

1999 SENATE JUDICIARY

SB 2223

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2223

Senate Judiciary Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
1	x		1989 - 5605
2-8-99 3	X		0 - 1541
Committee Clerk Signature <i>Jackie Follmer</i>			

Minutes:

SB2223 relates to crimes of simple assault, assault, aggravated assault, and abuse or neglect of a child; and to provide a penalty.

SENATOR STENEHJEM opened the hearing on SB2223 at 9:30 A.M.

All were present.

JONATHAN BYERS, Assistant Attorney General, testified in support of SB2223. Testimony attached. One concern that has been raised, simple assault would be raised to a Class B felony. In juvenile court, that would also be a felony crime. It would make a severe penalty for children who commit abuse on other children. May need some amendments.

LADD ERICKSON, Assistant State's Attorney in Morton County, testified in support of SB2223. This bill would help the shaken baby cases. We would have a better approach to prosecute. This bill addresses the bodily injury that is inflicted. It is difficult to prosecute

against the aggravated assault because you are proving the offense with an expert as opposed to a person that can talk and explain what happened. I have some concerns about the bill. The first one is with the aggravated assault section, an improvement for adult victims. Presently there are two differences with aggravated assault, one where you completely heal and one where there is permanent loss of bodily functions. There should be a distinction in the aggravated assault section. The hard spanking cases against the shaken baby cases, we need to keep these separate. REPRESENTATIVE CLEARY, District 49, testified in support of SB2223. This bill is for the shaken baby syndrome.

MARY LEMER testified in support of SB2223. Her grandson is a victim of shaken baby syndrome. The baby will need special care for the rest of his life. The father only received 2 years in prison.

SENATOR WATNE asked if the father got any counseling in prison.

MARY LEMER stated he is getting anger management.

SENATOR STENEHJEM asked if they had the opportunity to file a victim impact statement, a part of the presentence report. Did you get a form?

MARY LEMER stated that no, they did not.

JEFFREY FORSBERG testified in support of SB2223. I have worked with foster care and have dealt with child abuse. We need something for the 1 and 2 year old children. We cannot allow people to walk away from these crimes.

DICK PECK, North Dakota Peace Officers Association, testified in support of SB2223. We would like the law strengthened in this area.

SENATOR STENEHJEM CLOSED the hearing on SB2223.

February 8, 1999 Tape 3, Side A

LADD ERICKSON submitted additional testimony. Testimony attached. Additional amendments were submitted. Amendments attached.

JONATHAN BYERS also explained some additional information and technical amendments.

Discussion.

SENATOR WATNE made a motion on Amendments, SENATOR BERCIER seconded. Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON seconded. Motion carried. 6 - 0 - 0

SENATOR STENEHJEM will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2223: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2223 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection 2 of section 12.1-17-01, section" with "sections"

Page 1, line 2, remove the first "section"

Page 1, line 4, remove "simple assault,"

Page 1, remove lines 7 through 14

Page 2, line 4, after "years" insert "or the victim suffers permanent loss or impairment of the function of a bodily member or organ"

Page 2, line 16, after "or" insert "subdivision a of subsection 1 or subsection 2 of"

Page 2, line 23, replace "twelve" with "six"

Page 2, line 25, after "injury" insert ", substantial bodily injury, or serious bodily injury"

Page 2, line 26, remove "subsection 4 of"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2223

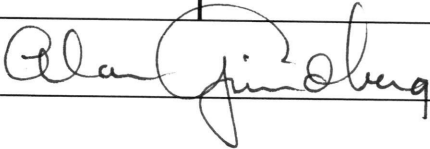
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2223

House Judiciary Committee

Conference Committee

Hearing Date : March 10, 1999

Tape Number	Side A	Side B	Meter #
2	X		6.4
Committee Clerk Signature 			

Minutes:

REP. CLEARY This bill is introduced to increase the penalty for shaking a baby. Far too much injury is happening because people shake babies. Maybe we can stop some of it if we make the penalty stiff enough to get the public's attention.

JONATHON BYERS Presented written testimony, a copy of which is attached. Also stated that the penalties are more severe because they are in a special relationship with the child and because it can happen behind closed doors.

MARY LEMER My husband shook our 4 month old son and caused brain stem damage. My husband got two years in prison. Our son is now five, but he is blind and will never walk or talk. Two years doesn't seem like enough.

