

2013 SENATE HUMAN SERVICES

SB 2345

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

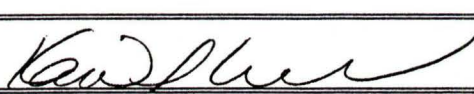
SB 2345

2/6/13

Recording Job Number: 18380

☐ Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the penalty for the exploitation of a disabled adult or vulnerable elderly adult.

Minutes:

You may make reference to "attached testimony."

Vice Chairman Larsen opens hearing on SB 2345.

Senator Schneider, prime sponsor, introduces bill to the committee. See attached testimony #1.

(0:5:00) Senator Larsen references his testimony on felony charges and asks if he knows how many people have been charged a felony for stealing an ipad or a bike.

Senator Schneider states that he can't imagine very many, especially out west where the court system is overrun.

Senator Dever asks if this also deals with mismanaging funds.

Senator Schneider states that the bill does not include mismanagement. This deals with the deliberate exploitation of a vulnerable elderly adult.

Discussion: Chairman Lee asks about the similarity with this bill to the one that's in the Judiciary committee. Senator Schneider touched on this in his testimony but Chairman Lee stepped out to of the room and missed his remarks. Senator Schneider elaborated on this a little more for her benefit.

Senator Dever asks if it is cumulative.

Senator Schneider looks to the code to answer the question.

Chairman Lee states that Senator Hogue suggested to maybe hold the bill until there has been activity on the Judiciary bill (SB 2323) so they have a better grasp on it and so they are not in conflict.

Senator Schneider feels it makes sense to hold it until there is action on SB 2323.

(0:11:23) Senator Armstrong testifies in support of the bill. He agrees with Senator Schneider in principal but disagrees with the carving out different things. Theft is theft across the board. He explains how he has been involved in many of these cases and, where there is a dollar amount, suggests a solution to make it consistent which would be in accordance with 12.12305. If the bill doesn't pass both houses, this will drop to \$500. If it does pass both houses, an A felony application to the original theft bill will also approve to this bill and it will be completely consistent with the theft code. In response to Senator Dever's question, he clarifies that it is cumulative and explains cumulative systematic theft.

(0:15:00) Senator Larsen asks if Senator Armstrong is able to give them the statistics in North Dakota of who has been exploited and what the outcomes are.

Senator Armstrong is not sure how those statistics work because there are 8 different places in the code that you could get charged out. He also doesn't know how much gets reported either.

Senator Anderson likes his idea of tying it to the other statute and asks him to work with the law intern to draft his amendment.

(0:17:38) Josh Askvig, Associate State Director of Advocacy for AARP ND, testifies in support. See attached testimony #2.

No further questions or testimony.

The hearing on SB 2345 is closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

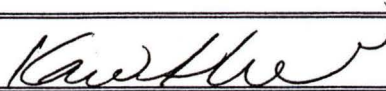
SB 2345

2/18/13

Recording Job Number: 19114

☐ Conference Committee

Committee Clerk Signature:



Explanation or reason for introduction of bill/resolution:

Relating to the penalty for the exploitation of a disabled adult or vulnerable elderly adult.

Minutes:

You may make reference to "attached testimony."

Chairman Lee opens discussion on SB 2345 and reviews the bill with the committee.

The committee discussed reducing the amount of money involved which makes a felony at a lower price and the proposed amendments.

Senator Armstrong steps in the room and distributes an amendment to the committee (see attachment #3 - 13.0802.01001). He explains to the committee that the reason why they didn't get an amendment before is because what he proposed to do during his testimony won't work. The grading statute in the theft code contains a lot of other information as opposed to just dollar amounts that don't really apply equally to this statute. The new amendment he is offering is a little more substantive. If the theft bill goes through, \$50,000 will be the A felony trigger. If the theft bill doesn't go through, there is no A felony theft so there is no inconsistency with the \$100,000 from the other theft. Senator Armstrong states that he differs from the primary sponsor of this bill and cares more about the big cases so that is why he adopted this amendment.

Discussion continues on the felony amount.

Senator Dever moves to adopt amendment .01001. **Senator Larsen** seconded.

