

**2017 HOUSE JUDICIARY**

**HB 1218**

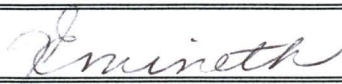
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1218  
1/23/2017  
27229

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the offense level for sexual assault; and to provide a penalty.

## Minutes:

Attachments 1,2,3

**Chairman K. Koppelman:** Opened the hearing on HB 1218.

**Rep. Delmore:** Representative from district 43 Grand Forks (#1) Went over the handout. (#2) 69% of the crimes were reported to law enforcement and of the adult cases 13% were strangers and in child cases only 3% of assault were strangers. At least 41% of the cases of the assailant were was a friend or an acquaintance or a date of the victim.

**Janelle Moos:** Executive Director of the CAWS North Dakota. Read the testimony #2 and went over the bill. (#3) 8:30) We have a strong relation with the Nurse examiners, law enforcement, prosecutors, we do work as a team.

**Chairman K. Koppelman:** The sections that are included in the bill

**Janelle Moos:** (Have the stuff from 1222 folder) Read 12.1-20-07 that where sexual assault is defined in the North Dakota Century Code. The class B felony is tied to the subdivision outlined under section 1 it talks about specific cases.

**Chairman K. Koppelman:** Does everything in the bill deals with age?

**Janelle Moos:** It is any of those; It doesn't have to pertain to just the age factor. We had to look at this several times.

**Chairman K. Koppelman:** Is there further testimony in support of HB 1218? In opposition? Neutral testimony? We will close the hearing on HB 1218.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1218  
1/23/2017  
27230

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Virginia Mineth*

## Explanation or reason for introduction of bill/resolution:

Relating to the offense level for sexual assault; and to provide a penalty.

Minutes:

**Chairman K. Koppelman:** Opened the meeting of HB 1218. Went over the handout regarding this bill. All we are doing is changing this from a class B to a class A is that correct?

**Rep. Klemin:** Yes. In the last category relating to subdivision B it is being changed to class A misdemeanor.

**Chairman K. Koppelman:** The bill would say that Class B misdemeanor exception is being removed is being removed.

**Rep. Satrom:** The second paragraph sums it up for me. I think that is the mission of this to provide some middle ground?

**Chairman K. Koppelman:** I think that is what was confusing about our testimony. Middle ground between ground class A felony and a Class B misdemeanor, I suppose there are circumstances where there is no middle ground.

**Rep. Maragos:** I will move a do pass motion HB 1218.

**Rep. Hanson:** Second.

**Chairman K. Koppelman:** We have a do pass on HB 1218

**Rep. Klemin:** We do have another statue on gross sexual procession which is the rape statue and those do have higher penalty's so if there was a charge of GSI this could be a lesser offense.

**Rep. Paur:** This references 12.1-20-07 in that section all the persons are mentioned about 15 times.

**Chairman K. Koppelman:** maybe not but that is a good point. Why didn't the legislative council pick up on that?

**Rep. Klemin:** Looking at the handout where sexual assault is described there are discrepancies. In section 8 and in section 9 and in section 11 has discrepancies.

**Chairman K. Koppelman:** Will check with Legislative Counsel- Kelly to see if they can check it.

Roll Call Vote: YES 13 NO 0 ABSENT 2 FLOOR ASSIGNMENT Rep. T. Jones

Date: 1-23-17  
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1218

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep Maragos Seconded By Rep Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	<input checked="" type="checkbox"/>		Rep. Hanson	<input checked="" type="checkbox"/>	
Vice Chairman Karls	<input checked="" type="checkbox"/>		Rep. Nelson	<input checked="" type="checkbox"/>	
Rep. Blum	<input checked="" type="checkbox"/>				
Rep. Johnston	<input checked="" type="checkbox"/>				
Rep. Jones	<input checked="" type="checkbox"/>				
Rep. Klemin	<input checked="" type="checkbox"/>				
Rep. Magrum	<input checked="" type="checkbox"/>				
Rep. Maragos	<input checked="" type="checkbox"/>				
Rep. Paur	<input checked="" type="checkbox"/>				
Rep. Roers-Jones	<input checked="" type="checkbox"/>				
Rep. Satrom	<input checked="" type="checkbox"/>				
Rep. Simons	<input checked="" type="checkbox"/>				
Rep. Vetter	<input checked="" type="checkbox"/>				

Total (Yes) 13 No 0

Absent 2

Floor Assignment : Rep. Jones

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



**REPORT OF STANDING COMMITTEE**

**HB 1218: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS**  
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1218 was placed on the  
Eleventh order on the calendar.

