

2017 HOUSE JUDICIARY

HB 1383

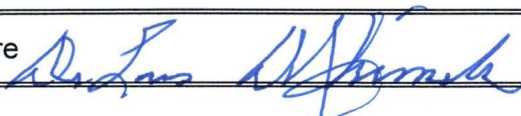
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1383
2/1/2017
27730

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to loitering; and to provide a penalty.

Minutes:

1,2

Chairman K. Koppelman: Opened the hearing on HB 1383.

Rep. Porter: Introduced the bill. Asked to put in by the Chief of Police in Mandan. This language was drafted from Florida. Devils Lake has a similar local ordinance.

Chairman K. Koppelman: We have been asked by leadership to move this bill.

Representative Vetter: Can you clarify loitering?

Rep. Porter: It gets spelled out on page 1, line 7-9 that is what you would be doing to cause the problem. Then 10-13 puts it onto law enforcement.

Representative Klemin: This is really broad? There seems to be constitutional problems with this.

Rep. Porter: I understand those concerns and it may be broad. This law was addressing gang activities.

Representative Klemin: There seems to be a constitutional issue with this.

Rep. Porter: I agree it may be broad. The definitions and the act wasn't invented. It was copied from another state where it is in place. I think this law is coming from shopping malls where gangs are active.

Representative Klemin: Do know any other law that it is illegal not to reveal your identity when law enforcement asked you? If you are not going anything other than standing around.

Rep. Porter: I do not know if it is needed or not? I do know that the way it is written a person is standing and prowling around private or public place and they are suspicious and they are talked to it would make it a crime.

Representative Hanson: The bill talks about a person may not prowl in a place in an unusual manner? What is the criteria that you would outline as unusual manner?

Rep. Porter: That is up to the committee.

Representative Hanson: What effect would this have on peaceful gatherings and the homeless?

Rep. Porter: I don't know about the homeless. I don't think it would have any impact on the peaceful side.

Opposition:

Jennifer Cook, Policy Director, ACLU: (#1) (12:00) Went through testimony.

Christopher Dobson, National Catholic Conference: (#2) (13:27-15:20) Read testimony.

Representative Hanson: Do know of any case law at the Supreme Court level causes constitutional concerns?

Christopher Dobson: All those loitering laws across the US have been struck down.

Chairman K. Koppelman: You heard the intent of the bill due to circumstances that are on gang. Can you assist with this bill?

Christopher Dobson: I have not heard specifics about what it is trying to accomplish.

Chairman K. Koppelman: Are you aware of people in Florida how this is working. They ran into the problems with municipal ordinances.

Representative Nelson: I am focusing on where you have to identify themselves?

Christopher Dobson: I am not aware of any incidents here.

Carol Two Eagles, Citizen: There is something in the law that says you have to identify myself. I contacted by a Mandan police officer who said she was passed out. I do not have to provide an ID. This is profiling. What would you know about it so then he took a step back? This continued about 15 minutes. A second officer rummaged around in the back of my pickup so I told him to stop. I sent a letter to the mayor of Mandan at the time and I did not hear back from him. They told me I could not set in the park with my eyes closed and I was made. It is in ND law but he showed it to me. It does existing in law somewhere. I think the language is excessive and broad.

Representative Nelson: Has anyone ever reported you to law enforcement for being a suspicious person.

Carol Two Eagles: She said are you a protestor. There may be a file on me

Chairman K. Koppelman: If the law enforcement officer thought you were passed out; in a vehicle that could have been the scenario that they thought.

Neutral: None

Hearing closed.

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HB 1383
2/1/2017
27774

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☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to loitering; and to provide a penalty.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1383.

Do Not Pass Motion Made by Rep. Roers Jones; Seconded by Rep. Blum

Representative Vetter: I think this is the worse one of all the ones we have seen so far.

Rep. Blum: I think the language is so broad we need to kill this bill.

Roll Call Vote: 14 Yes 0 No 1 Absent **Carrier:** Rep. Roers Jones

Closed.

