

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2163

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Deanna Hall
Operator's Signature

10/17/03
Date

2003 SENATE JUDICIARY

SB 2163

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2163

Senate Judiciary Committee

Conference Committee

Hearing Date 1/21/03

Tape Number	Side A	Side B	Meter #
1	x		0.5 - 19.5
2	x		4.1 - 19.0
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes:

Chairman Traynor called the meeting of the Senate Judiciary Committee to order. All members were present.

Chairman Traynor opened the hearing on SB 2163.

Testimony in support of SB 2163

Senator Judy Lee testified in favor of and introduced the bill. This bill will change the penalty for luring a minor with a computer. This issue is of grave concern to law enforcement officials from Senator Lee's community. Some of these officials will testify today.

Captain Dave Bruckner of the West Fargo Police Department testified in favor of the bill. (written testimony) (meter #1.4). This amendment closes a loophole in the existing law that currently allows for the charging of this offense as a class A misdemeanor. Captain Bruckner feels this offense which targets our children should be no less than a class C felony charge.

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Senate Judiciary Committee
Bill/Resolution Number SB 2163
Hearing Date 1/21/03

This past year the West Fargo Police Department has been involved with the investigation of three individuals charged with luring minors by computer. Two of the defendants pled guilty. Both were originally charged with class C felonies. In both cases the charges were reduced to a class A misdemeanor and sentencing was set at one year in jail, all but thirty days suspended. The thirty days were spent in the Cass County jail and they also served probation. The third case is still pending.

In comparison, if a person is charged federally, a guilty plea to luring a minor over the internet, without a previous conviction of a similar charge, will result in a sentence of 33 months to 41 months. A plea of not guilty followed by a guilty conviction results in a sentence of 46 months to 57 months. Larger metropolitan police forces have full time investigators whose sole duty is to go on the internet and scan for individuals attempting to lure minors for sexual favors. They often spend less than one minute on line before someone is chatting with them to obtain sexual favors. Law enforcement believes this crime will only increase with time. North Dakota needs to have a stiff penalty in place to serve as a deterrent for those who try to lure our children and grand children over the internet.

Senator Nelson asked the ages of the minors involved in the three cases? (meter #2.9)

Captain Bruckner said they were 14 years old.

Senator Nelson asked if they were different minors or all the same child?

Captain Bruckner said they were three different minors.

Senator Dever asked if the recent ruling regarding animated pornography applies to this bill?

Captain Bruckner said no.

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Senate Judiciary Committee
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Hearing Date 1/21/03

Senator Nelson asked if this bill is referring to a scenario where someone gets on the internet and asks a minor to meet them for sexual favors?

Captain Bruckner said yes. In a recent instance at 3:00 AM an officer observed a juvenile walking towards a convenience store. He questioned the girl and determined she was 14 years old. She was charged with a curfew violation. Upon further questioning, the officer determined she was on her way to the convenience store to meet someone she had been chatting with on the internet. The officer found the person waiting in his car at the convenience store. He was 21 years old.

Senator Traynor asked if this bill were passed, would persons convicted of this crime serve their time in Cass County jail?

Captain Bruckner said if a conviction is for a class C felony, time would be served in the penitentiary.

Senator Traynor asked for what term? Captain Bruckner said for up to five years.

Senator Traynor asked if there were any estimates of what this would add to the penitentiary population? (meter #4.4)

Captain Bruokner said no.

Senator Dever asked if the effect of this bill would be if an 18 year old communicates with a 17 year old in this manner, he could be guilty of a felony?

Captain Bruckner said yes. (meter #5.2)

John Olson, representing the North Dakota States Attorneys and the Peace Officers Associations, testified in favor of the bill. As a felony, this bill would provide for extradition since there is normally no extradition on misdemeanors.

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Senate Judiciary Committee
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Mr. Olson stated that a district judge would have the option to sentence someone convicted of luring a minor with a computer to something less than penitentiary time. He is not aware of any mandatory provisions in the bill that would require penitentiary time as a minimum. There would be a whole realm of sanctions available to the court.

Senator Traynor asked Mr. Olson, based on his legislative experience, if he thought this bill should have a fiscal note?