**2017 SENATE JUDICIARY**

**HB 1218**

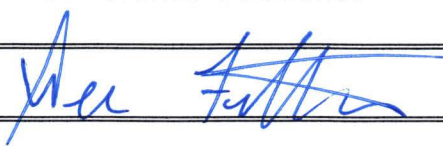
# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1218  
3/7/2017  
28806

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the offense level for sexual assault; and to provide a penalty.

**Minutes:**

**Testimony attached #**

1,2

**Chairman Armstrong** called the committee to order on HB 1218. All committee members were present.

**Lois Delmore, North Dakota State Representative District 43**, introduced and testified in support of the bill. (see attachment 1)

**Aaron Birst, Association of Counties**, testified in support of the bill. No written testimony.

"We support the bill. In North Dakota we have specific crimes for different kinds of sexual assault. They range from AA felony to B misdemeanor. The bill seeks to change the B misdemeanor to an A misdemeanor."

**Chairman Armstrong:** "Does this affect registration?"

**Aaron Birst:** "Yes it would. But because it would be a misdemeanor there would be options to not register."

**Chairman Armstrong:** "Are there any options under B misdemeanor to not register?"

**Aaron Birst:** "It is my understanding that it is still discretionary whether it's a B or A misdemeanor."

**Chairman Armstrong:** "So this doesn't really affect registration?"

**Chairman Armstrong:** "Correct."

**Janelle Moos, Executive Director of CAWS North Dakota**, testified in support of the bill. (see attachment 2)

**Chairman Armstrong** closed the hearing on HB 1218.



**Senator Luick** motioned for a Do Pass. **Senator Larson** seconded.

Discussion followed:

**Chairman Armstrong:** "I think this makes sense in a lot of different ways. This really gives everybody a little more discretion to deal with these cases without having such a drastic jump. We aren't creating new felonies; we are just giving the courts the tools they don't currently have under Class B Misdemeanors."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Senator Luick** carried the bill.

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1218**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Luick

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

**REPORT OF STANDING COMMITTEE**

**HB 1218: Judiciary Committee (Sen. Armstrong, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1218 was placed on the  
Fourteenth order on the calendar.

2017 TESTIMONY

HB 1218

#1  
1218  
1-23-17

**Facts About Sexual Assault In North Dakota  
January – December 2015**

- ❖ **1041 primary victims** and 180 **secondary victims** were served by 20 sexual assault crisis centers throughout North Dakota.
- ❖ At least **327(31%)** of primary victims were under the age of 18 years old at the time of the assault/s.
- ❖ At least **937(90%)** of the **victims** were **female**.
- ❖ At least **994 (95%)** of the **assailants** were **male**.
- ❖ At least **21 (2%)** of the **assailants** were **female**.
- ❖ **69% of the crimes were reported to law enforcement.**
- ❖ At least **50% of adult victims** contacted a sexual assault center about the crime **within 2 days** of the assault. **20% of adult victims** contacted a sexual assault center within **3-30 days** after the assault.
- ❖ At least **87% (902)** of the cases were **male assailant/female victim**.
- ❖ At least **9% (91)** of the cases were **male assailant/male victim**.
- ❖ At least **73%** of the adult assaults were **rape**, **6% attempted rape**, and **22%** were **sexual contact** other than rape or attempted rape.
- ❖ In adult cases **13%** of the **assailants were strangers**. In child cases **3%** of the **assailants were strangers**.
- ❖ In at least **41%** of all cases the **assailant was a friend/acquaintance/date** of the victim.
- ❖ At least **22%** of all cases were **incest or indicated a history of incest**. In at least **13%** of adult sexual assault cases reported, the victim also experienced **sexual abuse/incest as a child**.
- ❖ At least **12,574** services to **primary victims** were provided by crisis center advocates from January to December 2015.
- ❖ At least **37%** of the **assaults occurred in the victim's or assailant's home**.
- ❖ At least **28%** of the victims were **referred** to sexual assault service providers by **themselves, friends, or family members**.

Sexual Assault Statistics are compiled by CAWS North Dakota  
for the State Health Department  
525 N. 4<sup>th</sup> St., Bismarck, ND 58501 701-255-6240  
[www.cawsnorthdakota.org](http://www.cawsnorthdakota.org)

April 2016



H2  
HB 1218  
1-23-17

#### **12.1-20-07. Sexual assault.**

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
  - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
  - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
  - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
  - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
  - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
  - f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

#### **12.1-20-08. Fornication.**

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

#### **12.1-20-09. Adultery.**

1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person who is not his or her spouse.
2. No prosecution shall be instituted under this section except on the complaint of the spouse of the alleged offender, and the prosecution shall not be commenced later than one year from commission of the offense.
3. The court shall grant immunity from prosecution under this section to a person subject to prosecution under this section who, as part of a divorce, annulment, or separation proceeding, provides information regarding sexual acts with another person.

