Zac Ista from District 43 (Grand Forks). Like HB 1268 from this morning, HB 1269 is another bill to protect victims of domestic violence by providing additional intervention programming for those who engage in domestic violence. This programming helps prevent reoccurrences of violence and helps to break the dangerous cycle of domestic abuse.

Under current law, a conviction for certain crimes committed against a person's family or household member—which we currently define in 14-07.1-01(4) to mean "a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time"—triggers an automatic requirement for the court to sentence the offender to a domestic violence treatment program.

The first change this bill makes is to rename "domestic violence offender treatment program" to "domestic violence offender intervention program," which better reflects the type of programming provided to offenders. As those behind me will better explain, using the phrase "treatment program" connotes that committing domestic violence is akin to a medical, mental health, or substance abuse condition. That is not the case, nor does the current programming mirror treatment for such medical conditions. Therefore, renaming it as "intervention programming" more accurately describes the type of programming already being provided (and that programming would not change in light of this renaming).

The second change the bill makes is to add to the list of offenses for which a conviction triggers a required course of intervention programming. Under current law, sentences upon convictions for the following crimes against a family or household member must include a mandatory order to complete domestic violence offender programming:

- Simple assault
- Assault
- Aggravated assault
- Domestic violence
- Reckless endangerment
- Terrorizing
- Menacing

HB 1269 proposes to require mandatory intervention programming upon conviction for the following additional crimes when the victim is a member of the offender's family or household:

- Harassment
- Stalking
- Felonious restraint
- Unlawful imprisonment
- Criminal mischief
- Interference with an emergency call
- Violation of a disorderly conduct restraining order (DCRO)
- Violation of an order prohibiting contact (OPC)
- Violation of a domestic violence protection order (DVPO)

The reason for adding these additional crimes is to better implement the intent of why we require domestic violence offender intervention programming in the first place, which is to stop the cycle of domestic abuse. Each of the proposed additional crimes are substantially similar to those already listed in the statute and are common offenses that may be the ultimate crime of conviction in a domestic incident. By including mandatory intervention programming for this broader swath of crimes, we will better serve our communities by providing rehabilitative services to more offenders and protection for more victims and potential future victims. Supporters testifying behind me will elaborate on what exactly this programming does and how important this programming is to changing behaviors of offenders, which in turn means more safety for potential future victims. But I want to highlight just one data point before deferring to these experts: in a long-term study of male offenders who completed the intervention program in Grand Forks, offenders experienced a 68% decrease in further law enforcement involvement, an 89% decrease in further criminal charges, and an 83% decrease in protection

orders filed. Those impressive statistics show just how effective this intervention programming is and why it's important to extend it to all offenders prone to committing domestic violence

Of course, though, providing this programming is not without a financial cost, and I recognize there may be questions regarding how much this expansion would cost, how it would be funded, and whether adding additional crimes would result in a sort of unfunded mandate to the local agencies providing these services. As the fiscal note shows, there is no direct financial cost to the state for HB 1269. Currently, local domestic violence agencies cover the cost for court-ordered domestic violence programming, with program participants also paying fees for the programming on a sliding scale. To help with the cost of this programming, local agencies do receive state funds through the Department of Health and Human Services. Representatives of domestic violence prevention agencies testifying behind me can better explain the history of that fund, their funding requests for this budget cycle, and the current status of those requests at this point in the session. But beyond that question of appropriations, our local agencies are committed to providing this vital service to an expanded class of offenders even if the state funding is not increased, because they know it will help alleviate future violence across North Dakota communities.

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While the bill before you is a good one that warrants a do pass recommendation in its current form, I also offer one amendment for your consideration. In the House, I made a commitment that, if HB 1269 passed, I would bring to the Senate possible changes to our current definition of "family or household member," which establishes the predicate relationship between offender and victim that gives rise to a domestic violence conviction (or, as relevant to this bill, the imposition of mandatory offender intervention programming). In discussions with both prosecutors and criminal defense attorneys, we identified three general areas of concern with the current definition, which is both underinclusive and overinclusive in certain ways:

1. The definition applies to persons who have ever resided together at any point, regardless of any current relationship or how long ago (or for how long) they resided together in the past. For example, if two men lived together as roommates for a semester in college, they could be liable in perpetuity for a domestic violence charge if one ever assaulted the other at any point in their lives.

2. The definition has no limitation in defining "family member," meaning a relationship as attenuated as third cousin, for instance, theoretically could give rise to a DV charge.

3. The definition omits any application of our DV statutes to persons formerly in a dating relationship if those persons never cohabitated. Thus, if a dating relationship ends on a Monday and one partner assaults the

other the following Wednesday, that would not constitute domestic violence even if the violence was on account of the former romantic relationship that ended just 48 hours earlier.

The proposed amendment before you (23.0396.02001) seeks to address each of those concerns in the following ways:

1. It strikes “persons who are presently residing together or who have resided together in the past.” This would mean our DV statutes no longer applied to persons merely living together who were not family members or in a dating relationship (*e.g.*, roommates, fraternity/sorority housemates, etc.).

   There seems to be broad agreement among stakeholders about striking reference to persons <u>formerly</u> residing together. However, the question of whether to retain persons who are <u>presently</u> residing together proved to be a tricky issue on which to find agreement, so you may hear concerns about that particular language from those testifying behind me. In my view, I would consider either option (retaining or striking the application to persons currently living together) to be a “friendly amendment” to HB 1269, as I think application of the DV statutes to roommates who never had a dating relationship (or decline to reveal such a relationship) is already a rare occurrence such that retaining the language does not have a high likelihood of ever being the sole basis upon which a DV charge is prosecuted nor does striking the language risk leaving a large number of persons without appropriate recourse under the criminal code.

2. It limits application to “immediate family members,” which is then separately defined. This change eliminates the risk of charging more attenuated family members with DV where a regular assault charge is more appropriate. Again, there appears to be broad agreement among various stakeholders in supporting this proposed change.

3. It adds in application to persons who “were in a recent dating relationship.” This change makes sure that our DV statutes apply to situations where a relationship may have formally ended but the same type of controlling, abusive behavior leads sometimes present during a relationship leads to a post-relationship act of violence. Again, I believe there is substantial agreement among stakeholders about including application to former intimate partners as proposed in the amendment.

   To be sure, there certainly could arise issues as to what, exactly, constitutes a “recent” prior dating relationship. The phrasing in the proposed amendment mirrors a federal DV statute; other states set a durational limit (*e.g.*, relationships ending within the prior 12 months). In my view, whether a former relationship was sufficiently “recent” will be a factual issue to be resolved based on the evidence available in any given case. For instance, relationships that terminated days, weeks, or even months

before the subsequent criminal act likely would fall within the category of “recent,” while relationships that ended years before would not. It will be up to prosecutors and defense attorneys to make arguments to the courts about whether a particular relationship falling between those poles qualifies as “recent.” If this statutory language proves too ambiguous, we could revisit it in future sessions.

In sum, the proposed amendment represents a good compromise between various stakeholders that better balances the concerns highlighted in our current definition. I thank the Committee for being willing to consider whether now is the time to tackle this definition, but I understand if the Committee prefers to review this in a standalone bill next session while spending time in the interim to dig deeper into the issue.

With that, members of the Committee, I urge a do pass recommendation of HB 1269, either as it comes to you or with the proposed amendment. The bill will help to stop the dangerous—and sometimes deadly—cycle of domestic violence. In doing so, we will rehabilitate more offenders and protect more potential victims. I thank you for your consideration, and I look forward to your questions.