Roll Call Vote: 5-0, motion passes.

Senator Dever moves Do Pass as Amended. **Senator Anderson** seconded.

Roll Call Vote: 5-0, motion passes. **Senator Dever** is the carrier.

Votes were left open for Senator Axness. He submitted his votes of "YES" on both motions off the record and they were included in the roll call vote tallies.

13.0802.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Armstrong
February 18, 2013

93
2-18-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2345

Page 1, line 24, overstrike "one hundred" and insert immediately thereafter "fifty"

Page 2, line 2, overstrike "one hundred" and insert immediately thereafter "fifty"

Renumber accordingly

Date: 2/18/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2345

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0802.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Dever Seconded By Sen. Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 2/18/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2345

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Dever Seconded By Sen. Anderson

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	<input checked="" type="checkbox"/>		Senator Tyler Axness	<input checked="" type="checkbox"/>	
Vice Chairman Oley Larsen	<input checked="" type="checkbox"/>				
Senator Dick Dever	<input checked="" type="checkbox"/>				
Senator Howard Anderson, Jr.	<input checked="" type="checkbox"/>				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

REPORT OF STANDING COMMITTEE

SB 2345: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2345 was placed on the Sixth order on the calendar.

Page 1, line 24, overstrike "one hundred" and insert immediately thereafter "fifty"

Page 2, line 2, overstrike "one hundred" and insert immediately thereafter "fifty"

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2345

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2345
March 20, 2013
JOB # 20249

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the penalty for the exploitation of disabled adult or vulnerable elderly adult.

Minutes:

Testimony and attachments 1,2

SB 2345 starts at minute 3:15 on recording 20249

Chairman Kim Koppelman: Opens the hearing on SB 2345.

Senator Schneider: Testimony #1, see attached. (3:37 to 11:22).

Rep. Diane Larson: Why would we continue to come back and change numbers to have them be in agreement with the criminal code why don't we just say that this offense will relate to theft in the criminal code? Then as those numbers go up or down this would too.

Senator Schneider: That is one approach that could be done if we do that we are saying as a legislature that exploitation of a vulnerable adult in the extent that exceeds \$1000.00 is just as bad as passing a check for \$1000.00. I think this is a more serious crime and making a felony out of someone is serious in itself. Lowering the amount for a specific crime is appropriate especially when you can see how it happens. Someone buys a TV at Best Buy, their pay check doesn't get deposited when they thought it would, all of a sudden they are a felon. Not as good as serious as deliberately and willfully stealing \$500 from your grandma.

Rep. Kathy Hogan: Did you do any research on the history of why it was written this way and the history of the bill?

Senator Schneider: I didn't. It certainly is interesting, I don't know if the Legislature at that time didn't consider the threshold amounts for the other categories of theft in the code. But when I came across it, it certainly didn't make a lot of sense.

Chairman Kim Koppelman: Do you know how long that standard has been in code?

Senator Schneider: I cannot remember but I can report back to you.

Rep. Bill Kretschmar: Would you object to take out the word elderly and make it vulnerable adult like the title of the bill says?

Senator Schneider: I think that would make a lot of sense, because there are elderly people who aren't vulnerable. It seems like a good idea.

Chairman Kim Koppelman: And some vulnerable people who are not elderly.

Rep. Kathy Hogan: Handed out testimony for Mike Reitan, testimony #3.

Chairman Kim Koppelman: Closes the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2345
JOB # 20741
Date April 1, 2103

☐ Conference Committee

Marly Kingle

Explanation or reason for introduction of bill/resolution:
Relating to the penalty for the exploitation of disabled adult or vulnerable elderly adult

Minutes:

Attached is the purposed amendment

Chairman Kim Koppelman: Opens SB 2345 for committee work.

Vice Chairman Larry Klemin: Explained proposed amendments that the sub-committee worked on. They worked on vulnerable elderly adult is a defined term in chapter 12.01.31. There are several other chapters that deal with vulnerable elderly adults which was not covered in this bill and not covered by the hearing. So we did not feel it was right to take out the word elderly because the whole chapter deals with defined term elderly adults.
We did change the penalties and changed Page 2 after line 6 and Page 2 line 5.