JEFF FORSBERG (Policeman and foster parent) Was called to a home where there was domestic violence going on. I went into the house and stopped it and tried to get some agency to

Page 2

House Judiciary Committee

Bill/Resolution Number 2223

Hearing Date : March 10, 1999

help. Two days later the father shook the baby, who doesn't walk or talk. Most brain damaged babies die young from complications.

COMMITTEE ACTION

REP. DELMORE moved that the committee recommend that the bill DO PASS. Rep. Sveen seconded and the motion was passed on a roll call vote with 13 ayes, 0 nays and 2 absent. Rep. Cleary was assigned to carry the bill.

Date: 3/10
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2223

House JUDICIARY Committee _____

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Del Seconded By SV

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
✓ REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment Cleary

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

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 7:31 a.m.

Module No: HR-44-4501
Carrier: Cleary
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2223, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2223 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2223

SENATE BILL 2223 TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 6TH, 1999
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

Chairman Stenehjem, Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to speak in favor of Senate Bill 2223.

At least three recent cases have demonstrated the inadequacy of criminal penalties for extreme cases of child abuse. Had the child died in any of the cases, the defendants could have been subject to a maximum of life imprisonment without parole under a felony-murder prosecution. However, if by some miracle the child survives, the options available to the prosecutor are much more limited.

If a child abuse injury is extreme and permanent, the charging options currently available are aggravated assault or criminal child abuse. Either crime is a class C felony, unless the offender is a paid caretaker, in which case the offense is a class B felony. A class C felony has a maximum penalty of 5 years in prison, a \$5,000 fine, or a combination of both. A class B felony has a maximum penalty of 10 years in prison, a \$10,000 fine, or a combination of both.

Victim's families, investigators, and prosecutors have all voiced the concern that five years is not a sufficient penalty when the victim has been left in a permanent vegetative state.

Under current law, and even with these amendments, parents are subject to greater penalties than other adults are. This is because of the special relationship between parents and their children. There is a greater exposure due to the amount of time spent together. Child abuse is more easily hidden behind the closed doors of the family home. Finally, when a child thinks of telling someone about child abuse, who does that child tell when the child's confidants are the abusers?

Senate Bill 2223 is a uniform increase in the penalties available for inflicting injury on children under the age of twelve years.

I would be happy to answer any questions.

Stealing Your Life Away

from page 1

\$42 million to \$745 million.

These numbers only tell part of the story. Law-enforcement officials and consumer advocates are quick to point out that immeasurable human costs result from identity theft. Though the victim is not

State Trends

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State Trends reports on issues critical to state government leaders from state, regional and national perspectives. Drawing from current research, historical data and 50-state surveys, the publication tracks trends and provides timely information on the most creative solutions to problems faced by state governments.

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State Efforts to Curb Identity Fraud

Arizona: A.R.S. 13-2708 — Criminalizes identity fraud

California: Penal Code §530.5 — Criminalizes identity fraud; A.B. 50 (pending) — Increases fines for identity fraud

Colorado: H.B. 1168 (effective 6/27/98) — Criminalizes identity fraud and misuse of Social Security numbers

Georgia: S.B. 513 (effective 7/1/98) — Criminalizes financial identity fraud

Kansas: H.B. 2739 (effective 5/14/98) — Criminalizes identity fraud ✓

Massachusetts: H.B. 5147 (effective 3/3/99) — Criminalizes identity theft

Mississippi: H.B. 1099 (effective 7/1/98) — Criminalizes identity fraud and misuse of Social Security numbers

New Jersey: A-2414 (pending, passed Assembly) — Upgrades certain types of wrongful impersonation to identity fraud and prescribes penalties for the crime

New York: A.B. 9659 (pending) — Prescribes penalties for identity fraud; A.B. 10132; S.B. 6608 (pending) — Relates to various provisions for credit reporting, including identity fraud

Ohio: H.B. 704, S.B. 273 (pending) — Criminalizes identity fraud

Pennsylvania: H.B. 2114 (pending) — Relates to credit reporting and identity fraud

Wisconsin: A.B. 724 (effective 4/27/98) — Criminalizes identity fraud ✓

West Virginia: H.B. 4234 (effective 6/12/98) — Criminalizes identity fraud

Source: *Experian; CARD NEWS, July 6, 1998 (Vol. 13, No. 13), updated by CSG staff*

responsible for the debts accumulated by the thief (federal law limits a consumer's liability for credit card and banking fraud to \$50 per account), he or she is stuck with the bad credit record. In some instances, victims are even arrested for crimes the thief committed in their name.

