

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1348

2005 HOUSE JUDICIARY

HB 1343

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1348

House Judiciary Committee

Conference Committee

Hearing Date 1/17/05

Tape Number	Side A	Side B	Meter #
1		xx	32.7-end
2	xx		0-18.3
2		xx	21.3-24
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1348.

Representative Delmore: Sponsor of bill, support, explained the bill, whom to arrest, who is the predominant aggressor.

Chairman DeKrey: Thank you.

Bonnie Palacek, NDCAWS/CASAND: Support (see written testimony).

Chairman DeKrey: Thank you. Further testimony in support of HB 1348.

Chief Dan Draovitch, Minot Police Department: Support (see written testimony).

Chairman DeKrey: In the military, we tried to decide if it had been a fair fight or not. What happens to the person drawn into the fight by an aggressor, and wins the fight.

Chief Dan Draovitch: If you are there, you can tell who picked the fight. But there is a point where you can stop.

Chairman DeKrey: We talked about when did it become beating.

Chief Dan Draovitch: You can either flee, a lot of times there is alcohol involved. The first impact alcohol has is on the common sense, the brain. That's when it doesn't make any difference how big anybody is or how small. You do things that you wouldn't ordinarily do. The worst situation is when an officer arrests both parties, with the understanding that let the court sort it out. That's not doing our job. We can do better.

Representative Meyer: I was glad that you mention that, it's not really a question, but we are seeing a lot more cases of where the big, gentle husband, who really didn't marry very well, and when their wife comes at them and proceeds to beat them, and they were raised to not raise their hand against a woman, in those cases, even though he is twice the size she is, it would take that under consideration in doing these investigations. Does that give you the tool to investigate it.

Chief Dan Draovitch: It gives us one additional tool to investigate, that's correct. In my 37 years, I had a beating by a woman, and I could only hold her and couldn't fight back. I had to call for help.

Representative Charging: There have been some documentaries where women are the aggressors, and automatically the gentle giant is the one who gets hauled out. Will this automatically do the same.

Chief Dan Draovitch: Not at all. You have to do an adequate investigation. There is no automatic to anything. We have been given more tools over the years, but this gives us one more tool to be able to arrest the right person, instead of doing this dual arrest or not arresting anyone, because they both have injuries. The predominant aggressor is a good measure and used successfully by many states, and our department has used it for years. We have some problems in court, occasionally, most of them plead guilty.

Representative Zaiser: I know in Fargo, where men, big and small, have been beaten, but because of the stigma attached, they're afraid to follow through because they thought they would be accused as the aggressor. How do you respond to that. Are there any remedies for that.

Chief Dan Draovitch: I have seen that. I know it exists. If they don't make a claim, we have to walk away.

Chairman DeKrey: Thank you. Further testimony in support of HB 1348.

Sheriff Steve Bay, Grant Co. Sheriff's Dept.: I support this bill. It will help us decide in an investigation who is the predominant aggressor, maybe the aggressor is 5 ft and the other person is 6 ft. It can go either way, male or female. But it is a very important tool that we carry when we get called to the scene. Domestic violence is so important, that in the law enforcement field, they train us that it is most dangerous situation we will walk into. It is dangerous for us, but think about the victim.

Chairman DeKrey: Thank you. Further testimony in support.

Kari Kerr-Welsh, Prevention and Education Program Coordinator at the Community

Violence Intervention Center in Grand Forks: Support (see written testimony). She handed out testimony of Lt. Donavon Rasmuson and Jim Vigness (see written testimony).

Chairman DeKrey: Thank you.

Carly Mahoney, advocate at Abused Adult Resource Center in Bismarck, ND: Support (see written testimony).

Representative Koppelman: You indicated that the current standard in law is comparative severity of injuries. We've heard that several law enforcement departments already exercise

predominant aggressor standard. Would this bill get rid of the comparative severity, or just add this to the tool chest, how would that improve things.

Carly Mahoney: It just adds extra steps to it, comparative severity of injuries, to allow law enforcement to utilize other means to determine who that aggressor is. Some departments don't feel they can use it unless it is in the statute.

Chairman DeKrey: Thank you. Further testimony in support.

John Olson, ND Peace Officer Association: Support. We believe it is a good bill.

Chairman DeKrey: Thank you. Further testimony in support.

Jonathan Byers, AG's office: Support.

Chairman DeKrey: Thank you. Further testimony in support.

Connie Hildebrand, NASW-ND & AAUW-ND: We support this bill.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1348.

Representative Meyer: I move a Do Pass motion.

Representative Zaiser: I second the motion.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Galvin

Date: 4/17/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1348

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Meyer Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	/		Representative Zaiser	✓	
Representative Charging	/				
Representative Galvin	/				
Representative Kingsbury	/				
Representative Klemin	/				
Representative Koppelman	/				
Representative Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Galvin

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

REPORT OF STANDING COMMITTEE (410)
January 17, 2005 3:16 p.m.

Module No: HR-10-0586
Carrier: Galvin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1348: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1348 was placed on the
Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1348

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1348

Senate Judiciary Committee

Conference Committee

Hearing Date March 15, 2005

Tape Number	Side A	Side B	Meter #
1	X		1530 - End
		X	0.0 - 2030
Committee Clerk Signature <i>Maria R. Blay</i>			

Minutes: Relating to domestic violence arrest procedures and reports.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Delmore, Dist. #43 -Introduced the bill (meter 1525). This is the attempt to provide a statutory back-up to current training in the reporting process among ND law enforcement agencies Some of this legislation is in 30 states and it provides guidance to law enforcement officers in making appropriate arrests. The concept was brought forward by a group advocates and law enforcement officers across the state they are working on a model domestic violence response policy. Testimony will show the need and the use. This bill has passed the house with no opposition.

Sen. Trenbeath wondered if the law enforcement in the field were willing to do the determination in the field? They testified in favor of this in the house and in some cities are doing this successfully. This only clarifies in statute what they are doing.

Janelle Moos, ND Council on Abused Women- Community Response and Prevention Specialist (meter 1720) Gave Testimony - Att. #1 Also provided testimony from **Donavon Rasmuson**, Lieutenant for UND - Att. #2, **Jim Vigness**, Detective Grand Forks Police Department - Att. #3

Sen. Traynor what are the current training plans of the department to identify the prominent aggressor? Ms. Moos replied that at is time the formal policies has not been done yet. The task force will be trained to go to the agencies. Discussion (meter 2060)

Senator Syverson questioned a large male restraining his much smaller wife from harming him, how would he be profiled? According to this definition the male had the size but if the female was the aggressor.. How would this be interpreted? The language was done in collaboration of the different agencies. I will refer this on to Sheriff Bay who will give his testimony. Discussed the Predominant Aggressor to be the most significant, not necessary the first aggressor and the other factors.

