



# North Dakota House of Representatives

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## Representative SuAnn Olson

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## COMMITTEES:

Judiciary  
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**HB 1364**

**March 8, 2023**

Chairwoman Larson and members of the committee. I am Rep. SuAnn Olson, representing District 8.

HB 1364 was introduced because the original statute, 42-03-01, as originally written was unenforceable. The original language stated that before action could be taken, a dog had to habitually molest a person on a public road or street. The words "public road or street" have been interpreted literally. Which means, if a dog was a problem anywhere other than a street or road, there wasn't really anything that could be done where there weren't local ordinances.

Sec. 45-03-01 is re-written in this bill to clarify that if a dog **HABITUALLY** harasses a person anywhere outside of the dog owner's property, then a complaint can be made to a district or municipal judge. It is important to note the word "habitually" was already in the statute and is still present in the Section as re-written.

All of us can sympathize and many of us have experienced our dog getting away from us or out of our yard on occasion and needing to search the neighborhood for the escape artist. This bill does not affect those occasions. This bill will not affect hunters who are out with their dogs. It is intended to provide a resolution where dogs are repeatedly off leash, roaming the neighborhood, and harassing other people. Again, the word "habitually" is important in this statute.

There is testimony online which indicates concern that this Chapter would supersede local ordinances. This question was addressed in a North Dakota Supreme Court case from 2009 called State of North Dakota v. Lori Lee Brown. In that case, Brown had 3 barking dogs and her neighbor filed a complaint under Cass County's Animal Control Ordinance. Brown argued that the County didn't have authority to control her barking dogs because the State law only addressed dogs that were molesting individuals on public roads. A portion of the case states: "the legislature envisioned there would be instances when an ordinance adopted by a home rule county would apply to the same subject matter as, and conflict with, state law. The legislature expressly provided that, in such cases, the county ordinance would ordinarily supersede state law...These statutes would be rendered meaningless if, as Brown suggests, NDCC Sec 11-09.1-05(5) prohibits the county from enacting any ordinance if there is any state law or rule addressing the same subject matter." I think this case should allay fears

that local ordinances would be overruled by state law. The existing law has been co-existing with local ordinances for many years now.

A problem dog also becomes a property rights issue. People have a right to use their own backyards, their front yards, without fear. Children should be able to play in their own yard without worry. People should be able to let their own dog out in their yard without fear of a dog fight and without fear that their small dog may be mauled. People shouldn't be forced to put up a fence to keep other people's dogs out.

HB 1364 cleans up an unworkable section of Century Code. Please give this bill a DO PASS recommendation.

Thank you.