The traumatic and arbitrary nature of identity theft is drawing attention to the crime. Many victims are uniting to ensure no one else suffers the devastation of identity theft. Edward Mierzwinski, consumer program director for the U.S. Public Interest Research Group, said, "These 'victims' are a force to be reckoned with. They have lived through a nightmare. It's largely due to their efforts that changes are being made."

Criminalizing Identity Theft

The ultimate frustration for identity-theft victims is being told that no crime has been committed against them. Financial institutions — seen as the victim under fraud laws — often do not pursue the criminal because the losses do not justify the expense. With no law against identity theft on the books, law-enforcement officials cannot file a report on behalf of the consumer.

Congress recently made identity theft a federal crime by passing H.R. 4151, the Identity Theft and Assumption Deterrence Act of 1998, which President Clinton said he will sign. U.S. Rep. John Shadegg of Arizona, sponsor of the bill, said the federal law allows a "pre-emptive strike against fraud crime." Under current federal statutes, law-enforcement officials could arrest criminals only after they had used the stolen identity to

commit fraud. With H.R. 4151, just taking the social security number or assuming someone's identity is now a federal crime. The law also sets stiff penalties for identity theft, allows consumer victims to seek restitution from the criminal, and directs the FTC to establish a centralized complaints and consumer-education service.

How will the federal law impact state identity theft laws? "H.R. 4151 does not preempt state laws, and should complement them by increasing awareness of the crime," Rep. Shadegg says. State law enforcement can use the federal law, but it was designed to be a tool for federal law-enforcement officials in cracking organized-crime rings. State law-enforcement officials may be more effective in pursuing the individual, case-by-case crimes. Also, victims usually contact local officials, who need a law to guide them. Sen. W. Scott Oelslager, who proposed a bill (S.B. 273) to criminalize identity theft in Ohio, said, "I agree that the state identity-theft law is still necessary."

John Byrne, senior council and compliance manager for the American Bankers Association, the nation's largest banking trade association, agrees. "Mirroring federal laws may allow state prosecutors to take up cases that federal prosecutors avoid due to limited resources," Byrne said.

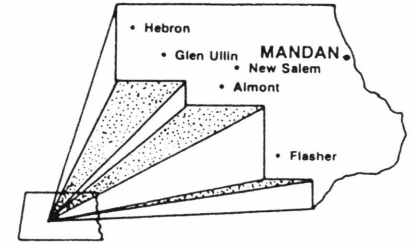
Saving Private Information

Consumer advocates encourage lawmakers to move beyond criminalizing identity theft to prevent the crime. Lamb sees a role for state officials in public education, for example. "Iowa's

cont'd on page 10



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STATE OF NORTH DAKOTA
OFFICE OF
STATE'S ATTORNEY



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MANDAN, NORTH DAKOTA 58554

PHONE 667-3350

ALLEN KOPPY
State's Attorney

BRIAN D. GROSINGER
Assistant State's Attorney
LADD R. ERICKSON
Assistant State's Attorney

Supplemental testimony of Morton County Assistant State's Attorney, Ladd R. Erickson, in support of Senate Bill 2223.

Mr. Chairman and members of the committee, my name is Ladd Erickson and I work for the Morton County State's Attorney's Office. Please consider this testimony as a supplement to my original testimony in support of SB 2223.

Mr. Chairman and members of the committee, the following testimony is to support and justify amendments that are being proposed to SB 2223 after consultation with the American Prosecutors Institute's shaken baby prosecutors and medical consultant, Dr. Daniel Davis, MD.

Dr. Davis is a shaken baby expert who is employed by the Hennepin County Medical Examiners Office, Minneapolis, Minnesota, and I am attaching his recommendations for what would be an appropriate age limit to place into the law when dealing with child abuse and shaken baby cases where the law establishes an enhanced penalty.

The following are proposals, and justifications for the proposals, that address the concerns raised by SB 2223:

First, after consulting with many state's attorneys and law enforcement officials, I hereby recommend to the committee that no changes be made to the current Simple Assault statute. The

reason for this recommendation is that simple assault cases are best dealt with at the current penalty levels proscribed in the statute, and there were no comments made to me by any of the sources I consulted with that problems exist with the current statute. Therefore, I would recommend to the committee that you strike the words “or is under the age of twelve years” from line 14 on page 1 on SB 2223.

