

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

22/2

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Operator's Signature

*Deanna D. Hall*

Date

10/21/03

2003 SENATE JUDICIARY

SB 2212

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10/21/03  
Date

# 2003 SENATE STANDING COMMITTEE MINUTES

## BILL/RESOLUTION NO. SB 2212

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/22/03

Tape Number	Side A	Side B	Meter #
1	X		49.3 - 52.0
2	X		27.5 - End
2		X	0.0 - 10.6
Committee Clerk Signature <i>MZ</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken this was a joint session of Senate and House Judicial and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill.

### Testimony in support of SB 2212

Wayne Stenehjem Introduced the Bill (Tape 1, Side 1, meter 17.8 to 40.1)

Senator Dick Dever Introduced Bill (Tape 1, Side 1, meter 49.3) Over the last few years the media and others has focused there attention on how many meth labs have been busted over our communities but we have not heard about the impact it has had on our children exposed to that environment. This is one of two bills that we as a state are to deal with this environment. Cited Attorney Generals Case of children found in a Meth Lab House (50.5 meter) When a person gets addicted to Meth, nothing matters. Well children matter and they matter to me. This bill will put parents on notice that if there children matter to them they should not put their children in this

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Page 2

Senate Judiciary Committee

Bill/Resolution Number 2041

Hearing Date 01/20/03

situation. It might even cause a parent to ask themselves "what am I doing to myself, what am I doing to my children"

Jonathan Byers, Assistant Attorney General - (tape 2, side 1, meter 27.4) Attachment #1, Read

Kathy Mayer - Prevent Child Abuse North Dakota - Attachment #2

Bonnie Palecek - NDCAWS Attachment #3

Senator Thomas L. Trenbeath - questioned over the counter cold medicines and amounts- Say a mother had three boxes of cold medicine would she have her child taken away?

Would this law stop a drug addict pregnant woman from seeking medical attention? Discussion,

**Testimony in opposition of SB 2212:**

none

**Testimony Neutral to SB 2212:**

none

**Senator John T. Traynor, Chairman closed the hearing**

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Deanna D. Smith  
Operator's Signature

10/21/03  
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2212

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/27/03

Tape Number	Side A	Side B	Meter #
2	X		17.0 - END
3	X		0.0 -3.8
Committee Clerk Signature			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill.

**Testimony in support of SB 2212**

Senator Dick Dever reintroduced the Bill.

Sandi Tabre (18.4 meter) Handed out an amendment and an Emergency Clause amendment.

Jonathan Byers, Assistant Attorney General - (meter 20)

Senator Stanley W. Lyson, Vice Chairman refereed to the section 15.25 requiring teachers to photo discussion regarding a teacher have the ability to have a Medical X-ray and laboratory testing.. (meter 20.0). I do not understand how anyone other then a Doctor make this decision.

Senator Thomas L. Trenbeath discussed sub section G and why was it not under 8 a.

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Page 2

Senate Judiciary Committee  
Bill/Resolution Number 2212  
Hearing Date 01/27/03

More discussion on who has the ability to take pictures and what pictures concluded. Discussed the bill was to wide open in regards to the "chemggvxcical". Discussed an amendment (meter 24.9)

Senator Stanley W. Lyson, Vice Chairman What if the parents do not believe in Medical attention what then? Discussion on who would pay for this medical attention

Janet Sundquist - Domestic Violence/Sexual Assault Advocate at the Abused Adult Resource Center. (Attachment #1)

Amendment from the Health Care Association

Discussed amendments and how to place them in bill.

Bonnie Palecek - North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in ND. (attachment #2)

**Motion Made to amend #1, Page 2, line 8, 9 10 on SB 2212 by Senator Thomas L.**

**Trenbeath , seconded by Senator Stanley W. Lyson, Vice Chairman**

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

**Motion Passes**

**Motion Made to amend #2 and add Emergency Clause on SB 2212 by Senator Carolyn**

**Nelson seconded by Senator Dennis Bercier**

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

**Motion Passes**

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Dennis Bercier  
Operator's Signature

10/21/03  
Date

Page 3  
Senate Judiciary Committee  
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Motion Made to amend #3 proposed by the ND Health Care Assoc. except line on pg. 2 line  
21 on SB 2212 by Senator Carolyn Nelson seconded by Senator Dick Dever

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

Motion Passes

Motion Made to amend #4 mandatory reporting in SB 2212 by Senator Thomas L.  
Trenbeath and seconded by Senator Carolyn Nelson.