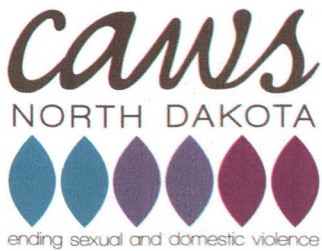
#### **12.1-20-10. Unlawful cohabitation.**

Repealed by S.L. 2007, ch. 131, § 4.

#### **12.1-20-11. Incest.**

A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.





HB #3 1218 1-23-17  
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Testimony on HB 1218  
House Judiciary Committee  
January 23, 2017

Chairman Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1218.

Sexual assault is the most under reported crime in the United States and one in four women and one in six men will experience sexual violence at some point in their life. Nationally, approximately 76% of the victims knew their assailant and 83% of victims were under the age of 25 at the time of their assault. Last year alone in North Dakota over 900 victims of sexual assault sought services from one of the twenty crisis centers; 40% of those victims were under the age of 18 at the time of the assault. Some adolescent sexual assaults are of course reported to the police, either by the victims themselves or by someone they disclosed to, such as a parent. In North Dakota, 70% of sexual assault victims report the assault to law enforcement.

The prosecutor plays a key role in the criminal justice system. She or he decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the offender's sentence. Although each of these decisions is important, none is more critical than the initial decision to prosecute or not to prosecute. Prosecutors have broad discretion at this stage in the process.

In sexual assault cases, the victim's character, behavior, and credibility may play an especially important role in charging decisions. In these types of cases, little physical evidence may be present to connect the suspect to the crime, and typically eyewitnesses who can corroborate the victim's testimony may not be available. The likelihood of conviction depends primarily on the victim's ability to articulate what happened and to convince a judge or jury that a sexual assault occurred. Thus, prosecutors' assessments of convictability and their charging decisions

#3  
HB 1218  
1-23-17

rest on predictions regarding the way the victim's background, character, and behavior may be interpreted and evaluated by other decisionmakers and potential jurors.

In North Dakota, a recent case shows the gap in North Dakota's sex-offense laws that some advocates and prosecutors say needs to be fixed. For many allegations of unwanted sexual contact involving adults, there's no flexibility for prosecutors between a charge that's a Class A felony and one that's a Class B misdemeanor. An A felony has a maximum sentence of 20 years behind bars. The maximum is 30 days for a B misdemeanor, North Dakota's lowest-level criminal offense, the same level as being a minor in possession of alcohol.

From 2010 to 2015 in North Dakota, a serious felony rape charge—Class AA or Class A—was eventually reduced to a Class B misdemeanor at least 49 times, according to state data.

That's nearly 8 percent of the 633 total convictions in sex-crime charges that were initially Class A or AA felonies. Fourteen of those 49 instances were in Cass County.

As noted in the news article from the Fargo Forum: "We don't have middle ground," according to Assistant Cass County State's Attorney Leah Viste.

More serious sex charges exist within that range, but they're only specific to certain situations—for example, sexual acts against hospital patients or prison inmates or as part of a hazing or gang initiation, and conduct including window peeping and indecent exposure.

Unlike North Dakota, the state of Minnesota has no simple misdemeanor sex charges on the books. It has four different degrees of felony level criminal sexual conduct. Pam Harris, chief assistant in the Clay County criminal division, said if a charge ends up being pleaded down, it will often be to a lesser felony.

Minnesota's least serious sex charge is a gross misdemeanor-- a step up from a regular misdemeanor. Harris said that gross misdemeanor charge is the only one that doesn't require sex offender registration upon a conviction.

Access to justice in the criminal justice system is one way victims can begin to move forward and thrive after an assault, the changes outlined in HB 1222, encourage an enhanced penalty for sexual assault crimes, so therefore, I encourage a DO PASS recommendation on HB 1222.

Thank you.



HB 1218

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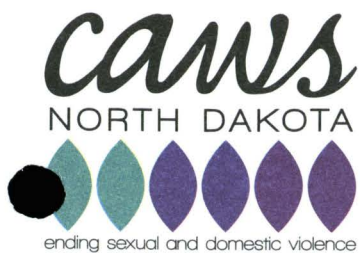
3/7/17

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April 2016



HB 1218

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3/7/17

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Testimony on HB 1218  
Senate Judiciary Committee  
March 7, 2017

Chairman Armstrong and Members of the Committee:

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