So I make a motion to amend SB2345.

Rep Hogan: Seconded the motion.

Voice vote and motion carried.

Rep Delmore: Made a motion of Do Pass as amended on SB 2345.

Rep Hanson: Second the motion.

Do Pass as amended Yes 13 No 0 absent 1 Carrier Rep Klemin

Vice Chairman Larry Klemin: I would think it would be good to hear SB 2074, 2251 and 2345 at the same time on the floor.

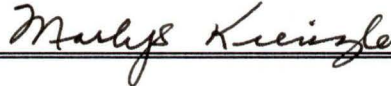
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2345
April 2, 2013
Job # No Recording

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Sub Committee meetings for SB 2074, 2345, 2251.

Minutes:

It came to my attention that there were a few revision and another item necessary for the minutes so consider these the revised ones:

Meeting was called to order by Rep. Klemin at 11:00 AM, Reps. Klemin, Brabandt and Hanson were present in addition to Commission Hamm and members of the Insurance Commission staff.

Rep. Klemin presented some background in bills similar to those being discussed and their history in interim studies. Rep. Klemin also presented a chart of where current Century Code has placed levels of criminal designation and penalties incurred along with current proposals for their adjustment.

It was decided that criminal designation levels Class A, B, C Felonies and Class A Misdemeanors should be made uniform within these three bills.

SB 2074: Rep. Hanson moved, seconded by Rep. Brabandt, to amend to "services retained or involved" in lines 7 & 8 of page 1. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, to remove references to subsection 6 in anticipation of potential renumbering due to SB 2251's passage in lines 10 & 11 of page 1. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to add a designation of a class A Felony for theft more than \$50,000.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2345: Motion made by Rep. Hanson moved, seconded by Rep. Brabandt, to remove the word "elderly" from bill. The motion passed 3-0 but was discovered to be too cumbersome to make work with the rest of Century Code and will therefore not be recommended to the full committee. Rep. Hanson moved, seconded by Rep. Brabandt, to change number of Class C

Felony to theft of \$1000 or more. Passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, to create a Class A Misdemeanor designation for theft of \$1,000 or less to preserve uniformity within Century Code.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2251: Rep. Hanson moved, seconded by Rep. Brabandt, delete section 3. The committee found exchanging a Class B Felony with a Class AA Felony designation to be extreme and questioned the need given that there was no testimony provided specifically to back it. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, change language on page 8, lines 10 and 26 to "excess of one thousand dollars" to provide unity within Century Code. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to adopt entirety of Amendment 13.8230.01001, relating to fines. Motion passed 3-0

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

The following is a summary of the criminal designations as they are proposed by the subcommittee in terms of level of thefts to incur said designation and fine subsequent:

AA Felony: Eliminated

A Felony: \$50,000 or more theft level, \$20,000 maximum fine.

B Felony: \$10,000 or more theft level, \$20,000 maximum fine.

C Felony: \$1,000 or more theft level, \$5,000 maximum fine.

A Misdemeanor: Less than \$1,000 theft level, \$3,000 maximum fine.

For organizations, the theft amount will remain the same as above while the penalties will be as follows:

A Felony: \$100,000 maximum fine.

B Felony: \$70,000 maximum fine.

C Felony: \$50,000 maximum fine.

A Misdemeanor: \$30,000 maximum fine.

B Misdemeanor: \$20,000 maximum fine.

VK
4/1/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2345

Page 2, line 5, remove the overstrike over "~~one thousand~~"

Page 2, line 5, remove "five hundred"

Page 2, after line 6, insert:

"d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars."

Renumber accordingly

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2345

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Unice Vote - Carried

to change 5 hundred Page 2 Line 5
to change one thousand Page 2 Line 5
to change 1002 after Line 6

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2345

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

SB 2345, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2345
was placed on the Sixth order on the calendar.

Page 2, line 5, remove the overstrike over "~~one thousand~~"

Page 2, line 5, remove "five hundred"

Page 2, after line 6, insert:

"d. A class A misdemeanor if the value of the exploited funds, assets, or
property does not exceed one thousand dollars."