Senator Hacker how do you determine the likelihood of future harm? How do you train someone to determine the likely hood of future harm? Domestic violence is a pattern they train officers to look at patterns. There is no way to actually determine likely hood of future harm. In the predominately the aggression gets worse in each future crime.

Sen. Trenbeath asked in sub section 2 we obligate the officer "the officer shall determine which party is..." In section 3 we say "if the officer determines..." Should the language not coincide?

Ms. Moos responded that shall is in current language section 3 was added so will include it in the report.

Sen. Trenbeath responded that an does the officer not do this already? Yes we would hope so.

The training is very limited and we are working to improve it.

Senator Triplett asked if her impression that this additional "predominate aggressor" language that most domestic violence incidents with just one arrest? We would hope it would decrease the incidence of dual arrests, currently they have been on the increase. Senator Triplett stated that this language would not prevent the dual arrests? It would not eliminate the option but we would hope the additional guidance would eliminate the possibility of dual arrest and just arrest the person who has been the most significant. Discussion of the above (meter 2890) All acts against the law are significant. Why should one who made less then the other be considered off the hook? Discussed the size of men verses women. **Sen. Nelson** sited several E-mail's to her siting the targeting of men. Men get put in jail and counseling and women don't have to go to counseling? Discussion of verbal abuse not being as visible as size. **Sen. Trenbeath** sited his concern about an officer being obligated to make a determination. Police officers are fact finders not judges. He also has concerns of the creation of a label that will follow a person through the court system "prominent aggressor". In front of a jury this makes you sound guilty off the bat. The officer is already doing the job currently with out categorizing a person in the process. I do not begrudge the tool (guidance to the officer) it is the label I do not like. No one from the Bar Association was on the committee, the police have been represented but the others are not.

Jon Olson, ND Peace Officers Assoc. (meter 4275) We are in favor of the bill. This bill does not force the officers to do anything they can not determine.

Steve Bay, Grand Forks Sheriff (meter 4360) In law enforcement over 21 years. Discussed his training. Law enforcement is supportive of the language and do not think it will change dual arrests. Our job starts with the first call but it does not end when we leave the house. We do investigations and each case is different. When we get a call we appreciate as many tool as we can have to use. This gives us one more tool. Sited an example. Some labels are deserved.

Senator Triplett questioned if the groups goal was to reduce the dual arrest and if they are doing this in other states you have mentioned and how has this reduced there dual arrests? I do not have the numbers but they have gone down. Senator Triplett further questioned why to decrease in dual arrest was so important? It would benefit the kids. If both parents get arrested it is hard on the children.

Senator Syverson spoke of how emotional stress in a long term environment could build up. A smaller person could cause stress levels to build, or push someone else to the brink.

Carly Mahoney, Advocate of Abused Adult Resource Center (meter 0.5) Gave testimony - Att. #4a and gave additional testimony of **Donald Rudnick**, Sheriff Att. #4b

Kari Kerr Welsh, Prevention and Education Program Coordinator at the Community Violence Intervention Center in Grand Forks, (meter 5054) Gave Testimony - Att. #5. The committee discussed the dangers of verbal abuse

Jon Byers, Attorney Generals Office (meter 358) Our office is in support of this bill. I am on the task force. We support this legislation on behalf of the police Department..

Senator Triplett asked if dual arrests are currently allowed in the law why do we need this. She also wondered that with very little training would these few lines be there only training?

Discussion of the law being a "cop out" for the officer to not making a decision. Concern that

the arresting officer would have too much power in putting a label onto the person arrested that will follow them through the system. Sen. Trenbeath questioned if we delete lines 5-6 that have the words "predominant aggressor" and left the definition in, would we get the same job done? It would not give them as much guidance.

Testimony in Opposition of the Bill

Mitchell Sandersom, Grand Forks citizen (meter 826) While something needs to be done with this problem this is not the way to do it. The police are not trained to do this. Discussed his personal situation and repeated much of what has been covered.

Rollin Rymer, Grand Forks citizen (meter 1404) I am against any Gender Bias laws. Children are the ones who suffer. Mr. Rymer's cited personal case and repeated more of what has been discussed.

Senator Syverson discussed how this would be well suited in a post board training curriculum. The tool would be better utilized there than in a statute.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1348

Senate Judiciary Committee

Conference Committee

Hearing Date March 21, 2005

Tape Number	Side A	Side B	Meter #
1	X		1320 - 3870
Committee Clerk Signature <i>Maria L. Salberg</i>			

Minutes: Relating to domestic violence arrest procedures and reports.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

Sen. Trenbeath handed out amendments to the committee - Att. #1 (meter 1400) The reason I am handing out the amendments is the legal "stigma" that may attach to someone having the label "predominant aggressor", even though everyone assures us this has no legal significance as far as guilt is concerned. While I agree, others may not see it this way. When I had this amendment drafted I wanted to do the same thing but with new language. I ran this by the ND Council For Abused Women Services, Janelle. Originally she was OK to this language but since then they have come back with the response via a note on my desk: Dear Sen. Trenbeath, after discussions with our disciplinary committee and other individual the testified. The language in your amendment would cause confusion among officers. Therefore we request the original language be retained or that the portions to the bill relating to predominant aggressor be deleted and let

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1348

Hearing Date March 21, 2005

current language stay. I have also received e-mail's from law enforcement officers stating that we kill the bill. After they reviewed my amendment they were then comfortable with the bill. The change removes the label but still describes the activity. At one point they portray the officers as well trained highly professional, experienced individuals and the next breath they tell us they can't read the English language. Committee discussed this. The language sounds very "anti mail".

Sen. Trenbeath made the motion to Do Pass the Amendment and **Senator Triplett** seconded the motion. All members were in favor and the motion passes.

Sen. Nelson made the motion to amend line 25 to delete 25 and 26, and **Sen. Trenbeath** seconded the motion. All members were in favor and motion passes.

Senator Triplett made the motion to Do Pass as twice amended and **Senator Hacker** seconded the motion.

