

2017 SENATE JUDICIARY

SB 2158


2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2158
1/23/2017
27219

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to killing or injuring a law enforcement support animal or service animal; and to provide a penalty.

Minutes:

Testimony attached #

1,2,3,4,5,6

Chairman Armstrong called the committee to order on SB 2158. All committee members were present.

Erin Oban, North Dakota District 35 Senator, introduced and testified in support of the bill. (see attachment 1)

Sergeant Tim Sass, Bismarck Police Department, testified in support of the bill. (see attachment 2) He also introduced his dog, Oscar.

"I want to change this because as an animal lover, these animals become more than just a pet to us. They live with us, they become part of the family. I feel that when Oscar is in the car with us, it's our duty to protect him. Even when Oscar is harassed he wants to protect us so badly that he can actually injure himself from busting his nose against the cage and door. These canines are more than just our partners they become our best friends. I'm with him more than I am with my own child. I support this bill."

Chairman Armstrong: "If a dog sniffs illegal contraband and then dies from exposure, will this bill make that a crime?"

Sgt. Sass: "I would charge that person with that, because it was the result of the crime. I am open to compromise and any suggestions, but I strongly support this bill."

Chairman Armstrong: "The penalty for fleeing the officer is a Class A Misdemeanor, correct?"

Sgt. Sass: "Yes."

Chairman Armstrong: "A couple problems I have is that if you are fleeing an officer, that is a Class A Misdemeanor, but if you are fleeing an officer and a dog comes at you, you're

going to hit it, kick it, whatever you can to try and get away from that dog. So my question is, if it's a Class A Misdemeanor to flee, even if you strike an officer it becomes a Class C Felony, but this would elevate hitting a dog to a Class A Felony?"

Sgt. Sass: "And that's some of the language that I'm open to addressing."

Chairman Armstrong: "What would you say to somebody who says that harassing or taunting a dog, even if it's a police dog, is a Class C Felony, but doing the same thing to somebody on the street is a Class B Misdemeanor? The language in the 2nd section is what gets me. Why is it worse crime for harassing a dog and not a person?"

Sgt. Sass: "It depends on the type of harassing as well. Harassment crimes can be enhanced also."

Senator Myrdal: "How many service animals are there currently in North Dakota?"

Sgt. Sass: "I don't have an exact number as of now."

Senator Osland: "How often is there a case against an individual that there would be a Class C Felony?"

Sgt. Sass: "Not too often with respect to assault."

Senator Osland: "How many cases in North Dakota against individuals that have assaulted a dog?"

Sgt. Sass: "In Bismarck, about a couple every year for assaulting, and 30-40 a year for harassing."

Chairman Armstrong: "Are you comfortable with hindering a service dog being a higher penalty than hindering you?"

Sgt. Sass: "When we charge people for hindering us, it's usually for not telling the truth, if they are physically hindering, it's usually an assault charge."

Senator Luick: "Do you think the people that you are targeting here, do you think they would be concerned that there is a steeper penalty now if you harass their dog? Or don't they care? Do you think increasing this will deter people from harassing dogs?"

Sgt. Sass: "I do. I know I will tell people about it, give them a warning that they can get into a lot of trouble if they keep harassing the dog."

Senator Myrdal: "Is there a chance of abuse for law enforcement officers now, because of their emotional attachment of this animal?"

Sgt. Sass: "No. I really don't believe so."

Senator Larson: "Already it is an enhanced penalty under section 1 in the bill. Its already a Class C Felony to willfully and unjustifiably torture and torment a police dog. Do you think it could serve your purpose just for people to know that? Wouldn't you be able to apply the current language to help prevent torture and torment of a police dog?"

Sgt. Sass: "It's tough because it goes case-by-case. If they are willfully tormenting or torturing than it is physical abuse, but if they are yelling then that is harassment."

Senator Larson: "Do you think that were going to end up locking up people for a felony because they don't understand that kicking that dog to get away from them is going to be a greater crime?"

Chairman Armstrong: "I'll take this question. It will be escalated. Kicking an officer is a Class C Felony, kicking a dog is a Class A Felony."

Sgt. Sass: "We give them lots of warnings. They should give up before the situation escalates."