Renumber accordingly

2013 TESTIMONY

SB 2345

TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)**SENATE BILL 2345 - SENATE HUMAN SERVICES COMMITTEE - FEBRUARY 6, 2013**

Madam Chair, members of the committee, my name is Mac Schneider and I represent District 42 in the North Dakota Senate. I am the prime sponsor of Senate Bill 2345, a bill which would strengthen criminal penalties against those who exploit a disabled adult or vulnerable elderly adult.

The motivation behind this bill is straightforward: Currently, the Code makes "garden variety" theft a class C felony if the theft of property or services exceeds \$500. See N.D.C.C. § 12.1-23-05. Financial exploitation of a vulnerable adult, on the other hand, does not become a class C felony until the value in question is more than \$1,000. See N.D.C.C. § 12.1-31-07.1.

To illustrate, if a thief steals a \$500.01 iPad from a complete stranger, he's a felon. If he instead takes advantage of his grandmother's dementia to steal \$1,000 from her checking account, he's not. This bill would simply address that disparity by adjusting the penalties for exploitation of a vulnerable adult so it is consistent with the penalty for theft in the Code.

For the sake of full disclosure, Madam Chair, there is a broader bill, SB 2251, which seeks to raise the dollar threshold for grading of theft offenses in N.D.C.C. § 12.1-23-05 (i.e., it would be a class C felony if "[t]he property or services stolen exceed" \$1,000 rather than \$500 in current law). I am supportive of SB 2251 and hope it becomes law.

Nevertheless, I believe there are two valid reasons to pass this bill. First, efforts similar to SB 2251 have failed to receive bicameral support in the past. While I hope this is not predictive of future results, passage of the legislation before you will ensure the disparity between the way we punish theft and the exploitation of some of the most vulnerable in our society is addressed regardless of the fate of SB 2251.

Second, even if SB 2251 does pass, I believe setting the threshold for felony exploitation of a vulnerable adult at \$500.01 is appropriate given the troubling nature of the crime, especially considering the penalties prescribed for other offenses under the Code. See, e.g., N.D.C.C. § 6-08-16 (presently making "insufficient funds or credit" a class C felony if the amount is "more than five hundred dollars" compared to the proposed \$1,000 under SB 2251); N.D.C.C. § 6-08-16.2 (punishing the what is essentially the passing of bad checks at the class C

felony level "if the instrument was for at least five hundred dollars" compared to the proposed \$1,000 under SB 2251); N.D.C.C. § 12.1-23-06 (making unauthorized use of a vehicle a class C felony "if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds five hundred dollars[]" compared to \$1,000 under SB 2251).

While reasonable people could disagree, I think most recognize obtaining \$500.01 through the exploitation someone who is vulnerable is more deserving of increased punishment than writing a bad check for the same amount. I even would take this argument one step further and say that it is entirely appropriate to make exploitation a felony at the \$500.01 level while, at the same time, raising the felony threshold to \$1,000.01 where unauthorized use of a vehicle is concerned.

Whatever the result of other legislative efforts this session, this bill is a practical way to protect the nearly 15% of our state's population over the age of 65 and other vulnerable adults. Thank you for your consideration.



SB2345 – SUPPORT Penalty for Elder Abuse

Wednesday, February 6, 2013
Senate Human Services Committee
Josh Askvig – AARP North Dakota
jaskvig@aarp.org or 701-989-0129

Chairman Lee and members of the Senate Human Services Committee, I am Josh Askvig, Associate State Director of Advocacy for AARP North Dakota. AARP has a long history of fighting for protections against financial exploitation of seniors and has been on the forefront of advocacy in support of federal and state laws and regulations that prevent this type of abuse. We believe states should enact and enforce laws that make it a criminal offense, with enhanced penalties for abuse, neglect, or exploitation of a vulnerable individual. AARP supports Senate Bill 2345.