Carrier: **Sen. Trenbeath**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

AH # 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1348

Page 1, line 1, remove "14-07.1-10," and remove the second comma

Page 1, remove lines 4 through 24

Page 2, remove lines 1 through 7

Page 2, line 23, replace "shall" with "may" and replace "is the" with "has engaged in the most immediately significant aggression"

Page 2, line 24, remove "predominant aggressor"

Page 3, line 5, replace "was" with "has engaged in the most immediately significant aggression"

Page 3, line 6, remove the first "the predominant aggressor" and replace the second "the predominant aggressor" with "that individual"

Renumber accordingly

Date: 3/21/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1348

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment 50526.0101

Motion Made By Senator Trenbeath Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/21/05

Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1348

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend line 25 after involved Delete 25 & 26

Motion Made By Senator Nelson Stopping at and the likely hood of doing future harm
Seconded By Senator Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/21/05
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO: HB 1348

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As 2x Amended.

Motion Made By Senator Triplett Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Trenbeath

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

REPORT OF STANDING COMMITTEE

HB 1348: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEARS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1348 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "14-07.1-01," and remove the second comma

Page 1, remove lines 4 through 24

Page 2, remove lines 1 through 7

Page 2, line 23, replace "shall" with "may" and replace "is the" with "has engaged in the most immediately significant aggression"

Page 2, line 24, remove "predominant aggressor" and after "factors" insert an underscored comma

Page 2, line 25, overstrike the comma and remove "the"

Page 2, line 26, remove "comparable size and strength of each party."

Page 3, line 5, replace "was" with "has engaged in the most immediately significant aggression"

Page 3, line 6, remove the first "the predominant aggressor" and replace the second "the predominant aggressor" with "that individual"

Renumber accordingly

2005 TESTIMONY

HB 1348

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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

Testimony on House Bill 1348
House Judiciary Committee
January 17, 2005

Chair DeKrey and Members of the Committee:

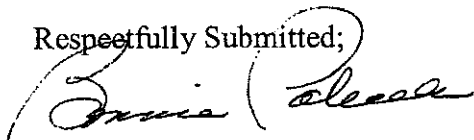
I am Bonnie Palecek speaking on behalf of NDCAWS/CASAND in support of HB 1348. As many of you know, our state coalition of 19 domestic violence/sexual assault agencies has worked with the legislature since the first domestic violence statute was passed in 1979 as one means of assuring victims safety and offender accountability.

We have been told many times that our laws are among the best in the nation, and we thank you for that. We also listen when those who look at the nationwide scope of our work tell us that there are places we can improve.

We are not easily sold on changes to 14.07.1. Our Legislative Committee looked closely at similar laws in 30 states, listened to trainers from the International Association of Chiefs of Police and elsewhere, and perhaps most importantly listened to our own law enforcement people and advocates, some of whom you will hear today. They convinced us this change is needed, and will help them do their jobs more effectively. Although support for this change is not unanimous, we feel compelled to bring it before you. This bill reflects professional law enforcement policy and training issues, as well as victim advocacy issues.

Each year over 4000 victims of domestic violence, and their 4800 children, depend on laws such as these to keep them safe in our state. Others will explain much more clearly than I, how adding predominant-aggressor language and clarifying self-defense will make our current statute better and serve these victims more effectively.

Respectfully Submitted;



Testimony in Favor House Bill #1348

Chairman Dekrey and members of the House Judiciary Committee:

My name is Dan Draovitch and I am the Chief of Police in Minot. I have been with the Minot Police Department for 37-years and have been dealing with domestic violence situations as either a responder or a proponent of domestic violence programs and related law enforcement tools for as long as I can recall. I grew up in a tough neighborhood in New Jersey just across the river from New York City and of all the things that mattered to me since my first memories were the impact that a "bully" can have on a person. If I ever got into trouble as a youth, it was for getting into a squirmish with someone who was bullying someone else. As a law enforcement officer I continue to be troubled by a person having power over another person to exercise force leading to serious personal injury and even death.

In working with domestic violence partners in Minot since the first domestic violence shelter was open, I have seen the laws change from the position where we could not make an arrest unless we actually witnessed the incident to a point where violators were arrested based on the standard of probable cause.

It was my privilege to work on efforts to be able to arrest a batterer and to alleviate the problem of the batterer posting bond and getting out of jail; returning to their home and resuming their aggression before we could even begin to do our reports. The law was changed to keep the batterer in jail without bond until a hearing was held.

In my 37-years there have been long hard challenges to educate the public and especially the abusers that domestic violence was indeed a **crime** when social ignorance denoted domestic violence a matter of an act to be kept secret in the home.

I have seen women (especially) maimed, disfigured, and killed due to the effects of domestic violence. It has been a long road with the legislature in past sessions having gradually provided law enforcement with the tools to investigate and make arrests based on probable cause in domestic violence incidents. This next tool as stated in this bill will provide additional "common sense" to be exercised by our officers when investigating domestic violence cases. This bill would allow officers to delineate between a large powerful predominant aggressor who may have been struck by a lesser physical presence either in self-defense or in pure fear to inflict a slight wound while the victim is beaten and sustains wounds often more serious but presenting a questionable situation where both have physical marks.

However, as you can probably see in your mind's eye the many times where words to inflict fear on a person which turns to physical violence and provoking a physical reaction to get away; to flee; or to just get out of the way of an attacker can inflict bodily harm but it is reasonable to do so under the tenet of self-defense and/or intimidation under great stress. The interest of the law enforcement officer is to arrest the predominant aggressor and to be able to separate the aggressor from mutual combat and/or a dual arrest which presents a dilemma to law enforcement when both parties show signs of physical injury and meet the standard of probable cause. It only takes good sense; and good observation and asking the right questions to the right people to be able to determine who the predominant aggressor is and the arrest can be made.

The Minot Police Department has exercised this procedure for some time as a procedural process rather than acting under the color of law. While it can work with a proper investigation, the prosecution in the courts is somewhat more difficult in that the concept of the predominant aggressor is not recognized in the domestic violence statutes at this time.

In closing, the Attorney General of the State of North Dakota every year puts out statistics relative to murders in the State of North Dakota. As you might expect, these offenses are varied in location and circumstances but one thing that you will see in past statistics for every year is that murders resulting from domestic violence are always more than 50% (and sometimes as much as 70%) of the total murders in the State of North Dakota. Law enforcement needs absolutely every tool which can be provided by the law in order to protect these victims. Each and every individual deserves the best protection possible. When I think back to the time when our hands were totally tied and we were rarely able to make a domestic violence arrest, to the various laws which we really had to fight hard for to give us the tools to be able to protect our victims, this bill will give us one more tool to be able to do just that.

Thank you for your consideration and I would ask for a favorable response to this letter.