Chairman Armstrong: "If this bill passes without amending anything, there will be no more misdemeanors. It will be a felony, correct?"

Sgt. Sass: "Yes."

Chairman Armstrong: "Isn't there already adequate protection in the Century Code relating to financial obligation of the dog?"

Sgt. Sass: "It's tough because we do use them as tools."

TJ Jerke, North Dakota State Director of the Humane Society, testified in support of the bill. (see attachment 3)

Dan Donlin, Chief of Police of the Bismarck Police Department, testified in support of the bill. No written testimony.

"I discussed sections of the bill with colleagues and there are some things we agree on. Everyone agreed that it probably shouldn't be a Class A Felony. There was quite a bit of discussion about accepting it as a Class B Felony. The issue wasn't so much about the killing of a law enforcement dog, but according to the language of the current bill as written, "a person beats or kicks a service animal it's a Class A Felony, we struggled with that since if a person beats or kicks a police officer it's a Class C Felony."

Chief Donlin said the language could be changed and he'll leave it up to the committee.

Senator Larson: "It looks like this bill includes any service animal not just police dogs. Is your suggestion that if you move it into law enforcement you are only counting the law enforcement dog and not the same for any service animal?"

Chief Donlin: "No, my understanding is that it is inclusive to any service animal."

Senator Myrdal: "The term service animal is such a broad term, that will be addressed in the amendment. Will your department be okay with narrowing it down to law enforcement and what types of animals are used for Law Enforcement?"

Chief Donlin: "I have no issues with that. The canines we have are Dual Purpose Canine, and Straight Narcotics Canine."

Ryan Sandberg, North Dakota Association of Criminal Defense Attorney's, testified in opposition of the bill. No written testimony. Ryan Sandberg did have a photo of a client's bite wounds. (see attachment 4)

"We are against this bill. When I first saw the bill I was curious, is there a problem with this? Are these types of crimes happening a lot? So I Googled it, and couldn't find anything. I've been an attorney for over 12 years and a deputy for 3.5 years, and I've never had a case like this before. So if it's not broken, then why fix it?"

Dr. Delray Martin, North Dakota Veterinary Medical Association, testified in opposition of the bill. (see attachment 5)

Pete Hanebutt, North Dakota Farm Bureau, testified in opposition to the bill: "We don't like this bill. As we see it there are motives at play here. I like the questions that the committee asked, we also have similar concerns. We'd like this bill killed."

Trevor Graff, North Dakota Stockmen's Association, testified in opposition of the bill for Julie Ellingson. (see attachment 6.)

Chairman Armstrong closed the hearing on SB 2158.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2158 Committee Work
1/24/2017
27317

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to killing or injuring a law enforcement support animal or service animal; and to provide a penalty.

Minutes:

Chairman Armstrong called the committee to order on SB 2158.

Senator Myrdal has reservations about the bill.

"We had an issue in our district that deals with this bill. Anybody who knows me knows that I wouldn't equate human life to animal life. However, having said that, I extremely commend these officers and their canine partners. So I think this has to be revisited at some level, but I don't think the amendments we have in the room are satisfactory."

Senator Osland: "What problem is this bill going to solve? We all love our law enforcement, but I see this as a different issue and I'm not sure it's going to help."

Senator Myrdal: "I see that concern as well but I think some of my constituents feel that if we are to protect our law enforcement, that should include their services animals. Again, I'm not equating animal lives to human lives, but I think this will be an issue that will need to be revisited in the future."

Senator Larson: "Sgt. Sass is a friend of mine, however, I also know that a service dog with the police is a tool and one that is very valuable, but expendable. That's why they send a dog into a dangerous situation where a suspect could be armed instead of sending a person in. We want to protect human life as much as possible. As compelling as all the arguments were, I'd rather maintain what we have rather than losing more."

Senator Luick: "We have been looking at reducing the fines and penalties on non-violent situations with humans, ratcheting those down the last couple sessions here. Again, rather than kill this, if there is an effort to ratchet this up a little bit, not make the steps that is in this bill itself, what do we think about that?"

Chairman Armstrong: “Right now under current law, this bill will make hitting a dog a felony and hitting a human is only a misdemeanor. Where is the data that says ratcheting this up will help? We haven’t seen any data to see if this will help. If we keep ratcheting things up we could find that we have a very uneven criminal justice system.”