As people live longer, the number of people over the age of 85 is also increasing. North Dakota is already seeing significant increases in the oldest-old population. From 2000 to 2010, the number of people over the age of 85 grew 13.3%; however, the number of North Dakotans age 90 and over grew 23.4%. This information is important because people over the age of 85 are the most likely to need the support of family, friends, and the community to remain living independently. (National Association of Area Agencies on Aging & MetLife Foundation, 2007)

Our oldest citizens are also the most likely to be abused, neglected and exploited. Elder abuse, like many other forms of domestic abuse, is an often hidden phenomenon. People in this age group are disproportionately affected by financial fraud. Although older people make up just 12 percent of the population, they constitute a full 30 percent of the victims of consumer fraud. Women, who make up an increasingly larger percentage of the older population by virtue of a longer life expectancy, are the majority of the victims.

Financial abuse of seniors can cause injuries far beyond the pocketbook. This abuse frequently affects seniors' physical and emotional health. The enactment of stronger safeguards against the abuse of elders is a win, win, win situation for states, older adults and their families.

AARP supports SB2345 and its strong legal protections against financial exploitation and abuse.

13.0802.01001
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
February 18, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2345

Page 1, line 24, overstrike "one hundred" and insert immediately thereafter "fifty"

Page 2, line 2, overstrike "one hundred" and insert immediately thereafter "fifty"

Renumber accordingly

/

TESTIMONY OF SENATOR MAC SCHNEIDER (DISTRICT 42 - GRAND FORKS)

SENATE BILL 2345 - HOUSE JUDICIARY COMMITTEE - MARCH 20, 2013

Mr. Chairman, members of the committee, my name is Mac Schneider and I represent District 42 in the North Dakota Senate. I am the prime sponsor of Senate Bill 2345, a bill which would strengthen criminal penalties against those who exploit a disabled or vulnerable elderly adult.

The motivation behind this bill is straightforward: Currently, the Code makes "garden variety" theft a class C felony if the theft of property or services exceeds \$500. See N.D.C.C. § 12.1-23-05. Financial exploitation of a vulnerable adult, on the other hand, does not become a class C felony until the value in question is more than \$1,000. See N.D.C.C. § 12.1-31-07.1.

To illustrate, if a thief steals a \$500.01 iPad from a complete stranger, he's a felon. If he instead takes advantage of his grandmother's dementia to steal \$1,000 from her checking account, he's not. The bill would simply address that disparity by adjusting the penalties for exploitation so it is consistent with the penalty for theft in the Code. As amended, the bill also adjusts penalties for the most serious cases of exploitation, making this crime punishable as a class A felony if the value at issue exceeds \$50,000.

For the sake of full disclosure, Mr. Chairman, there is a broader bill, SB 2251, which seeks to raise the dollar threshold for grading of theft offenses in N.D.C.C. § 12.1-23-05 (i.e., it would be a class C felony if "[t]he property or services stolen exceed" \$1,000 rather than \$500 in current law). I am supportive of this bill and hope it becomes law. Nevertheless, I believe there are still several valid reasons to give favorable consideration to the bill before you:

First, passage of this bill will ensure the disparity between the way we punish theft and the exploitation of some of the most vulnerable in our society is addressed regardless of the fate of SB 2251.

Second, if SB 2251 does pass, I believe lowering the threshold for felony exploitation of a vulnerable adult to \$500.01 -- even while raising the felony threshold to \$1,000.01 for other crimes -- is appropriate given the troubling nature of the crime, especially considering the penalties prescribed for other offenses under the Code. See, e.g., N.D.C.C. § 6-08-16 (presently making "insufficient funds or credit" a class C felony if the amount is "more than five hundred dollars" compared to the proposed \$1,000 under SB 2251); N.D.C.C. § 6-08-16.2

(punishing the what is essentially the passing of bad checks at the class C felony level "if the instrument was for at least five hundred dollars" compared to the proposed \$1,000 under SB 2251); N.D.C.C. § 12.1-23-06 (making unauthorized use of a vehicle a class C felony "if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds five hundred dollars[]" compared to \$1,000 under SB 2251).

While reasonable people could disagree, I think most recognize obtaining \$500.01 through the exploitation someone who is vulnerable is more deserving of increased punishment than writing a bad check for the same amount. I even would take this argument one step further and say that it is entirely appropriate to make exploitation a felony at the \$500.01 level while, at the same time, raising the felony threshold to \$1,000.01 where unauthorized use of a vehicle is concerned.