Abuse & Rape Crisis Program ♦ Wishing Well Child Visitation Program
Crime Victim Witness Program ♦ Domestic Violence Offender Treatment Program
Prevention and Education Program

A United Way Agency

January 17, 2005

Chairman DeKrey and Members of the House Judiciary Committee:

My name is Kari Kerr Welsh and I am the Prevention and Education Program Coordinator at the Community Violence Intervention Center in Grand Forks. I have worked in the area of domestic violence for the past nine and a half years as an advocate and most recently providing training on victimization issues to law enforcement and other professionals. I am here to provide testimony in support of House Bill 1348.

The intent of predominant aggressor legislation is to protect victims of ongoing domestic violence. It provides guidance to officers when investigating reports of mutual violence in an effort to lower dual arrest rates and thus avoid undermining the overall goal of holding offenders accountable and protecting victims. In many cases, when officers make a dual arrest, they are arresting an ongoing victim of abuse who is acting in self-defense or retaliating for being battered.

Once the officer determines that self-defense is not a factor, the predominant aggressor legislation would allow officers to consider additional factors in the course of their investigation, such as the comparative severity of injuries, the comparable size and strength of each party and the likelihood of future harm.

Case-in-point in Grand Forks, a 29 year old victim of domestic violence was arrested after law enforcement responded and saw a scratch on her husband's cheek. The husband had raped her and hit her on the head. It is important to note she was also pregnant at the time. She picked up the phone to dial 911 and he grabbed it from her. When she attempted to grab the phone back, it left a scratch on his cheek. She had no visible bruising at the time law enforcement arrived on scene. What is most concerning about this incident is the fact that she has suffered two years of abuse at the hands of her husband resulting in numerous injuries. The comparable size of these individuals is approximately 5'9", 175 pounds, to her 5'5", 120 pounds. The comparable strength isn't even close and the likelihood of future injury is obvious. Still, the victim was arrested and sat in jail for three days until the States Attorney's Office reviewed the case and dismissed the charges. Although the victim was never formally charged, the likelihood that she will call law enforcement again is extremely minimal, but the likelihood that her husband will use this incident to increase his power and control in their relationship is overwhelming. As a system we have failed to protect this victim's safety and hold this offender accountable.

During the past year and a half, I have been conducting training to law enforcement on the concept of predominant aggressor. While the idea has been widely accepted, the feedback is, that without the backing of legislation it is a concept that the officers are hesitant to apply in practice. Therefore, I urge your favorable consideration of House Bill 1348.

Thank you.

Kan Ken Welsh

UNIVERSITY POLICE DEPARTMENT
P.O. BOX 9035
GRAND FORKS, NORTH DAKOTA 58202-9035
(701) 777-3491
FAX (701) 777-4132

January 17, 2005

House Judiciary Committee

Hon. Duane DeKrey, Chairman

Committee Members:

My name is Donavon Rasmuson. I am a Lieutenant for the University of North Dakota Police Department where I have been employed for 25 years. I have 28 total years of law enforcement experience and I am writing this letter in support of the addition of "predominant aggressor" language as proposed in HB 1348.

Imagine if you will, Mother is home with the children, Dad is "out with the boys." Dad comes home, as he has done in the past and starts verbally bashing and abusing his wife. He continues to "push her buttons" knowing that eventually she will physically strike out. She does, and causes a slight bloody nose and a fat lip. At this point Dad knocks her across the room, and gives her a couple more licks for good measure. During this the oldest child is on the telephone to the local law enforcement agency reporting that Mom and Dad are fighting.

Law Enforcement arrives on the scene. Dad meets them at the door with his fat lip and bloody nose. He tells the officers that he had been out drinking and when he got home, his wife started yelling at him for not coming home after work and punched him in the nose. There are obvious signs of recent physical injury to Dad.

The officer talking with Mom gets basically the same story. He came home drunk, when I asked why he didn't come home from work a shouting match started. This has happened before and he always ends up in a fight. I hit him and he punched me a couple of times. There are also obvious signs of recent physical injury to Mom.

With the present language, unfortunately, most of the time the responding officers will arrest both parties because of the injuries to both. This does not accomplish what the domestic violence laws were intended for, the protection of the victim.

The language in HB 1348 provides additional guidance to law enforcement officers by including the determination of whether or not either party acted in self defense, which party was the predominant aggressor and still requires the consideration of comparative injuries, as well as the size and strength of each, and the likelihood of future harm. I feel that the inclusion of this type of language in fact makes it easier for law enforcement officers to "get it right" the first time, and provide for the protection of the victim.

There may be arguments that there is no need for new language in the Code, it is just a matter of training for officers. Departments do not have the time, staffing or money to provide all the training necessary to make every officer an expert on determining comparative injuries. It is actually easier to spell it out, as HB 1348 does by including the necessity to determine self-defense issues, consider size and strength of each party, and who is more likely to cause more harm to whom.

I urge the committee to recommend that HB 1348 be submitted, as written, to the full house with the recommendation to pass. By doing so you are doing your part to make the residents of this state that much safer in their own homes.

Thank you,



Lt. Donavon Rasmuson

University of North Dakota Police Department

Box 9035

Grand Forks, ND 58202



POLICE DEPARTMENT

122 South Fifth Street • P.O. Box 5548 • Grand Forks, ND 58206-5548

John D. Packett
Chief of Police

Phone:(701) 787-8000
Fax:(701) 780-8253

January 15, 2005

Chairman DeKrey and Members of the House Judiciary Committee;

Hello, My name is Jim Vigness and I have been a police officer with the Grand Forks Police Department for over 18 years. I have been a detective investigating domestic violence cases for over 6 years.

I urge you to add the proposed 'Predominant Aggressor' language to House Bill #1348. I strongly believe that the adoption of the additions will have a number of benefits for the families involved with the entire system that responds to domestic violence. I would like to point out two of the more immediate benefits here.

The first benefit I foresee is the reduction of dual arrests. Dual arrests are often referred to as mutual combat situations. Mutual combat requires that individuals involved in combat have inflicted or have the ability to inflict equal damage to the other combatant. In domestic violence this scenario is rare. Very rare in fact. When a mutual arrest is made, I believe there is too great a chance that one person has been unjustly arrested. At first, there may appear to be probable cause to make the arrest, but with predominant aggressor issues being taken into consideration, I feel that an arrest of what is most likely a victim of domestic violence can be avoided. Arresting a victim of domestic violence should never happen. Sadly, it does, but with the addition of the predominant aggressor language we could greatly reduce the occurrence of it.