Secondly, I would recommend to the committee that you pass the proposed amendments to the Assault statute on lines 17-18 on page 1. When a person inflicts the types of injuries defined by “substantial bodily injury,” and the victim is pre-puberty, (under age twelve) enhancing the penalty provision to a class C felony will better protect these victims.

Third, I would recommend that the committee pass the proposed enhanced penalties to the Aggravated Assault statute with the following addition: “except if the victim is under the age of twelve years, *or the victim suffers permanent loss or impairment of the function of any bodily member or organ*, in which case the offense is a class B felony.” (page 2, lines 3-4)

The addition of this language matches one of the definitions of “serious bodily injury” (12.1-01-04(29)), and will fill a hole in the current Aggravated Assault statute for cases wherein a victim loses the function of an eye in a knifing case, suffers permanent brain injuries from being beaten with a bat or club, or suffers permanent impairment of a knee or other body member. This addition will better protect the police and others from acts of violence.

Fourth, insert after “or” on page 2, line 16: “*subdivision a of subsection 1 and subsection 2 of.*” This will focus the addition of title 14 crimes to the offender registration statute on those crimes that involve an act of violence.

Fifth, replace twelve with “six” on page 2, line 23 and add: “bodily injury, *substantial*

bodily injury, serious bodily injury,” to lines 25 and 26 on page 2, and strike the words “subsection 4 of .”

The age is lowered from twelve to six based on the recommendations of Dr. Davis. (*See attached*) The addition of “substantial bodily injury,” and “serious bodily injury” is to allow the charging document and the jury instructions to fit the injuries to the child. Without these additional definitions, the jury would be instructed on bodily injury only, when the evidence in some cases better fits with the additional definitions.

In addition, the Committee may have concerns about the different standards between ‘bodily injury’ in the Simple Assault statute, and bodily injury in the context of the title 14 statute.

The difference between the two statutes focuses on who is the offender. In the Simple Assault statute, the offender can be any person. In the title 14 statute, the offender must be a parent or custodian of the child. There is a higher burden of proof for the State when a parent or custodian is the defendant because parents or custodians of children are permitted to use corporal punishment when disciplining a child. Corporal punishment is a legal defense, and a parent can only be convicted of an offense if they used more than corporal punishment in disciplining their child¹. *See Raboin v. North Dakota Department of Human Services*, 552 N.W.2d, 329 (N.D.

¹§ 12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities

The use of force upon another person is justified under any of the following circumstances:

1. Except as provided in section 15-47-47, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of

1996) (Finding that spanking children on the buttocks with a plastic spoon and a belt was not child abuse.) In Re S.W. v. C.W., 290 N.W.2d 675 (N.D. 1980) (Finding that a father who had kicked, struck, and belted a child repeatedly about the head, legs, and backside, leaving a number of bruises or welts had abused his daughter.)

When a child is under age six it is very dangerous to the health of the child to be the victim of excessive physical punishment because that aggression can easily lead to permanent injuries, such as shaken baby syndrome. Therefore, there is a public policy justification for the enhanced penalties in this section when those penalties are limited by the age of the victim.

The use of force by a parent, custodian, or guardian defense in N.D.C.C. § 12.1-05-05 distinguishes Simple Assault from the “bodily injury” standard in N.D.C.C. § 14-09-22. People unrelated to a child rarely strike that child, it simply is not a prolific societal problem. When it does occur, the scheme set forth in the Simple Assault, Assault, Aggravated Assault, format provides all of the police power necessary to address these cases. Therefore, there is a rational reason to define “bodily injury” in both statutes because they will legally be treated differently.

Mr. Chairman and members of the committee, I respectfully request that you adopt these amendments and support the passage of SB 2223. Thank you.

any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation . . .

PROPOSED AMENDMENTS TO SENATE BILL NO. 2223

1. Page 1, line 14, delete “or is under the age of twelve years”;
2. Page 2, line 4, insert “or the victim suffers permanent loss or impairment of the function of and bodily member or organ”;
2. Page 2, line 16, after “or” insert “subdivision a of subsection 1 and subsection 2 of”;
3. Page 3, line 23, replace “twelve” with “six”;
4. Page 3, line 26, insert after bodily injury, “substantial bodily injury, serious bodily injury”;
5. Page 3, line 26, delete “subsection 4 of”.