Mr. Olson said all bills relating to criminal penalties probably contain a fiscal note. It would be impossible to predict the fiscal impact of the bill. Whether an A misdemeanor or a C felony, there would still be a lot of discretion by the courts. There could possibly be more incarcerations in the penitentiary.

Senator Dever asked, regarding extradition, doesn't current law already provide for extradition if the perpetrator is over 22 years of age and the victim is under 15 years of age? The effect of this bill is to narrow the age span.

Mr. Olson said he believes that is correct.

Jessica McSparron^{#2}, the sexual assault program and policy coordinator for the North Dakota Council on Abused Women Services and the Coalition Against Sexual Assault in North Dakota testified in favor of the bill. (written testimony) (meter #7.8)^{#2}

Bob Benson, Fraternal Order of Police of North Dakota and a police officer since 1991 testified in favor of the bill (meter #10.1)

Mr. Benson investigates these kinds of crime in the city of Bismarck. He cited an example of a case which occurred after our last natural disaster when many out of town insurance adjusters were hired by insurance companies to assist with claims. One of these people was a child

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Hearing Date 1/21/03

predator. He asked if anyone in the insurance office had a young son who would be willing to help him process claims in his motel room. He said he was asking for a young male to avoid any appearance of impropriety. An office employee recommended her 16 year old son. He worked for weeks for the out of town adjuster. One day the young man opened the computer to find sexually explicit photos of young men. The young man reported this to the police department and they were able to get a search warrant. The adjuster was terminated and left town. Under current law, a police officer can't make an arrest on a misdemeanor if the crime did not happen in his presence without first gathering evidence. In a felony, an officer can make an arrest even if the crime did not occur in his presence. Over one thousand sexually explicit photos of young men were found on the computer. It became evident the adjuster was traveling from town to town making victims of young boys. The adjuster could not be extradited. This needs to be a C felony. Its a serious crime.

To respond to Senator Dever's previous question, this is not the same thing as an 18 year old asking a 17 year old out on a date. Any police officer investigating a case or any prosecutor would know that. It is a crime for a 18 year old to have sex with a 17 year old, a class B misdemeanor.

Senator Dever said he knows it is a crime but it is not a felony and he doesn't see how this bill treats this situation any differently.

Senator Trenbeath said he agrees this is not covered by the bill. He said no attorney in his right mind would prosecute an 18 year old for communicating sexually with his 17 year old girlfriend but there is no accounting for human behavior and it is possible within the proposed statute.

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Deanna G. Hall
Operator's signature

1/17/03
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Senate Judiciary Committee
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Hearing Date 1/21/03

Senator Lyson said in other sections of the code a distinction is drawn between over 18 and under 15 and over 21 and under 18 and perhaps the bill should be adjusted.

Mr. Benson said law enforcement officers and prosecuting attorneys exercise some discretion on whether to arrest or prosecute situations that are not black and white. He would agree that according to the letter of the law, in the scenario discussed, the 18 year old could be prosecuted. Under the intent of the law, he would not be prosecuted. The intent of this law is to punish predators that are making victims out of our children.

Senator Lyson asked if it would be better for the law to be very specific regarding the ages of those involved in these kinds of crimes. Senator Thomas L. Trenbeath Coruption of solicitation of Minors 12.1-20.05 The adult who engages in solicites with the intent to engage in or causes an another to engage in a sexual act with a minor is guilty of a class A misdinener if the victom is a minor of 15 years of age or older. An Audult who solicites... minor under age 15 .. audult is over 22 (meter #19.5)

Testimony Nutreal to SB 2163

None

Testir/ony in Oppose of SB 2163

None

Chairman Traynor closed the hearing on SB 2163.

Chairman Traynor reopened the hearing on SB 2163 p.m. Tape 2, side 1, meter 4.6

Discussion on 22.15 Reasonable belief. Formed an Amendment. Sited another chapter that used "... if one is older then 22 yrs and the other is under 15 years" Reasonable doubt questions.

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Senator Thomas L. Trenbeath moved a DO PASS on Amendment one. Senator Dick Dever second the motion.

Roll Call Vote: 6Yes. 0 No. 0 Absent

Motion carried

Senator Stanley W. Lyson, Vice Chairman moved a DO PASS. Senator Carolyn Nelson second the motion.