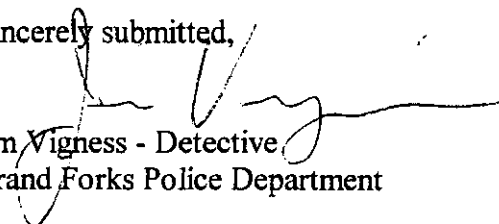
The second benefit is one that dovetails the first. This statute will provide additional guidance to law enforcement when responding to domestic violence calls. I believe that an officer responding to a domestic violence scene that has a greater understanding of domestic violence dynamics will be able to make not only the right decisions in moments of chaos, but will be able to make decisions that will have a lasting positive effect on all those involved.

I do not believe that this is an issue of training for law enforcement, as law enforcement officials across North Dakota do not have the same training opportunities. Put it in state law where we all have access to it.

I strongly urge you to consider this issue.

Thank you very much for your attention to my testimony.

Sincerely submitted,


Jim Vigness - Detective
Grand Forks Police Department



A B U S E D
A D U L T
R E S O U R C E
C E N T E R

Chair DeKrey
Testimony HB 1348
House Judiciary Committee
January 17, 2004

Chair DeKrey and Members of the Committee:

My name is Carly Mahoney and I am an advocate at the Abused Adult Resource Center in Bismarck, ND. I am here today to speak in support of **House Bill 1348**.

I have been working at the AARC for the past two and a half years as an advocate for victims of domestic violence and sexual assault. For the past two years I have coordinated the Rural Outreach Advocacy Program for seven counties. Throughout 2004, task forces were developed in those counties to develop a "Domestic Violence Coordinated Community Response Protocol". The task forces were multidisciplinary teams that included: law enforcement, prosecutors, social service workers, educators, health care providers, clergy, probation officers, advocates, human services center workers, court personnel, extension agents, city and county council members, counselors, and community members.

In the process of writing the protocol, questions arose around determining the best community response for those situations in which one or both parties have injuries and self-defense cannot be determined. Although supportive of predominant aggressor assessment, task force members did not feel there was sufficient descriptive language in North Dakota Statute to do so.

For example, during an administrative review of domestic violence cases at a U.S. Marine Corps base, the counselor in charge presented the case as a "summary" of the story from the two parties. As part of her presentation, she showed the committee a police photo of the husband's injury – a deep bite mark to the upper, left side of his chest and no other injuries; according to the police report, the wife had red marks on both of her wrists and some redness around her face and neck. The husband said the wife bit him, so he restrained her to keep her from doing so again. The wife reported her husband had pinned her against his chest, holding her wrists behind her back. She bit him while being pinned against his chest. The committee found "mutual" abuse with the wife as the primary aggressor due to the severity of the husband's injury.

In this case scenario, what the committee members in effect did was to conflate the two stories and take the "severity" of injuries as an indication of predominate responsibility. If they had contemplated each party's actions separately, the two stories would not have seemed equally credible. Consider that the husband said that the wife bit him. Did she run across the room and suddenly bite his chest without his noticing what she was going to do? Were they talking or arguing and her first move was to lunge at him teeth first? Biting someone is generally not considered an offensive move. If a person is going to bite

PO Box 5003 • Bismarck, ND 58502-5003

Office: 701-222-8370 • Fax: 701-323-9399
24-Hr. Crisis: Toll Free: 1-866-341-7009
email: aarc@btinet.net



someone, they are more likely to target an extremity, such as a hand or arm, which can be brought up to the mouth. The wife's story that she was pinned face first against the chest, unable to breathe, and then bit her husband, is more credible. Despite the severity of his injury, her actions could potentially be considered self-defense.

It is only by sorting out each story separately, however, and as separate courses of conduct, that each can be properly evaluated, not only for self-defense but also in terms of the predominant physical aggressor analysis (When is Arrest NOT an Option? The Dilemmas of Predominate Physical Aggressor Language and the Regulation of the Intimate Partner Violence by Trish Erwin for the Battered Women's Justice Project).


North Dakota's current statute language indicating "comparative severity of injuries" would have led to the same result to arrest the wife in this scenario. As we see with further analysis, it is not the appropriate response in such cases. Although "comparative severity of injury" is one part of determining predominant aggressor, it is insufficient in providing a full framework for law enforcement to assess the situation. It often leaves officers in situations in which they are forced to arrest the wrong party or both parties. According to the Battered Women's Justice Project, *the concept of predominant physical aggressor attempts to provide law enforcement officer's with a framework to determine- in a situation where both parties have used violence- which party should be subject to state action.*

Dual arrests create multiple problems, not only for the victim but for the criminal justice system as well. When a victim of domestic violence is arrested, it is the ultimate re-victimization by the very system in which they sought help. This creates an environment where a victim is reluctant to seek help in the future, further jeopardizing their safety. Witnessing violence in the home is a traumatic event for a child. If dual arrests are made it causes children to be removed from the safety and security of their home and may require they be placed into foster care.

As advocates we have witnessed issues arise in the criminal justice system, that upon dual arrest, victims will often plead guilty at their first appearance, without explaining that there was a need to defend themselves – whereas batterers tend to plead not guilty. Victims often overlook the long term consequences of pleading guilty, such as: loss of housing assistance, public assistance, jobs and custody, fines and fees; ultimately increasing dependence on the batterer and continuing the cycle of violence. Most often we see cases against the batterer dropped, the violence continues, and victims are the only ones held accountable for the batterers' behavior.

Nationwide, nearly thirty states have already adopted similar Predominant Aggressor language to enhance their current statutes for domestic violence offenses. By incorporating Predominant Aggressor language, North Dakota will join these states in creating a safer environment not only for victims but for their children, law enforcement, and the community as a whole. This is why I speak today on behalf of the Abused Adult Resource Center in support of **House Bill 1348**. Holding the Predominant Aggressor accountable is a vital part of the process in working to end violence in our communities.

Thank you,



Carly Mahoney

Delmore, Lois M.

From: Rudnick, Donald J. [Rudnick@co.cass.nd.us]
Sent: Friday, January 14, 2005 6:32 PM
To: Bernstein, LeRoy G.; Boehning, Randy G.; Delmore, Lois M.; Kingsbury, Joyce M.; Klemin, Lawrence R.; Koppelman, Kim A.; Kretschmar, William E.; Maragos, Andrew G.
Cc: dcharging@state.nd.us; pgalvin@state.nd.us; sjmeyer@state.nd.us
Subject: support of HB 1348

Because I cannot be in Bismarck to testify I am sending this e-mail urging your support for the recommended changes to HB 1348. As a member of the committee to improve procedures in investigations of complaints of Domestic Violence, we have been working to improve existing statues to help. We also are trying to develop a policy which all cities and counties can adopt as required by law. Your support of this bill will be a step in the right direction in full-filling the goals of the committee to get a uniform process in North Dakota to treat all domestic violence the same. Thank you in advance. Cass County Sheriff Don Rudnick

AH #1

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

18 East Rosser #370 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairman Traynor and Members of the Senate Judiciary Committee,

My name is Janelle Moos and I'm the Community Response and Prevention Specialist with the ND Council on Abused Women's Services where I supervise the administration of a grant that is in the process of developing a model law enforcement domestic violence policy with the assistance of a statewide multidisciplinary task force. I'm here this morning to provide testimony on behalf of this statewide, multidisciplinary task force and to urge your favorable consideration of HB 1348.