Third and finally, the Senate-passed version of this bill, again, makes the most serious cases of financial exploitation a crime if the value exceeds \$50,000 (down from \$100,000), a policy shift that is independent of the changes in SB 2251.

Whatever the result of other legislative efforts this session, this bill is a practical way to protect the nearly 15% of our state's population over the age of 65 and other vulnerable adults. Thank you for your consideration.

Brittany Lawonn, Published July 29 2009

Judge admonishes, sentences Villellas



Fargo homebuilder Larry Villella and his wife, Catherine Sadler-Villella, leave the Cass County Courthouse in this 2008 screen image from WDAY.

A judge on Tuesday sentenced Fargo homebuilder Larry Villella and his wife to jail after admonishing them for taking advantage of her vulnerable, 75-year-old father.

“At a very vulnerable point in his life, you did take advantage and did help your husband take advantage of your very own father,” Judge Wickham Corwin told Catherine Sadler-Villella before sentencing her to 60 days, with all but 50 spent on electric home monitoring.

Corwin told Sadler-Villella and Villella that her decision to plead guilty to misdemeanor charges of forgery and misapplication of entrusted property may have saved the state a lengthy trial.

Two months after her March change of plea, Villella pleaded guilty to a felony charge of conspiracy to commit misapplication of entrusted property.

Both had originally faced felony charges of forgery, exploitation of a vulnerable adult and misapplication of entrusted property amid accusations they exploited her father out of more than \$100,000 and forged his signature on a guaranty to back more than \$1 million in loans to finance Villella’s business.

Villella’s attorney, Mark Beauchene, argued for a deferred sentence or a suspended sentence for his client, saying Villella should receive a punishment similar to his wife’s.

Beauchene showed Corwin photos of Sadler-Villella’s father, saying he was happy when he was living with the family.

Sadler-Villella’s sister, Therese Isom, addressed Corwin before the sentencing, saying she is

heartbroken over the lies and deceit. She said the Villellas have shown no remorse, only anger for being caught.

Both Villella and Sadler-Villella gave emotional apologies before being sentenced, saying they regretted the pain and suffering their actions have caused.

“I wish it had never happened,” Villella said, his voice breaking as he spoke.

Corwin told Villella he too wished the incident hadn’t happened.

“In short, sir, your father-in-law placed his trust in you and you took advantage of that,” Corwin said before sentencing him to one year, with all but 120 days suspended for a period of five years of supervised probation.

Corwin ordered Villella to spend 60 of the 120 days in jail, giving him credit for 50 days previously spent on electronic home monitoring. Villella has 70 days remaining to serve and must report to jail no later than Aug. 17.

Villella’s share of restitution will remain open. Sadler-Villella has agreed to waive her expected inheritance.

Readers can reach Forum reporter Brittany Lawonn at (701) 241-5541

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Elder abuse: An 'extensive and hidden' problem

Social isolation and mental impairment, such as dementia or Alzheimer's disease, are two factors that may make an older person more vulnerable to abuse.

By: Pamela Knudson, Grand Forks Herald

GRAND FORKS, N.D. -- An elderly woman allowed her adult-age grandchild, who was struggling financially, to move in rent-free. The arrangement was supposed to be temporary, but months turned into years.

Because of Alzheimer's disease, the grandmother forgot what her stove and refrigerator were for, her niece, "Deb," said.

Although relatives nearby offered to come in and make meals, the grandchild didn't inform nearby relatives when she would be absent for the day, which led to grandma subsisting on a piece of toast and coffee for as long as 24 hours.

The grandchild ignored relatives' instructions to not move things in the home; consistency is important for people who suffer from Alzheimer's. It's "crazy-making behavior," Deb said.

The grandchild was verbally abusive and demeaning, but "when (a friend) said, 'You shouldn't talk to your grandmother like that,' the grandchild said, 'Well, you would too if you had a live with her.'"