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

Motion Made to Do Pass SB 2212 with four amendments by Senator Dennis Bercier and  
seconded by Senator Thomas L. Trenbeath.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion carried, amendment passed.

Floor Assignment Senator Dennis Bercier

Dennis Bercier  
Operator's Signature

10/21/03  
Date

*703*  
1-31-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2212

Page 1, line 1, after "reenact" Insert "section 12.1-20-08,"

Page 1, line 3, replace "crime" with "crimes" and after the first "of" insert "fornication and"

Page 1, line 4, remove the third "and" and after "penalty" Insert "; and to declare an emergency"

Page 1, after line 5, insert:

**"SECTION 1. AMENDMENT.** Section 12.1-20-08 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-08. Fornication.** ~~A person~~ An individual is guilty of a class A misdemeanor if ~~he the individual~~ engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07."

Page 2, line 8, replace the second "the" with "a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2."

Page 2, remove lines 9 and 10

Page 2, line 20, overstrike "and x-rays" and Insert immediately thereafter "- X-rays - Medical tests"

Page 2, line 22, overstrike the second "a"

Page 2, line 23, overstrike "radiological examination" and replace "or toxicology or laboratory testing" with "imaging studies, laboratory tests, colposcopes, and other medical tests"

Page 2, line 24, after "photographs" Insert "and other visual images"

Page 2, line 26, remove ", toxicology or laboratory"

Page 2, line 27, remove "reports," and overstrike "x-rays taken" and Insert immediately thereafter "visual images"

Page 2, line 29, after the period Insert "imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request."

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



Date: January 27, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2212**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amended #1 Page 2, line 9 & 10

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	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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Dennis Bercier  
Operator's Signature

10/21/03  
Date

Date: January 27, 2003  
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2212**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amended # 2 Emergency Clause

Motion Made By Senator Carolyn Nelson Seconded By Sen. Bercier

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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Dennis Bercier  
Operator's Signature

10/21/03  
Date

Date: January 27, 2003  
Roll Call Vote #: 3

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2212**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amended # 3 ND Health Care Amend

Motion Made By Senator Carolyn Nelson Seconded By Sen. 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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Operator's Signature

Date

Date: January 27, 2003  
Roll Call Vote #: 4

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2212**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amended #4

Motion Made By Senator Thomas L. Trenbeath 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 \_\_\_\_\_

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

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Dennis Bercier  
Operator's Signature

10/21/03  
Date

Date: January 27, 2003  
Roll Call Vote #: 5

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2212**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38298.0100

Action Taken DO PASS as Amended Four Times

Motion Made By Sen. Bercier Seconded By Senator Thomas L. Trenbeath

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

Total (Yes) five (5) No Zero (0)

Absent One (1)

Floor Assignment Sen. Bercier

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

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Dennis Bercier  
Operator's Signature

10/21/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 31, 2003 10:11 a.m.

Module No: SR-19-1420  
Carrier: Bercler  
Insert LC: 38298.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2212: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2212 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "section 12.1-20-08,"

Page 1, line 3, replace "crime" with "crimes" and after the first "of" insert "fornication and"

Page 1, line 4, remove the third "and" and after "penalty" insert "; and to declare an emergency"

Page 1, after line 5, insert:

**"SECTION 1. AMENDMENT.** Section 12.1-20-08 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-08. Fornication.** ~~A person~~ An individual is guilty of a class A misdemeanor if ~~he~~ the individual engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.

Page 2, line 8, replace the second "the" with "a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2."

Page 2, remove lines 9 and 10

Page 2, line 20, overstrike "and x-rays" and insert immediately thereafter "- X-rays - Medical tests"

Page 2, line 22, overstrike the second "a"

Page 2, line 23, overstrike "radiological examination" and replace "or toxicology or laboratory testing" with "imaging studies, laboratory tests, colposcopies, and other medical tests"

Page 2, line 24, after "photographs" insert "and other visual images"

Page 2, line 26, remove ", toxicology or laboratory"

Page 2, line 27, remove "reports," and overstrike "x-rays taken" and insert immediately thereafter "visual images"

Page 2, line 29, after the period insert "imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request."