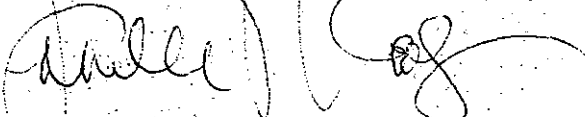
The task force convened in December of 2004 and began drafting a framework within which to develop a model ND law enforcement domestic violence policy that will assist city, county and tribal departments across the state in responding to domestic violence in their communities. The policy will include a large section on arrest procedures. During the drafting of the arrest procedures section, many law enforcement officers began discussing predominant aggressor within the context of how an officer makes the determination of who to arrest in a domestic violence incident. These officers described the process within which they make the arrest decision and felt that the addition of predominant aggressor language to the arrest procedures section of the domestic violence code would provide additional guidance to officers in making the decision to arrest.

Predominant aggressor as defined in HB 1348 means the individual determined to be the most significant, but not necessarily the first, aggressor in a domestic violence incident. The concept of predominant aggressor attempts to provide law enforcement officers with a framework to determine- in a situation where both parties have used violence- which party should be arrested. There are currently 30 states, including Montana and South Dakota that provide this guidance to their law enforcement officers by including the predominant aggressor concept within their domestic violence statutes. Training on domestic violence response is limited and law enforcement agencies across the state do not have equal opportunity or access to the training; therefore, by having predominant aggressor added to the domestic violence statute it will provide equal access to all law enforcement agencies across North Dakota.

At this time I would like to submit written testimony on behalf of two members of the task force; Detective Jim Vigness of the Grand Forks Police Department and Lt. Donavon Rasmuson of the University of North Dakota Police Department and mention that Cass County Sheriff Donald Rudnick emailed his testimony to members of the Committee. Additionally, in the next few minutes you will hear additional testimony from two other members of the task force, Grant County Sheriff Steve Bay and Carly Mahoney, the Rural Outreach Coordinator with the Abused Adult Resource Center of Bismarck.

I would like to thank you for your time this morning and to strongly urge your favorable consideration of HB 1348. Thank You.

Janelle Moos, M.S.



UNIVERSITY POLICE DEPARTMENT
P.O. BOX 9035
GRAND FORKS, NORTH DAKOTA 58202-9035
(701) 777-3491
FAX (701) 777-4132

March 10, 2005

Senate Judiciary Committee

Senator John T Traynor, Chairman

Committee Members:

My name is Donavon Rasmuson. I am a Lieutenant for the University of North Dakota Police Department where I have been employed for 25 years. I have 28 total years of law enforcement experience and I am writing this letter in support of the addition of "predominant aggressor" language as proposed in HB 1348.

Imagine if you will, Mother is home with the children, Dad is "out with the boys." Dad comes home, as he has done in the past and starts verbally bashing and abusing his wife. He continues to "push her buttons" knowing that eventually she will physically strike out. She does, and causes a slight bloody nose and a fat lip. At this point Dad knocks her across the room, and gives her a couple more licks for good measure. During this the oldest child is on the telephone to the local law enforcement agency reporting that Mom and Dad are fighting.

Law Enforcement arrives on the scene. Dad meets them at the door with his fat lip and bloody nose. He tells the officers that he had been out drinking and when he got home, his wife started yelling at him for not coming home after work and punched him in the nose. There are obvious signs of recent physical injury to Dad.

The officer talking with Mom gets basically the same story. He came home drunk, when I asked why he didn't come home from work a shouting match started. This has

happened before and it always ends up in a fight. I hit him and he punched me a couple of times. There are also obvious signs of recent physical injury to Mom.

With the present language, unfortunately, most of the time the responding officers will arrest both parties because of the injuries to both. This does not accomplish what the domestic violence laws were intended for, the protection of the victim.

The language in HB 1348 provides additional guidance to law enforcement officers by including the determination of whether or not either party acted in self defense, which party was the predominant aggressor and still requires the consideration of comparative injuries, as well as the size and strength of each, and the likelihood of future harm. I feel that the inclusion of this type of language in fact makes it easier for law enforcement officers to "get it right" the first time, and provide for the protection of the victim.

There may be arguments that there is no need for new language in the Code, it is just a matter of training for officers. Departments do not have the time, staffing or money to provide all the training necessary to make every officer an expert on determining comparative injuries. It is actually easier to spell it out, as HB 1348 does by including the necessity to determine self-defense issues, consider size and strength of each party, and who is more likely to cause more harm to whom.

I urge the committee to recommend that HB 1348 be submitted, as written, to the full house with the recommendation to pass. By doing so you are doing your part to make the residents of this state that much safer in their own homes.

Thank you,



Lt. Donavon Rasmuson

University of North Dakota Police Department

Box 9035

Grand Forks, ND 58202

Att #3

John D. Packett
Chief of Police**POLICE DEPARTMENT**

122 South Fifth Street • P.O. Box 5548 • Grand Forks, ND 58206-5548

Phone: (701) 787-8000
Fax: (701) 780-8253

January 15, 2005

Chairman Traynor and Members of the Senate Judiciary Committee;

Hello, My name is Jim Vigness and I have been a police officer with the Grand Forks Police Department for over 18 years. I have been a detective investigating domestic violence cases for over 6 years.

I urge you to add the proposed 'Predominant Aggressor' language to House Bill #1348. I strongly believe that the adoption of the additions will have a number of benefits for the families involved with the entire system that responds to domestic violence. I would like to point out two of the more immediate benefits here.

The first benefit I foresee is the reduction of dual arrests. Dual arrests are often referred to as mutual combat situations. Mutual combat requires that individuals involved in combat have inflicted or have the ability to inflict equal damage to the other combatant. In domestic violence this scenario is rare. Very rare in fact. When a mutual arrest is made, I believe there is too great a chance that one person has been unjustly arrested. At first, there may appear to be probable cause to make the arrest, but with predominant aggressor issues being taken into consideration, I feel that an arrest of what is most likely a victim of domestic violence can be avoided. Arresting a victim of domestic violence should never happen. Sadly, it does; but with the addition of the predominant aggressor language we could greatly reduce the occurrence of it.