Family members noticed grandma became more nervous and anxious, and her personality changed when she was around her grandchild, Deb said.

This is an example of a situation that goes beyond normal, even expected, friction that occurs in families and rise to the level of elder abuse — not all that rare, but often go unreported because others are unaware of the problem or uncertain what to do about it.

Underreported abuse

Nationally, it's estimated that only one in five cases of elder abuse are reported. The problem is "extensive and hidden," said Rachelle Haga, an advocate at the Community Violence Intervention Center in Grand Forks.

While it's difficult to pinpoint how many elders are affected, findings from the often-cited National Elder Abuse Incidence Study suggest more than 500,000 Americans 60 and older were victims of domestic abuse in 1996.

Abusers can be family members, trusted friends or professional caregivers, according to the agency. Family members are more often the abusers than any other group.

Elder abuse can happen to anyone regardless of ethnicity, race, socio-economic status, nationality, gender or sexual orientation. Social isolation and mental impairment, such as dementia or Alzheimer's disease, are two factors that may make an older person more vulnerable to abuse.

"It's a little more subtle than what outside people see," Deb said. "Maybe, they should look a little bit further."

The desire to control or exert power over another person is common in elder abuse, said Haga. In the scenario Deb described, the grandchild "was making choices in (his/her) own interest, not in the grandmother's interest."

Generally speaking, "it's difficult for one person in the family to step forward or try to change the situation."

Collaborative efforts

To address elder abuse locally, CVIC received a "Later in Life" grant a few years ago from the U.S. Department of Justice which focused on people 50 and older.

"At 50, you're restarting your life" after an abusive situation, Haga said. "You may not have entered the workforce because you've been raising kids. It's a big change in that point in life. It's a struggle, and there's a lack of resources."

Many in those circumstances don't qualify for certain resources that are tied to households with children.

Of those who received services from CVIC during the duration of the grant, which ended in September, nearly all — 96 percent — were women.

Under the grant, CVIC also connected with North Dakota Job Service which works with older people who need employment assistance, perhaps for the first time, she said.

CVIC collaborated with Adult Protective Services, the court system and nursing homes, trained firefighters, law enforcement, nurses, social and outreach workers at senior centers, and conducted presentations at churches.

"The more people you can have on board to intervene, the better," Haga said. "I've gotten calls from nurses, pastors, social workers — a whole variety" of professionals.

At the Grand Forks Senior Center, CVIC employees also led a training session to clarify the proper use of 911.

"You might call police or the fire department, but not if you're threatened by your child," she said. "People's mindset may be such that you just don't report" a family member.

"It's more rare for someone 85 years old to walk through the doors of an agency like CVIC."

Financial exploitation

She cited the case of a woman whose home was ransacked by a member of her family looking for a will document in order to change it for self-benefit.

"You wouldn't think of that as domestic violence, but it certainly is," Haga said. By not reporting it, "in that case, the mother was protecting her child over her own expense."

As an advocate at CVIC, "you have to protect that" viewpoint, she said.

"My role is to present safety options. The idea of locking the door and locking one's (child) out is not changed in one conversation."

Offering options and information is central to Haga's work.

"We don't advise. We give a whole bunch of options," she said.

Financial motives are frequently part of elder abuse, said Therese Hugg, adult therapist and wellness coordinator at CVIC.

For example, people may choose to keep an elderly relative at home, to save money, when nursing home care is required, she said. In such instances, "the level of care being provided is questioned."

She has also seen cases in which a parent's Social Security payments are controlled entirely by a child, and the parent has no knowledge of or access to financial resources he or she is entitled to.

However, CVIC employees "don't assess" the situation, Hugg said. That is the role of the state's Adult Protective Services agency.

North Dakota is one of four states that does not require mandatory reporting of elder abuse, she said.

"Our role is wellness and support," Haga said. "We're involved in advocacy and safety planning" and, if needed, links to agencies that could help.

Such conversations "are always client-led," she said. "I have no agenda until I meet with someone who tells me what's going on."

"They may need to hear, 'I believe you' or 'it's not your fault.' There's such a big spectrum" of client issues.