Roll Call Vote: 6Yes. 0 No. 0 Absent

Motion carried,

Carrier: Senator Stanley W. Lyson, Vice Chairman

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01/17/03
Date

FISCAL NOTE
 Requested by Legislative Council
 01/21/2003

Bill/Resolution No.: SB 2163

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Based on current information regarding individuals charged and convicted of luring minors by computer and the resultant sentence imposed by the court, it is the DOCR's opinion that SB 2163 would not have a measurable fiscal impact. To date the DOCR has not been assigned the custody of any individual found guilty of this crime. However it is important to note that if the number of individuals found guilty of luring a minor by computer increases or if the court imposes longer and/or more strict sentences, it is reasonable to assume that the DOCR will experience an increase in the number of individuals assigned to its custody. This potential increase combined with the fact that DOCR is and has been operating at full capacity will result in the need for increased general fund appropriations.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

No measurable fiscal effect

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

No measurable fiscal effect

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

No measurable fiscal effect

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01/17/03
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Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/24/2003

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01/17/03
Date

30348.0101
Title.0200

Adopted by the Judiciary Committee
January 21, 2003

JE3
1-23-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2163

Page 1, line 20, remove the overstrike over "~~class A misdemeanor, but if the adult is
twenty-two~~"

Page 1, line 21, remove the overstrike over "~~years of age or older or~~" and remove the overstrike
over "~~the minor is under the age of~~"

Page 1, line 22, remove the overstrike over "~~fifteen,~~" and insert immediately thereafter "a" and
remove the overstrike over "~~violation of this section is a~~"

Renumber accordingly

Page No. 1

30348.0101

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1/17/03
Date

Date: January 21, 2003
 Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2163

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dick Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent Zero (0)

Floor Assignment _____

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

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Deanna Hall 10/17/03
 Operator's Signature Date

Date: January 21, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2163

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amend

Motion Made By Senator Stanley W. Lyson Seconded By Senator Carolyn Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent Zero (0)

Floor Assignment Senator Stanley W. Lyson, Vice Chairman

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

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Deanne Hall Operator's Signature 01/17/03 Date

REPORT OF STANDING COMMITTEE (410)
January 27, 2003 12:27 p.m.

Module No: SR-14-1109
Carrier: Lyson
Insert LC: 30348.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2163: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2163 was placed on the Sixth order on the calendar.

Page 1, line 20, remove the overstrike over "~~class A misdemeanor, but if the adult is twenty-two~~"

Page 1, line 21, remove the overstrike over "~~years of age or older or~~" and remove the overstrike over "~~the minor is under the age of~~"

Page 1, line 22, remove the overstrike over "~~fifteen,~~" and insert immediately thereafter "g" and remove the overstrike over "~~violation of this section is a~~"

Renumber accordingly

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Operator's Signature

1/17/03
Date

Date: February 2, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2163

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken MOTION TO BRING BACK SB 2163 AND RECONSIDER ACTION

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Stanley W. Lyson, Vice Chairman

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson		
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment _____

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

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Deanne Hall 01/17/03
Operator's Signature Date

Date: February 2, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2163

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Stanley W. Lyson, Vice Chairman

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson		
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment Senator Stanley W. Lyson, Vice Chairman

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

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Deanna Hall Operator's Signature 10/17/03 Date

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 12:54 p.m.

Module No: SR-21-1602
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2163, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO
NOT PASS (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2163
was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-21-1602

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2003 TESTIMONY

SB 2163

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Deanna Walcott
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10/17/03
Date

Att 1

I'm Captain Dave Bruckner with the West Fargo Police Department.

The West Fargo Police Department is in favor of SB 2163, amending NDCC 12.1-20-05.1, Luring Minors by Computer. The proposed amendment to section 3 would remove what we see as a loop hole in the existing law allowing for the charging of this offense as an A Misdemeanor. We feel this offense, which targets our children, is worthy of no less than a C felony charge.

This past year the West Fargo Police Department has been involved with three investigations where individuals were charged with luring minors by computer. In two of these cases the defendants have plead guilty. Though originally charged as C felonies, in both instances, the charges against the defendants were reduced to a Class "A" misdemeanor. Sentencing was set at 1yr. in the jail, all but 30 days suspended. The 30 days was to be spent in the Cass County Jail and the balance served on probation. The third case is still pending.