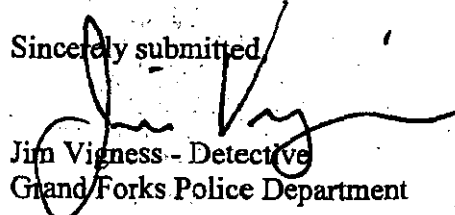
The second benefit is one that dovetails the first. This statute will provide additional guidance to law enforcement when responding to domestic violence calls. I believe that an officer responding to a domestic violence scene that has a greater understanding of domestic violence dynamics will be able to make not only the right decisions in moments of chaos, but will be able to make decisions that will have a lasting positive effect on all those involved.

I do not believe that this is an issue of training for law enforcement, as law enforcement officials across North Dakota do not have the same training opportunities. Put it in state law where we all have access to it.

I strongly urge you to consider this issue.

Thank you very much for your attention to my testimony.

Sincerely submitted,



Jim Vigness - Detective
Grand Forks Police Department



A B U S E D
A D U L T
R E S O U R C E
C E N T E R

Chair John Traynor
Testimony HB 1348
Senate Judiciary Committee
March 15, 2005

Chair Traynor and Members of the Committee:

My name is Carly Mahoney and I am an advocate at the Abused Adult Resource Center in Bismarck, ND. I am here today to speak in support of **House Bill 1348**.

I have been working at the AARC for the past two and a half years as an advocate for victims of domestic violence and sexual assault. For the past two years I have coordinated the Rural Outreach Advocacy Program for seven counties. Throughout 2004, task forces were developed in those counties to develop a "Domestic Violence Coordinated Community Response Protocol". The task forces were multidisciplinary teams that included: law enforcement, prosecutors, social service workers, educators, health care providers, clergy, probation officers, advocates, human services center workers, court personnel, extension agents, city and county council members, counselors, and community members.

In the process of writing the protocol, questions arose around determining the best community response for those situations in which one or both parties have injuries and self-defense cannot be determined. Although supportive of predominant aggressor assessment, task force members did not feel there was sufficient descriptive language in North Dakota Statute to do so.

For example, during an administrative review of domestic violence cases at a U.S. Marine Corps base, the counselor in charge presented the case as a "summary" of the story from the two parties. As part of her presentation, she showed the committee a police photo of the husband's injury - a deep bite mark to the upper, left side of his chest and no other injuries; according to the police report, the wife had red marks on both of her wrists and some redness around her face and neck. The husband said the wife bit him, so he restrained her to keep her from doing so again. The wife reported her husband had pinned her against his chest, holding her wrists behind her back. She bit him while being pinned against his chest. The committee found "mutual" abuse with the wife as the primary aggressor due to the severity of the husband's injury.

In this case scenario, what the committee members in effect did was to conflate the two stories and take the "severity" of injuries as an indication of predominate responsibility. If they had contemplated each party's actions separately, the two stories would not have seemed equally credible. Consider that the husband said that the wife bit him. Did she run across the room and suddenly bite his chest without his noticing what she was going to do? Were they talking or arguing and her first move was to lunge at him teeth first? Biting someone is generally not considered an offensive move. If a person is going to bite

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someone, they are more likely to target an extremity, such as a hand or arm, which can be brought up to the mouth. The wife's story that she was pinned face first against the chest, unable to breathe, and then hit her husband, is more credible. Despite the severity of his injury, her actions could potentially be considered self-defense.

It is only by sorting out each story separately, however, and as separate courses of conduct, that each can be properly evaluated, not only for self-defense but also in terms of the predominant physical aggressor analysis (When is Arrest NOT an Option? The Dilemmas of Predominate Physical Aggressor Language and the Regulation of the Intimate Partner Violence by Trish Erwin for the Battered Women's Justice Project).

North Dakota's current statute language indicating "comparative severity of injuries" would have led to the same result to arrest the wife in this scenario. As we see with further analysis, it is not the appropriate response in such cases. Although "comparative severity of injury" is one part of determining predominant aggressor, it is insufficient in providing a full framework for law enforcement to assess the situation. It often leaves officers in situations in which they are forced to arrest the wrong party or both parties. According to the Battered Women's Justice Project, *the concept of predominant physical aggressor attempts to provide law enforcement officer's with a framework to determine- in a situation where both parties have used violence- which party should be subject to state action.*

Dual arrests create multiple problems, not only for the victim but for the criminal justice system as well. When a victim of domestic violence is arrested, it is the ultimate re-victimization by the very system in which they sought help. This creates an environment where a victim is reluctant to seek help in the future, further jeopardizing their safety. Witnessing violence in the home is a traumatic event for a child. If dual arrests are made it causes children to be removed from the safety and security of their home and may require they be placed into foster care.

As advocates we have witnessed issues arise in the criminal justice system, that upon dual arrest, victims will often plead guilty at their first appearance, without explaining that there was a need to defend themselves - whereas batterers tend to plead not guilty. Victims often overlook the long term consequences of pleading guilty, such as: loss of housing assistance, public assistance, jobs and custody, fines and fees; ultimately increasing dependence on the batterer and continuing the cycle of violence. Most often we see cases against the batterer dropped, the violence continues, and victims are the only ones held accountable for the batterers' behavior.

Nationwide, nearly thirty states have already adopted similar Predominant Aggressor language to enhance their current statutes for domestic violence offenses. By incorporating Predominant Aggressor language, North Dakota will join these states in creating a safer environment not only for victims but for their children, law enforcement, and the community as a whole. This is why I speak today on behalf of the Abused Adult Resource Center in support of **House Bill 1348**. Holding the Predominant Aggressor accountable is a vital part of the process in working to end violence in our communities.