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2003 HOUSE JUDICIARY

SB 2212

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2212

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-5-03

Tape Number	Side A	Side B	Meter #
2	x		16.5-18 / 43.0-46.9
Committee Clerk Signature <i>APamrose</i>			

**Minutes:** 12 members present, 1 member absent (Rep. Wrangham)

The original hearing was held on January 22, 2003 in the Pioneer Room as a Joint Session with the Senate. The minutes are attached. Attachments can be found with the Senate minutes in the library.

**Chairman DeKrey:** We heard this bill so I would like to do committee work.

**Sandi Tabor, Deputy AG:** (See attached updated overview). This bill deals with indecent exposure. It also includes some language amending the definition of deprived child.

**Chairman DeKrey:** With this amendment, is this going to stop all the e-mails we've been getting.

**Ms. Tabor:** Jonathan Byers is here and I called him this morning and asked him what he did to that bill.

**Chairman DeKrey:** I'm glad that people across the nation, other than North Dakota, are to worried about nudity.



Page 2  
House Judiciary Committee  
Bill/Resolution Number SB 2212  
Hearing Date 3-5-03

**Ms. Tabor:** On SB 2212, if you look at the bottom of the first page of the overview and then on page 2, a summary of the changes done by the Senate, and there are people who can explain those in more detail to you when you are ready to meet and discuss this.

**Chairman DeKrey:** Thank you.

(Reopened later in the afternoon session)

**Chairman DeKrey:** Let's take a look at SB 2212.

**Ms. Tabor:** Jonathan Byers is here to explain the amendments.

**Chairman DeKrey:** Please explain to me why anybody in North Carolina, California, or Florida are so uptight about this bill, and every other state except North Dakota.

**Mr. Byers, Asst. AG:** If there is a concern relating to the indecent exposure statute, I would think it is by individuals' that do not realize that in order to prove this crime, a prosecutor still has to prove it was for the purpose of arousing, appealing to, gratifying that person's lust, passions, or sexual desires. So if somebody is nude sunbathing in their backyard, and a meter reader comes by in an enclosed fence, and happens to get a surprise, that's not the kind of crime that is contemplated here.

**Chairman DeKrey:** So if you and your son plays buckets on a Saturday morning and go and take a shower in the locker rooms, you are not a criminal.

**Mr. Byers:** You are not a criminal. If you forget to close the bathroom door and one of the kids happen to walk by while you are urinating, it is not for the purposes that are required to be proved.

**Rep. Eckre:** Could an overzealous prosecutor try and make something out of this and wreck someone's life.

Page 3  
House Judiciary Committee  
Bill/Resolution Number SB 2212  
Hearing Date 3-5-03

**Mr. Byers:** In order to even sign a criminal complaint in a case like this, it usually requires testimony before a judge or a signed affidavit before a notary public which would include that element, that it would have to gratify their lust, passions or desires. You're not going to be able to establish that, either one of those processes.

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2212.

**Rep. Grande:** I move a Do Pass.

**Rep. Delmore:** Seconded.

11 YES 0 NO 2 ABSENT DO PASS

CARRIER: Rep. Grande

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Deanna D. Ball  
Operator's Signature

10/21/03  
Date

Date: 3/5/03  
Roll Call Vote #: 1

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2212**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Grande Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Grande

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10/21/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2003 3:23 p.m.

Module No: HR-39-4030  
Carrier: Grande  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2212, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2212 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-4030

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*10/21/03*  
Date

2003 TESTIMONY

SB 2212

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10/21/03  
Date

**Proposed Amendments to Senate Bill 2212**

January 27, 2003

Presented by the Office of Attorney General

Page 1, line 4, after ":", remove "and"

Page 1, line 2, after "penalty" insert "; to provide an effective date; and to declare an emergency"

Page 2, after line 29, insert:

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with the secretary of state.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

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Deanna D. Ball  
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10/21/03  
Date

1/27 2nd set

Prepared by the North Dakota Healthcare Association  
January 22, 2002

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2212**

Page 2, line 20, overstrike "and x-rays" and insert immediately thereafter "Xrays - Medical tests"

Page 2, line 21, after "photographs" insert "and other visual images"

Page 2, line 22, overstrike the second "a"

Page 2, line 23, overstrike "radiological examination" and replace "or toxicology or laboratory testing" with "imaging studies, laboratory tests, colposcopies, and other medical tests"

Page 2, line 24, after "photographs" insert "and other visual images"

Page 2, line 26, remove ", toxicology or laboratory"

Page 2, line 27, remove "reports," and overstrike "x-rays taken" and insert immediately thereafter "visual images"

Page 2, line 29, after the period, insert "Imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request."