Subject: SBS

Date: Mon, 25 Jan 1999 14:10:42 EST

From: Expdigital@aol.com

To: lre@btigate.com

1/25/99

Mr. Ladd Erickson
North Dakota State's Attorney
Mandan, ND

Mr. Erickson,

In answer to your question on the telephone this morning, I believe that the vast majority of cases of the Shaken Baby syndrome occur in the two or younger age group. We have recently had a case where a mother admitted to shaking her three year old girl to unresponsiveness and indeed the classic finding of a subdural hematoma was observed at autopsy. In my opinion, there is no age limit after which a child is immune to the effects of vigorous shaking, assuming the abuser is strong enough to shake the child vigorously. In terms of your pending legislation, my advice would be to provide an age cut-off of 5 years for identifying victims of SBS so as to include the very occasional case of an older child that will come to the attention of the medical community with the classic features of shaking.

If I can be of additional help, please call.

Sincerely,

Daniel W. Davis, MD

Assistant Hennepin County Medical Examiner
Hennepin County Medical Examiner's Office
730 South Seventh Street
Minneapolis, MN 55415
tel. (612) 347-2125
fax. (612) 904-4323

CRIME	INJURY	RELATIONSHIP	AGE OF VICTIM	OFFENSE CLASS	MAXIMUM PENALTY
simple assault	Bodily injury	None required	12 or over < 12*	B Misdemean. C felony	30 days 5 years
assault	Substantial bodily injury	None required	12 or over < 12	A Misdemean. C felony	1 year 5 years
aggravated assault	Serious bodily injury	None required	12 or over < 12	C felony B felony	5 years 10 years
Criminal child abuse	Bodily injury or mental inj	Parent, guard. other custod.	12 to 18 6 < 12 ** 6	C felony B felony	5 years 10 years
Criminal child abuse***	Bodily injury or mental inj	Teacher, day- care, or other paid caretaker	12 to 18	B felony under current law	10 years

* may be amendment proposed to remove simple assault from this bill or limit its application

** may be amendment proposed to reduce age, since it only involves bodily injury

*** no proposed change; provided for reference only

SENATE BILL 2223 TESTIMONY
HOUSE JUDICIARY COMMITTEE
MARCH 10th, 1999
PRAIRIE ROOM

By Jonathan Byers, Assistant Attorney General

Chairman DeKrey, Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to speak in favor of Senate Bill 2223.

Three or four recent cases around the State of North Dakota have demonstrated the inadequacy of criminal penalties for extreme cases of child abuse. Had the child died in any of the cases, the defendants would have been faced with the possibility of a maximum of life imprisonment without parole under a felony-murder prosecution.

However, the children in these three cases survived. Even though the injuries were extreme and permanent, the charging options available to the prosecutors were either aggravated assault or criminal child abuse. Either crime is a class C felony, unless the offender is a paid caretaker, in which case the offense is a class B felony. A class C felony has a maximum penalty of 5 years in prison, a \$5,000 fine, or a combination of both.

Victim's families, investigators, and prosecutors have all voiced the concern that five years is not a sufficient penalty when the victim has been left in a permanent vegetative state.

Senate Bill 2223 increases the maximum penalties for assault and aggravated assault if the child is less than twelve years old. It increases the penalty for criminal child abuse when the child is less than six years old. Under Senate Bill 2223, a person causing permanent brain damage to an infant by shaking or striking the infant could be charged with a class B felony. A class B felony has a maximum penalty of 10 years in prison, a \$10,000 fine, or a combination of both.

Under current law, and even with these amendments, parents are subject to greater penalties than other adults are. This is because of the special relationship between parents and their children. There is a greater exposure due to the amount of time spent together. Child abuse is more easily hidden behind the closed doors of the family home. Finally, when a child thinks of telling someone about child abuse, who does that child tell when the child's confidants are the abusers?

I ask for a do pass on this bill, and I would be happy to answer any questions.

CRIME	INJURY	RELATION- SHIP	AGE OF VICTIM	OFFENSE CLASS	MAXIMUM PENALTY
assault	Substantial	None required	12 or over	A Misdemean.	1 year
	bodily injury		< 12	C felony	5 years
aggravated assault	Serious	None required	12 or over	C felony	5 years
	bodily injury		< 12	B felony	10 years
Criminal child abuse	Bodily injury or mental inj	Parent, guard.	6 to 18	C felony	5 years
		other custod.	< 6	B felony	10 years
Criminal child abuse	Bodily injury or mental inj	Teacher, day- care, or other paid caretaker	< 18	B felony under current law*	10 years

* no proposed change; provided for reference only