In Comparison, if a person is charged Federally the penalties are: If you plead guilty to Luring a minor over the Internet and have not been convicted of a similar charge you can be sentenced to a minimum of: 33 mo. (2 3/4yrs) to 41 mo. (3 1/2yrs). If you plead not guilty and are found guilty you can be sentenced to: 46 mo. (3 3/4yrs) to 57 mo. (4 3/4yrs).

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Dave Bruckner
Operator's Signature

10/17/03
Date

Law enforcement views the seriousness of this crime such that the larger metropolitan police departments have full time investigators whose only job is to go on the Internet and scan for individuals who are attempting to lure minors for sexual favors. Frequently the investigator spends less than a minute before someone is chatting with them to obtain sexual favors.

We believe this type of crime will only increase with time. ND needs to have a stiff penalty in place to serve as a deterrent against individuals who attempt to lure our children over the Internet.

We ask for your support of SB2163.

Thank you.

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10/17/03
Date

A# 2

BISMARCK
Abused Adult Resource Center
222-8370
BOTTINEAU
Family Crisis Center
228-2028
DEVILS LAKE
Safe Alternatives for
Abused Families
8-662-7378

Testimony in support of SB 2163
January 21, 2003

Chairperson Traynor,
Member of the Senate Judiciary Committee

GRAND FORKS
Domestic Violence and
Rape Crisis Center
225-4506
LAKOTA
Catholic House
349-4729
MARTIN
Rape and Abuse Crisis Center
300-344-7273

For the record, I am Jessica McSparron, the Sexual Assault Program and Policy Coordinator for the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. The North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota is in support of the passage of SB 2163, relating to the penalty for luring minors by computer.

MORT BERTHOLD RESERVATION
Coalition Against
Domestic Violence
27-4171
MORT VATES
154-3861 Ext. 228
MORTON
Multi-County Crisis
Intervention Center
52-4242

This change requires that adults engaging in computer communication that contains sexually explicit material, or invites participation in sexual acts be responsible for the transmission of that information. If the adult communicates sexually explicit material to a minor, the penalty is a class C felony. The sexually explicit nature of the material should be handled with regulations similar to those in place on the sale and use of sexually explicit material. For example, the age limit in which to enter a retail business selling sexually explicit items or to rent pornographic movies is 18. Retail establishments selling or renting pornographic material to individuals under the age of 18 face stiff fines, and criminal charges. The increase in penalty for adults who utilize computers to communicate sexually explicit information and/or invite minors to engage in sexual acts is justified by the increased potential for violence and abuse.

MANDAN
Community Violence
Intervention Center
46-0405
MAYNARD
A.F.E. Shelter
88-353-7233

By increasing the penalty to a class C felony in all instances of luring minors by computer, the offender will be required to register on the sex offender registration list. In understanding sex offender behavior, the violence used to force sexual acts increases as opportunities to engage in the forcible sex act increases. Over time, establishing a pattern of more violent, higher risk forced sexual contacts. By increasing the penalty, the ability of the Department of Corrections and Rehabilitation, along with the Attorney General's Office to regulate, manage, and alter the likelihood of further violence increases with the implementation of sex offender treatment, tracking, and probation limitations. With these regulations in place, the offender decreases the risk for engaging in violent behavior.

MEDORA COUNTY
Crisis Family
Resource Center
700-651-8643
MERCER COUNTY
Women's Action and
Resource Center
73-2274

Therefore, the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota is in support of a do pass on SB 2163.

MILWAUKEE
V Center
52-2258
MORRIS COUNTY
Rural Resource Network
33-5061
MORT TOTTEN
Mort Lake
16-4231

Respectfully,
Jessica McSparron
Jessica McSparron, ESW
Sexual Assault Program and Policy Coordinator

MUNDAN
Program, NW, ND
8-3233
MUNDT
Used Persons Outreach
Center
5-0078

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
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Fax: (701) 255-1904 • Email: ndcaws@btinet.net
National DV Hotline 1-800-799-7233 • 800-787-3224 TTY

MURDOCK
Rose Rivers Crisis Center
2-2115
MUSTERS
Crisis Shelter
2-0757



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Deanne Hall
Operator's Signature
10/17/03
Date