Renumber accordingly

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Deanna Wallis  
Operator's Signature

10/21/03  
Date

**50-25.1-03.1. Photographs and x-rays - X-rays - Medical tests.** Any person or official required to report under this chapter may cause to be taken color photographs and other visual images of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination imaging studies, laboratory tests, colposcopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter. Photographs and ~~x-rays taken~~ visual images, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible. Imaging studies or copies of the studies, and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

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10/21/03  
Date



Chairman Traynor, Chairman DeKrey and Members of the Joint Judiciary Committee:

My name is Janet Sundquist; I am a certified Domestic Violence/Sexual Assault Advocate at the Abused Adult Resource Center in Bismarck. Today I am here to testify in favor of the amendments for Senate Bill Number 2212.

Recently I was in contact with a 17-year-old girl who identified that a 15-year-old boy had raped her. After meeting with her psychiatrist she made the decision to report to law enforcement. I provided emotional support while law enforcement questioned her. I thought that the questioning was almost complete, when the law enforcement personnel began to read the victim her rights. Prior to the assault she had informed the perpetrator, by letter, that she would consider being sexually active with him but was fearful of becoming pregnant. Because law enforcement had this letter in their possession it caused the case to be "complicated" in their eyes. She chose to discontinue speaking with law enforcement and left the facility. I returned to speak to the law enforcement personnel who informed me that he had sent the case to the State's Attorney but assumed the male would not be charged. I inquired what would happen in this case and questioned if this victim would be charged with a crime, it was insinuated to me that both the girl and boy would be charged with fornication. I expressed to law enforcement that this girl came in to report a crime and because of that she will now be charged with a crime herself, I also explained that probably 75% of high school teenagers are having sex but none of them are being charged with fornication. After this long discussion with law enforcement, they decided to contact the State's Attorney and suggested the charges be dropped altogether, which then happened.

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10/21/03  
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Although this girl was not charged with a crime, she was re-victimized by the system. I have had follow-up contact with this young lady and she is having a difficult time identifying the fact that she was raped because after coming forward and reporting, she was made out to be a criminal.

Thank you Chairman Traynor, Chairman DeKrey and Members of the Joint Judiciary Committee for this opportunity to testify in favor of Senate Bill 2212.

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Our Center worked with a young girl, aged 13, who was charged with fornication. She had been a rape victim as a younger girl and since that time had apparently been acting promiscuous. This incident involved a 13 year old allegedly consenting to have sexual intercourse with an adult- age 18. The young girl told a professional about this and it was reported. At this time the 18 year old was charged with Gross Sexual Imposition and the 13 year old was charged with fornication. She was expected to testify in the GSI case. When I contacted the State's Attorney's office I questioned if they thought she would testify if by doing so she would implicate herself in the fornication case against her. They told me, as they had told her and her counselor at our office that they would drop the charges against her. They believed it was the only way to get her to understand the seriousness of her actions (having sex at a young age). I explained to the prosecutor that it was not unusual behavior for a child who was sexually abused to act promiscuous after the violation they had experienced and that I thought it revictimized the victim to charge them in a crime. Obviously, these children should receive counseling to deal with the victimization but charging them with a crime was not the best way to handle it.

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**SECTION 5. AMENDMENT.**

Section 12.1-20-08 of the North Dakota Century Code is amended and reenacted as follows:

Fornication. A person is guilty of a class A misdemeanor if he or she engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.

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Att #1

SENATE BILL 2212 TESTIMONY  
JOINT SENATE AND HOUSE JUDICIARY COMMITTEES  
JANUARY 22<sup>nd</sup>, 2003  
PIONEER ROOM

By Jonathan Byers, Assistant Attorney General

Chairmen of the Joint Committees and Members:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of Senate Bill 2212.

The Bill you are now considering is the product of suggestions offered by the Alliance for Children's Justice. The first of those suggestions deals with the crime of indecent exposure. You may or may not know that the crime of indecent exposure only covers conduct in a public place. If John Doe exposes himself to his daughter and her friends at her birthday party in the Doe residence, then he cannot be convicted of indecent exposure. Section 1 of Senate Bill 2212 closes that loophole.