Thank you,


Carly Mahoney

Janelle Moos

From: Rudnick, Donald J. [Rudnick@co.cass.nd.us]
Sent: Monday, March 14, 2005 1:02 PM
To: Traynor, John T.; Syverson, John O.; Trenbeath, Thomas L.; Nelson, Carolyn C.; nhacker@state.nd.us; ctripplett@state.nd.us
Cc: Janelle Moos
Subject: HB1348 predominant aggressor of Domestic Violence

Chairman Traynor and Committee members I am unable to be at your hearing however I am requesting your support for HB 1348. I have with other in law enforcement personnel been serving on a committee to improve the creation of a state wide policy on domestic violence investigations. As a group we have looked at all the aspects of domestic violence, procedures dealing with investigations, and determining the aggressor, arresting and treatment issues. One of the main concerns is the repeat offenders to domestic violence. Many times officers arriving on the scene find it difficult to determine who the aggressor is, so in some situation both may be charged, which in itself is not the best solutions when there are children involved. We are asking that you consider adding the language of a predominant/dominant aggressor which will help identify which one may be the most significant as an aggressor. Domestic violence calls, are some of the most dangerous in the terms an officer or officers knowing what they are really responding to. It is a daunting task of which you have directed us to respond, investigate and determine who needs to be arrested and hopefully with some intervention we may never have to respond again. I again ask for you support of the amendments in HB 1348 Sheriff Don Rudnick

3/14/2005

March 15, 2005

Senate Judiciary Committee: John Traynor, John Syverson, Nicolas Hacker, Thomas Trenbeath, Carolyn Nelson, Constance Triplett.

My name is Kari Kerr Welsh and I am the Prevention and Education Program Coordinator at the Community Violence Intervention Center in Grand Forks. I have worked in the area of domestic violence for the past nine and a half years as an advocate and most recently providing training on victimization issues to law enforcement and other professionals. I am here to provide testimony in support of House Bill 1348.

The intent of predominant aggressor legislation is to protect victims of ongoing domestic violence. It provides guidance to officers when investigating reports of mutual violence in an effort to lower dual arrest rates and thus avoid undermining the overall goal of holding offenders accountable and protecting victims. In many cases, when officers make a dual arrest, they are arresting an ongoing victim of abuse who is acting in self-defense or retaliating for being battered.

Once the officer determines that self-defense is not a factor, the predominant aggressor legislation would allow officers to consider additional factors in the course of their investigation, such as the comparative severity of injuries, the comparable size and strength of each party and the likelihood of future harm.

Case in point in Grand Forks, a 29 year old victim of domestic violence was arrested after law enforcement responded to a call and saw a scratch on her husband's cheek. The husband had raped her and hit her on the head. It is important to note she was also pregnant at the time. She picked up the phone to dial 911 and he grabbed it from her. When she attempted to grab the phone back, it left a scratch on his cheek. She had no visible bruising at the time law enforcement arrived on scene. What is most concerning about this incident is the fact that she has suffered two years of abuse at the hands of her husband resulting in numerous injuries. The comparable size of these individuals is approximately 5'9", 175 pounds, to her 5'5", 120 pounds. The comparable strength isn't even close and the likelihood of future injury is obvious. Still, the victim was arrested and sat in jail for three days until the States Attorney's Office reviewed the case and dismissed the charges. Although the victim was never formally charged, the likelihood that she will call law enforcement again is extremely minimal, but the likelihood that her husband will use this incident to increase his power and control in their relationship is overwhelming. As a system we have failed to protect this victim's safety and hold this offender accountable.

During the past year and a half, I have been conducting training to law enforcement on the concept of predominant aggressor. While the idea has been widely accepted, the feedback is that without the backing of legislation, it is a concept that the officers are hesitant to apply in practice. Therefore, I urge your favorable consideration of House Bill 1348.

Thank you.

Att #6

Nelson, Carolyn C.

From: Dick D Overby [d.overby@juno.com]
Sent: Sunday, March 13, 2005 7:31 PM
To: Nelson, Carolyn C.
Cc: rachael_disrud@yahoo.com
Subject: HB 1348

R. D. Overby
P. O. Box 1823 Fargo, ND 58107-1823 (701) 235-9504

March 5, 2005

Senator Carolyn Nelson
State Capitol
Bismarck, ND 58501

Dear Carolyn:

Thank you for talking with me after the meeting this morning about House Bill 1348. In the domestic violence group I've been attending I see that the man gets put in jail and gets counseling but nothing for the woman. I've seen quite a number of couples divorcing because the man gets healed and not the woman. When the bill talks about "comparable size and strength of each party" that's in most cases the man. It's sexist. I don't believe that is right. The bill could say put the most disturbed one in jail. Actually they could suggest counseling first before arresting the man and giving him a criminal record. I believe the purpose of our government is to heal families. As well as it is the intent of the Legislature and Judicial but I find in actual practice things are being done to families that tear them apart. I hope you can kill H.B 1348. Later after the session I hope the no contact orders will be looked into. I've read and personally seen these orders cause hardships on families as well as divorces. Where the intent is good the actual practice it is anti family. the past ten years or so the pendulum has swung too far in the other direction. There needs to be balance put in the law.

Thank you,

R. D. Overby

To: Senator Carolyn Nelson

Carolyn would you add the following to my letter and see that the other members of the Judiciary committee receive a copy too.

HB 1348 is like the defeated HB 1492. Neither one are needed.

Their arresting mostly the men now. Rarely the woman gets arrested.

I don't believe that beating up on the man helps the family (woman or children). What is needed is **effective and accountable counseling** and I don't see where the women are getting that. When a woman goes to someone for help and they have her get a protection order that doesn't help families to heal.

Fact Sheet on HB 1348

- 1) Should psychological and verbal abuse be a crime? Should they be considered as factors when making an arrest for domestic violence?

Psychological and verbal abuse among adults is currently not a crime under North Dakota's domestic violence statute. 14-07.1 basically defines domestic violence as physical harm or the threat of imminent physical harm. The purpose of the addition of predominant aggressor language to the domestic violence statute is not to attempt to identify who may have *verbally* started or provoked the incident; but rather an attempt to identify who committed a *physical* assault and protect victim of that assault.

- 2) Will HB 1348 prohibit dual arrests?

No. HB 1348 will not prohibit an officer from making a dual arrest. North Dakota law enforcement agencies which have incorporated the predominant aggressor concept into their training use it as a standard by which they measure a good investigation. Nationally, any dual arrest rate over 3-5% indicates a need for training on appropriate investigation techniques.

- 3) Does HB 1348 infringe on officer discretion?

As long as an officer is acting in good faith, ND's statutes provide him or her with immunity. HB 1348 does nothing to change that. The language in HB 1348 requires officers to attempt to determine the predominant aggressor. It is not a blanket mandate.

- 4) Is the label predominant aggressor unfair?

Being identified as predominant aggressor is not a crime in and of itself. The charge that results from an arrest in a domestic violence incident will be for the crime that the individual committed.

- 5) Why do we need a statute? Isn't it a training issue?

66% of the law enforcement agencies in ND *do not* have a policy on domestic violence and training resources are extremely limited. The domestic violence statutes may be the only template that departments have for training locally.

Submitted by the ND Council on Abused Women's Services
Bonnie Palecek and Janelle Moos
701-255-6240