Date: 2-1-17
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 1383

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. Roers Jones Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment : Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1383: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1383 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1383

#1
1383
2-1-17

Testimony in Opposition to HB 1383 – Related to Providing a Penalty for Loitering

American Civil Liberties Union of North Dakota

House Judiciary Committee

February 1, 2017

Thank you, Chair Koppelman and members of the House Judiciary Committee for your time and attention this morning. My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. The ACLU of North Dakota is a nonprofit, nonpartisan organization with more than 6,000 members, activists, and followers. The ACLU of North Dakota is one of the state's leading organizations dedicated to advancing and defending civil liberties and civil rights.

We urge this committee to give HB 1383 a Do Not Pass recommendation.

This bill and the enforcement of it may result in over-policing that disproportionately impacts communities of color or people of color.

- In general, although the law and the criminal justice system provide equal opportunity in theory, it is too often denied in fact. From our earliest days, the ACLU has fought for racial justice and an end to systemic racism. Today, race remains the critical dividing line in American society. Through litigation, advocacy, and public education, the ACLU addresses a broad spectrum of issues that have a disproportionate impact on people of color. These include over-policing, racial profiling, the targeting of the poor, and racial disparities that permeate virtually every aspect of the criminal justice system.
- These disparities are the result of intentional discrimination and of unconscious bias. For instance, racial profiling, discriminatory drug laws, and biased police enforcement bring a disproportionate number of people of color into the criminal justice system. That system goes on to convict and incarcerate people of color disproportionately, and often returns them to society without the right to vote and with diminished prospects for jobs, housing, and a future.
- We've spotlighted the consequences of policing disparities in our report, *Picking Up the Pieces*, a headline-generating report that documents the devastating human impact of racialized over-policing. In Minneapolis, blacks and Native Americans are nearly nine times more likely than whites to be arrested for offenses as petty as loitering.¹

This bill will likely criminalize North Dakotans who are homeless and impoverished.

- Having no home is not a crime, but it is difficult to find people in that circumstance who have not experienced ticketing, arrest, jail time, unaffordable fines or harsh encounters with law enforcement, mostly just for existing in the wrong place and time, and therefore violating loitering laws.

¹*Picking Up the Pieces – Policing in America: A Minneapolis Case Study*, American Civil Liberties Union of Minnesota, <https://www.aclu.org/feature/picking-pieces>.

- One such example is exhibited in Fort Collins, Colorado where the ACLU found that police were arresting people under aggressive panhandling laws for silently holding signs, going far beyond the law itself, as well as constitutional boundaries. In another Colorado city laws against loitering on school grounds were used to arrest people for sitting on park benches nowhere near a school. These arrests are costly to cities and counties that must incarcerate impoverished offenders.
- The ACLU affiliates nationwide have litigated numerous loitering statutes based upon First Amendment grounds that specifically target begging or panhandling for money or food. These cases have been successful and courts have determined that loitering statutes that criminalize begging are an unconstitutional restriction of free speech rights. Although this bill does not have specific language to that effect, because the language is so broad “loitering” may be construed by police to include begging or panhandling and therefore as applied this bill could face a constitutional challenge.²

This bill would likely chill North Dakotans’ First Amendment rights to freedom of speech and assembly.

- This bill disturbs the principles of the First Amendment overbreadth doctrine; thus, infringing on constitutionally protected speech and conduct.
- First Amendment rights are fundamental cornerstones of our nation. The freedoms of speech and assembly protect the free flow of ideas, an important function in a democratic society. Yet, this bill prohibits First Amendment speech and conduct in public forums - such as public streets, parks, and sidewalks - traditionally so associated with First Amendment rights that denying access to it for this purpose is strictly prohibited.
- The overbreadth doctrine invalidates laws that substantially inhibit First Amendment speech and conduct. A statute is overbroad if its reach ensnares both protected and non-protected First Amendment activities, essentially punishing otherwise innocent and constitutionally protected conduct.³

This bill is overbroad, vague, and will likely not withstand constitutional challenges.

- There are a number of U.S. Supreme Court cases that explicitly consider the constitutionality of anti-loitering ordinances or statutes.⁴ These cases have struck down loitering laws for vagueness.

² *Thayer v. City of Worchester*, 144 F.Supp.3d 218 (2015).

³ See *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). This standard is far more restrictive when protected speech and criminal penalties are involved.