Signs that someone may be abusing you

Does your partner, family member or trusted caregiver:

- Embarrass you by calling you bad names or putting you down?
- Look at you or act in ways that scare you?
- Control what you do, who you see, or where you go?
- Take control of your money or legal documents?
- Make all the decisions?
- Threaten to hurt you or self?
- Destroy, damage or give away your property?
- Shove you, slap you or hit you?
- Keep details about your finances or property from you?
- Neglect your physical, medical or emotional needs?
- Take money you need to pay your bills?
- Act like everything is fine when it is not?

What is elder abuse?

Abandonment: Desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person

Emotional Abuse: Inflicting mental pain, anguish or distress of an elder person through verbal or nonverbal acts

Exploitation: Illegal taking, misuse or concealment of fund, property or assets of a vulnerable elder

Neglect: Refusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder

Physical Abuse: Inflicting, or threatening to inflict, physical pain or injury on a vulnerable adult, or depriving them of a basic need

Sexual Abuse: Nonconsensual sexual contact of any kind

Help is available:

National Center on Elder Abuse: (800) 677-1116, www.ncea.aoa.gov

In North Dakota

Aging & Disability Resource LINK: 1-855-GO2-LINK (1-855-462-5465)

Call Knudson at (701) 780-1107; (800) 477-6572, ext. 1107; or send e-mail to pknudson@gfherald.com.

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House Human Service Committee

Senate Bill 2345

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Chairman Koppelman and members of the Human Services Committee I would respectfully ask for your 'Do Pass' recommendation on SB2345 relating to the penalty for the exploitation of a disabled or vulnerable adult.

It is most unfortunate that there are individuals who live amongst us that prey upon the vulnerability of adults suffering from diminished mental or physical capabilities. The West Fargo Police Department has responded to incidents where an adult may have been physically or mentally abused or neglected by a family member, an acquaintance, a care giver or a total stranger. Other cases involve theft or other personal crimes committed against the victim. I had asked our detective sergeant to provide an example of financial crimes committed against a vulnerable adult. He provided the following:

2013 This incident involves a female vulnerable adult with a development level of a 3rd grader. She began dating a male and moved in with his family. The male's mother began charging the female \$750 a month for rent. Numerous gift cards were purchased with the victim's funds and used by the suspect. Those transactions were captured on in-store surveillance. Additional ATM withdrawals were made upon the victim's bank account and again captured the suspect on video. The dollar amounts so far are in excess of \$2000.

2012 This incident involves a female vulnerable adult who is confined to a wheel chair and at the time of this incident did have a life coach who was a male adult. The life coach took advantage of the victim by using her credit card on several occasions throughout the Fargo Moorhead area. The suspect helped the victim receive cash from her bank and was given the pin number to her bank in confidence by the victim. The suspect initially stole her billfold to gain access to her credit card and again use it numerous times. The suspect was eventually fired but not until he ran up \$1500.00 dollars in credit card transactions. Further investigation found that the suspect also did this to his own grandfather and that case is still pending in Cass County.

2007 The victim was 80 years old at the time of our investigation. The suspect was and still is a career criminal involving vulnerable adults. Both parties had known one another for a long period of time. The suspect knew that the victim was financially well to do and know the victim's mental health was getting worse by each passing month. The suspect took the victim to the bank on several occasions and talked the victim into withdrawing large amounts of cash in excess of \$200,000.00 dollars, and also getting money from the victim's retirement accounts. The suspect in this case had just done the same type of crime in Minnesota which resulted in a loss in excess of \$400,000.00 dollars.

Elderly victims seldom if ever recover from the financial ruin resulting from their exploitation at the hands of another. Life savings and retirement accounts are emptied, homes are lost and property stolen by someone the victim has come to trust and believes is acting in their best interest. Sadly, as noted in the examples provided, the suspects typically victimize more than just a single victim. North Dakota has enacted enhanced penalties to punish those who prey upon the vulnerability of youth. I believe it only appropriate to enact enhanced penalties to punish those who prey upon the vulnerability of a person's physical or mental disability.

I ask for your support of SB2345.

House Human Service Committee

Senate Bill 2345

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Respectfully submitted.

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