Senator Myrdal: “Isn’t the difference that the dog is an official police law enforcement animal, that’s why its ratcheted up already?”

Chairman Armstrong: “I’m not sure.”

Senator Myrdal: “Some of the testimony seemed like people would just stick their dogs in there instead of doing proper procedure, some of it anyway. I’m not going to submit those amendments because I don’t think this is fixable as it stands.”

Chairman Armstrong: Under current law the enhancements are already there. They do exist; you may not think they are enough but they are there.”

Senator Osland motioned for a Do Not Pass. **Senator Luick** seconded.

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

Chairman Armstrong carried the bill.

Chairman Armstrong closed the hearing on SB 2158.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2158**

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 Osland Seconded By Senator Luick

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2158: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2158 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2158

①

1/23/17

SB 2158

Mr. Chairman, members of the Committee, for the record, I'm Erin Oban, Senator for District 35 here in Bismarck. I'm here to introduce SB 2158, a bill I bring before you at the request of a sergeant and K9 handler with the Bismarck PD who reached out to me to address what he and others feel are inadequate penalties for crimes committed against law enforcement support animals.

While the sergeant specifically requested these changes be made to "law enforcement support animals" in current Century Code, we didn't think it was coincidence that the penalties for crimes against "law enforcement support animals" and "service animals" were exactly the same, so we included "service animals" in the bill as well. For the sake of making this testimony easier to run through, please note that any changes proposed in this bill that I'm discussing with you now with respect to law enforcement support animals would also apply to service animals. *(As defined in NDCC 25-13-01.1, a "service animal" means any guide dog, signal dog, or other animal trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability. The term includes an animal trained to provide assistance or protection services to an individual with a disability, pull a wheelchair, lend balance support, retrieve dropped objects, or provide assistance in a medical crisis.)*

The bill, as written, would increase the penalties for the willful and unjustifiable killing, shooting, torturing, tormenting, beating, kicking, etc., of a law enforcement support animal from a class C felony *(maximum penalty of five years, \$10,000 fine, or both [NDCC 12.1-32-01])* to a class A felony *(maximum of twenty years, a fine of \$20,000, or both [NDCC 12.1-32-01])*. Further, it increases by one class the offense of harassing, taunting, provoking, and interfering with a law enforcement support animal from a class A misdemeanor *(maximum of one year, a \$3,000 fine, or both [NDCC 12.1-32-01])* to a class C felony.

Increasing these penalties may not necessarily *prevent* these kinds of crimes, because I can't imagine a person who purposefully harms or kills a law enforcement or support animal much cares about the consequences. I do believe, however, greater justice for the person or family standing by that animal's side and counting on the skills that animal provides is worth this discussion. I tried to find some numbers to share with you regarding the frequency of incidents like these, but I was unable to come up with much for data. Perhaps there are others here who will be able to.

It's pretty clear these highly trained, highly skilled animals serve especially important roles to people in our state. I may not experience these roles first-hand, but I am happy to do my job in representing people and professionals in our community who feel strongly about this issue and to give them the chance to discuss it. That said, in no way am I interested in equating or elevating penalties against law enforcement and service animals to or higher than those against human beings, so the bill, as presented, in my opinion, needs some work to respond to that very valid argument.

Mr. Chairman, I know and can understand the hesitation you have to "meddle" in the criminal code, but I encourage each member of this Committee to put yourself in the shoes of these officers and their families or the individuals who rely on support and service animals, to recognize the incredible amount of time and money required to train these

animals, to consider the commitment these animals and owners have to one another, and to use this bill as a starting point for this conversation. I've already visited with one of the cosponsors about some amendments that may make this more palatable, and I would encourage your support of any amendments that make the bill better, and, in the end, the bill itself.

Thank you, and I will try to answer any questions you may have.

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SB 2158
1123/17

12.1-17-09. Killing or injury of law enforcement support animal

Chairman Armstrong, members of the Senate Judiciary Committee, my name is Sgt. Tim Sass with the Bismarck Police Department. I have been with BPD for just under 7 years with all of my time assigned to the patrol division. I spent my first two years as a patrol officer and began working with our k9 unit at that time as a decoy. I then became a k9 handler in 2013 and have been one since. My k9 is a Belgian Malinois who came from Holland. His name is Oscar and he is 8 ½ trained in narcotics and patrol functions.