Section 2 of the bill broadens the definition of a deprived child for the purposes of juvenile court intervention. The addition of subsection f to the definition will specifically authorize a juvenile court action against a mother whose child is born and tests indicate the child was exposed to controlled substances or chronic and severe use of alcohol. The addition of subsection g is what makes SB 2212 part of the overall meth strategy. In a few minutes I will be outlining criminal sanctions against

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parents who allow their children to be exposed to the manufacture of controlled substances. However, parents that get arrested eventually get out on bail, or parole, or probation.

This morning, Senator Dever pointed out that parents need to be put on notice that if they care about their children, they won't expose them to the dangerous aspects of meth manufacture. They are given the choice, but they need to know they might not get the choice again.

Section 3 of the bill is amendment to the mandated reporting statute for child abuse and neglect. It removes the crime of fornication from the list that requires mandated reporters to file a report with child protective services. School counselors and doctors will not have to report if they obtain information that a juvenile is engaged in a sexual relationship with a same-age juvenile.

Section 4 is the mechanism that will allow physicians to do testing of newborns if there are signs that the newborn was exposed to alcohol or controlled substances before birth. They then make a report to child protective services and the juvenile court may step in as provided in Section 2 of the bill. An amendment may be offered to substitute other language in place of that currently in the bill draft, and the Attorney General has no objection.

The Attorney General asks for a do pass. I would be happy to answer any questions.

Deanna D. Wall  
Operator's Signature

10/21/03  
Date

Testimony in support of SB2212  
January 22, 2003

Kathy Mayer  
Prevent Child Abuse North Dakota  
Contact # - 223-9052

My name is Kathy Mayer, and I am the director of Prevent Child Abuse North Dakota, a statewide non-profit organization that provides education and public awareness for the prevention of all forms of child abuse and neglect.

I am here today in support of Senate bill 2212.

I am sure there is no one here today that won't agree that all forms of child sexual abuse and exploitation is tragic for the child victim. There are many forms of abuse defined in the present statute, but one of the amendments proposed today addresses the seriousness of exposing children to another form of sexual exploitation. Children deserve protection from being victimized in any manner related to atypical adult sexual behavior. We would ask that you support the amendment in Section 1 of this bill.

Section 2 addresses the ever-increasing problems our state is facing due to the increased use of alcohol and controlled substances during pregnancy as well as after children are born. A child's overall health and wellbeing as well as their safety are issues that Prevent Child Abuse North Dakota supports as part of its mission. We support the passing of this amendment.

Prevent Child Abuse North Dakota also supports the amendments in Sections 3 and 4. The addition of toxicology and laboratory testing will ensure that children who have been exposed to illegal substances will be quickly identified and treated accordingly. It will also enable social service personnel and law enforcement to determine the risks present in the home and how best to address them on behalf of the child. We ask for your support of this amendment as well.

Thank you for your attention and I would be happy to answer any questions related to this testimony.

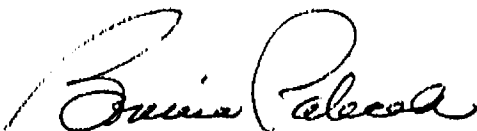
PH #3

January 22, 2003

Senator Traynor and Members of the Committee:

Attached is written testimony from the ND Council on Abused Women's Services in regard to Section 3 of SB 2212. I will attend Monday's Committee Work session along with our Sexual Assault Prevention Coordinator and staff from the Abused Adult Resource Center in case the committee has questions.

Thank you for your consideration.



Bonnie Palecek  
Executive Director  
NDCAWS

  
Operator's Signature

10/21/03  
Date



BISMARCK  
Abused Adult Resource Center  
222-8370

BOTTINEAU  
Crisis Center  
78

LAKE  
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VALLEY CITY  
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Center  
845-0078

WAHPETON  
Rivers Crisis Center  
5

WISCONSIN  
Family Crisis Shelter  
572-0757

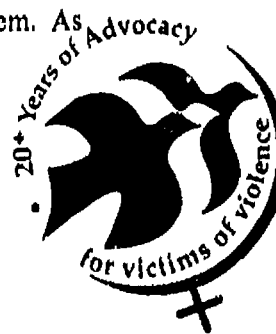
Chair John Traynor  
Testimony on SB 2212  
Senate Judiciary Committee  
January 22, 2003

Chair Traynor and Members of the Committee:

My name is Bonnie Palecek and I speak on behalf of the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I submit this testimony in support of Senate Bill 2212, and will also request an amendment to this bill related to the crime of fornication.