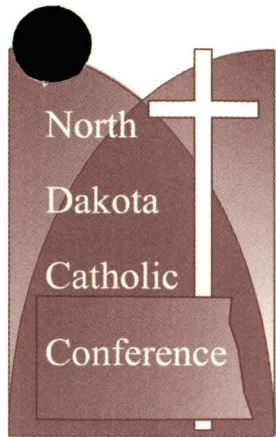
⁴ Vague laws violate due process because they do not give adequate notice to citizens about what conduct is prohibited, and because they authorize or encourage arbitrary and discriminatory enforcement. *Chicago v. Morales*, 527 U.S. 41, 56 (1999). Vagueness is often present in laws designed to allow police to roust suspicious characters who are not engaged in independently criminal conduct. E.g., *Morales* (gang loitering ordinance); *City of Sumner v. Walsh*, 148 Wn.2d 490, 61 P.3d 1111 (2003) (juvenile curfew); *Kolender v. Lawson*, 461 U.S. 352, 356-58 (1983) (loitering law requiring presentation of ID); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)

- Numerous lower federal court and state court cases have also struck down loitering laws for violating the Due Process Clause of the Fourteenth Amendment.⁵

Again we urge a Do Not Pass vote on this bill. Thank you for your time and attention. I will stand for questions.

(vagrancy). The concern about arbitrary and discriminatory enforcement is particularly acute when examining vagrancy or loitering laws, but the vagueness doctrine is not limited to that context. It may be invoked whenever a law is insufficiently precise about the extent of its coverage. E.g., *Village of Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489 (1982) (drug paraphernalia law not vague); *Smith v. Goguen*, 415 U.S. 566, 574 (1974) (flag desecration law vague).

⁵ Courts have been suspicious of laws that make it a crime, without more, to simply exist in public places. When such laws are invalidated, it is often on the grounds of vagueness. There appears to be no good way to write a law that allows the police to round up (or chase away) the usual suspects without also covering virtually every otherwise law-abiding citizen. As a result, the laws rely on vague phrases that officers on the street can use as they see fit against people of their choosing. Examples include juvenile curfews, *City of Sumner v. Walsh*, 148 Wn.2d 490, 61 P.3d 1111 (2003), vagrancy laws, *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), laws that allow police to demand identification from loiterers, *Kolender v. Lawson*, 461 U.S. 352, 356-58 (1983), and laws that allow police to order anyone seen in the presence of a gang member to move along, *Chicago v. Morales*, 527 U.S. 41, 56 (1999).



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: House Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1383 - Loitering
Date: February 1, 2017

#2
1383
2-1-17

This morning, being a Wednesday morning, people are outside the abortion clinic in downtown Fargo. They come to pray and bear witness. Some may try to counsel women arriving and leaving the clinic. They do this every week.

It is also very likely that every week there is someone who feels that the presence of these prayers and sidewalk counselors cause "justifiable and reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity." It could be a clinic employee, a patient, or a passerby.

There lies the fundamental problem with this bill. It allows for investigation, interrogation, and possible arrest and prosecution based on an individual complainant's subjective perception. It is not enough that those outside the abortion clinic are acting lawfully. The definition of "loiter and prowl" includes actions that are currently legal.¹ Even if the individual is not prosecuted, it requires a law enforcement officer to, in each case, investigate whether a violation of the statute has occurred. Similar laws in other jurisdictions, though intended for other purposes, have been used to harass people praying and counseling outside abortion clinics.

The subjectivity in this bill could also be used to harass persons who appear different or "may not be wanted" such as homeless persons, people with mental illnesses, and religious minorities.

The purpose of this bill could be to address a real problem, but its breadth and subjectivity make it a tool to be used against peaceful and prayerful persons and those at the margins of society. We urge a **Do Not Pass** recommendation.

¹ Page 1, lines 22-24 state: "As used in this section, 'loiter and prowl' means to be dilatory, to stand idly around, to linger, delay, or wander about, or to remain, abide, or tarry in a public or private place without a lawful reason." (emphasis added.) Having a lawful reason is a defense only to remaining, abiding, and tarrying. It is not a defense to being dilatory, standing idly around, lingering, delaying, or wandering about.