Under 50-25.1-03.1, any individual with professional responsibilities for the care of a child is required to report to law enforcement any sexual assault, sexual acts, or sexual contact with a child, a child being any individual under the age of 18. SB 2212 removes mandatory reporting of fornication, which is any sexual activity between persons under the age of 18. The North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault supports the removal of mandatory reporting for three reasons. First, the mandatory reporting of a sexually active minor is consistent with the ability of minors over the age of 14 to receive medical services and counseling for sexually transmitted illnesses and pregnancy without parental consent. Next, mandatory reporting of fornication creates a major barrier for minors in reporting sexual activity which may include sexual assault or abuse and may prevent them from receiving medical or mental health services related to sexual issues going on in their lives: it also discourages supportive relationships between counselors, teachers, social workers, school nurses, domestic violence/sexual assault advocates and children who are engaging in sexual relations. Thirdly, the mandatory reporting of fornication currently has the potential to expose a minor to prosecutorial action and charges of a class B misdemeanor.

The passage of SB 2212 would change reporting mandates but in no way eliminates them. As a professional mandated to report child abuse, I would still be required to report the following:



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

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- a. Under section 12.1-20-03, gross sexual imposition, any person under that age of 15 involved in a sexual act.
- b. Under section 12.1-20-05, corruption or solicitation of a minor, anyone under the age of 15 engaging, solicited to engage or caused to engage in any sexual act or sexual contact with an adult (an individual over the age of 18);
- c. Under section 12.1-20-06, sexual abuse of wards, any person who engages in a sexual act or sexual contact with a person in official custody or detention when the person has supervisory or disciplinary authority.
- d. Under section 12.1-20-07, sexual assault, any minor (an individual under the age of 18) who engages in a sexual act or sexual contact with an adult (an individual over the age of 18).

By removing fornication from mandatory reporting requirements, professionals working with minors may use their professional discretion in reporting the sexual activity of minors between the ages of 15 and 17 who engage in sexual activity with another individual between the ages of 15 and 17. Mandatory reporting for professionals working with minors in this age range would still be required to report when a minor between the ages of 15 and 17 engaged in a sexual act or contact that was

- a. compelled by force or threat of imminent death, bodily injury or kidnapping
- b. the victim was unaware that the activity was happening
- c. the victim's power was substantially impaired due to intoxicants
- d. the victim suffers a mental disease or defect which renders them unable to consent
- e. the victim was rendered incapable of resisting through the use of threats
- f. the victim was in official custody and assaulted by a detainee.

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AGE	Mandatory Report	Exception
Minor under 15	any sexual activity	
Minor under 18	any sexual activity with an adult	
Minor ages 15 to 17	any sexual activity with another individual ages 15 to 17 if:	Threat, force, incapacitation, mental defect/disease, or in official custody

If we eliminate mandatory reporting of voluntary sexual activity between minors i.e. (passage of SB2212) we still have a concern. In those cases in which there is abusive sexual activity, there still is mandatory reporting, and in those cases, minors are in danger of being prosecuted for fornication because fornication still exists within the criminal code.

Therefore, the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota proposes an amendment to section 12.1-20-08, relating to fornication. The amendment would prevent minors who are victims of a sexual offense from prosecution. Under current law any minor (person under the age of 18) who engages in any sexual activity is guilty of a class B misdemeanor. Our amendment proposes that any minor who is a victim of a sexual act in violation of sections 12.1-20-01 through 12.1-20-07 could not be charged with fornication.

While we would all hope that a child victim would never be charged with such a crime, there have been instances in the state in which minors have been charged with fornication when they came forward as a victim of a sexual assault. Sexual assault advocates are concerned

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that this type of prosecution will become accepted prosecutorial practice, putting an already at risk population at even greater risk.

The North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota supports the passage of Senate Bill 2212 and urges your adoption of the proposed amendment.


Respectfully,



Bonnie Palecek

Executive Director

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## ENGROSSED SB 2212

### Definition of Deprived Child and Amendments to the Indecent Exposure Law

In its original form, the bill made four changes to existing law:

- 1) Clarified existing indecent exposure laws to address certain lewd actions done in the presence of minors (Section 2 of the engrossed bill).
- 2) Amended the definition of deprived child to include 1) children subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance; and 2) children present in an environment subjecting the child to exposure to the clandestine manufacture of controlled substances, their precursors or analogs (Section 3 of the engrossed bill)
- 3) Clarified the definition of abused child to apply to non-caretakers and eliminated the crime of fornication from the list of sexual crimes that require reporting. Mandated reporters will not have to report if a teen discloses sexual activity with a same-age juvenile (Section 4 of the engrossed bill).
- 4) Clarified the types of images, x-rays and medical tests a person or official subject to mandatory reporting of a possible sexual offense may take without the consent of the child or the child's parents or guardian (Section 5 of the engrossed bill).

The Senate adopted the following amendments recommended by the Coalition Against Sexual Assault North Dakota, Attorney General's Office, and ND Healthcare Association:

- 1) Section 1 of the engrossed bill was added to protect victims of sexual crimes from being charged themselves. The crime of fornication prohibits minors from engaging in sexual acts. However, by the addition of section 1, the legislature clarifies that it was not their intent to have the younger victim charged

Deanna D. Smith  
Operator's Signature

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Date

with fornication when an older perpetrator has engaged in a sexual act with the minor.

- 2) Section 5 of the engrossed bill was amended to further clarify the types of images, x-rays and medical tests a person or official subject to mandatory reporting of a possible sexual offense may take without the consent of the child or the child's parents or guardian.
- 3) The Senate Judiciary Committee also added the emergency clause.

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Abused Persons Outreach  
Center  
845-0078

WAMPETON  
Rivers Crisis Center  
2-2115

WILLISTON  
Family Crisis Shelter  
572-0757

Chairperson DeKrey  
Members of House Judiciary Committee

Testimony in Support of SB 2212  
March 5, 2003

For the record I am Jessica McSparron, Sexual Assault Program and Policy Coordinator for the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I hereby submit this testimony in support of Senate Bill 2212.

Section 1 protects adolescent victims of sexual assault from prosecution for being involved in a sexual act, since any minor engaging in a sexual act is currently guilty of a class B misdemeanor. We believe it may have a chilling affect on these young victims' reporting if they risk being prosecuted for a criminal act themselves when they come forward to report a rape.

Section 2 addresses an issue which apparently arose out of a recent incident in which prosecution of a sexual offense of indecent exposure was precluded because the act was not committed in a public place. We support this change.

Section 3 involves exposure of children to hazards of controlled substances. We are currently tracking the relationship between rising methamphetamine use and domestic violence and share concern for children caught in these lethal situations.

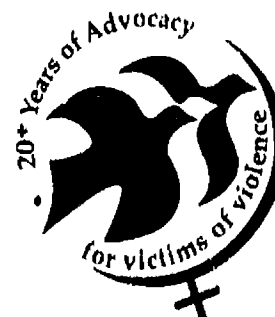
We support Section 4, which would provide professional discretion for those advocates, school counselors, social workers, and others in reporting voluntary sexual activity between minors ages 15 to 17. Currently, for example, an advocate or counselor working with a student on dating relationship issues must report that student if she/he alluded to any voluntary sexual activity in the relationship.

Finally, we also support the broadening and clarification of the kinds of medical tests allowed to be used to substantiate the alleged child abuse done without the parents' knowledge.

Respectfully,

*Jessica McSparron*  
Jessica McSparron

Sexual Assault Program and Policy Coordinator



North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota  
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**SB 2212**  
**Definition of Deprived Child and**  
**Amendments to the Indecent Exposure Law**

The bill makes two amendments to existing law.

Section 1 clarifies existing indecent exposure laws to address certain lewd actions done in the presence of minors.

Section 2 amends the definition of deprived child to include 1) children subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance; and 2) children present in an environment subjecting the child to exposure to the clandestine manufacture of controlled substances, their precursors or analogs. The bill is a necessary component in our efforts to address the tremendous problems associated with parents or other individuals manufacturing methamphetamine in homes where children are present.

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*10/21/03*  
Date