I love being a police officer, being part of a family, part of team that will lay down its life for you and becoming a k9 handler is one of the largest honors I have had. Oscar and I have been inducted into the North Dakota Animal Hall of Fame, we have participated, placed and won several k9 competitions for narcotics and patrol and he has been my partner and most trusted friend since the day we met. I wanted to introduce the new penalty as I have seen first-hand the stress these animals go through when working. A police k9 is very high energy and we need that type of drive but they also can harm themselves when provoked. I have been on many calls where a suspect, somebody who has been drinking or is under the influence of narcotics is harassing our k9s. This could be barking at them from a distance, hitting the squad car door, trying to open the door or yelling at them through the cage. This causes stress on the k9 as that is tormenting them and ultimately challenging them to fight. The k9s will bark back, shake the car and I have come back to find blood in my car because Oscar hit his nose so hard on the cage trying to get out it he has split open. These k9's become our partners, our best friends and the people we spend the most time with. We are trained and told to look at them as tools, something that can be used and replaced, but once you start working with them you just can't do that.

A police k9 is a licensed and uniformed officer of the law. They are trained to protect us as handlers from dangers. Oscar has protected me from people trying to fight, he has located suspects hiding in rooms, fields and boats that possessed guns and knives and later admitted they were going to harm us or make sure they didn't go back to prison. This means that he has not only protected and saved my life but also as the lead unit we have also saved and protected other officer's lives. Our police k9's live at home with their handlers. We have take home squad cars which means we truly spend every minute of the day with our partners. Oscar is part of my family and a member of my family when home. He knows at home is just a dog and my wife and son also trust him. They know he is not a normal pet but when I leave for work, they hug me and then hug him. I even find my wife talking to him and telling him to protect me when being called out for a dangerous call.

The trust is I could talk for hours about how Oscar is a part of my family and my partner who I trust my life with. But this is not about just Oscar and I, this is about every k9 handler and their partner in the state. We have monthly trainings and certifications throughout the year where I get to see all the handlers and their partners working together. A police k9 is an invaluable tool to each agency also. The cost for a police k9 is approximately \$20,000 and there is the continued cost of food, vet bills and our squad cars. A k9 is used to find suspects, who could be hiding and setting an ambush for officers, find a lost child, located evidence and find narcotics which is how we just found the 44 pounds of Marijuana with Burleigh County's K9. And in the same case seized \$10,000 cash from Oscar.

We have taken precautions to protect our k9s by getting them tactical vests they wear when going into a search but nothing is going to work all the time. We have more agencies than ever getting police k9s in our state. Bismarck PD has 3 and is looking at getting a 4th. Burleigh County just got their first one and is now getting a 2nd. Morton County has one and is getting a 2nd and we are seeing that trend all over because their value and resource is something you just don't get with a human officer. In 2017 we have already lost 9 k9s, in 2016 we lost 184 and since 2013 when I became a handler we have lost 688 k9s across the country.

In Bismarck we also had a k9 killed a few years ago where Lt. Fetzer and his partner Viper were doing a vehicle sniff, the suspect got out of the car, dropped a bag of meth and Viper ingested it. This resulted in Viper having to be put down.

I have talked with almost every handler as well as other officers in the state and they are all in support of changing this penalty. Unfortunately the majority of them could not be here to also talk today because they are either working the DAPL or their agencies are short staffed because of recent events and taking time off for Officer Allery's funeral which is tomorrow. I can't express enough my passion and true thoughts behind this but also understand things must be looked at from several points of view. With that in mind I am open to compromise and working with everyone to find a common ground that everyone can agree upon.

I would like to thank the Chairman and members for the chance to be a part of the legislative process and giving me the opportunity to come and talk with you all today.

Sgt. Tim Sass

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**Testimony in Support of S.B. 2158
Presented to the Senate Judiciary Committee
January 23, 2017
By TJ Jerke
North Dakota State Director
The Humane Society of the United States**

Chairman Armstrong, and members of the Committee, my name is TJ Jerke, the North Dakota State Director for The Humane Society of the United States (HSUS). On behalf of HSUS, and our members and supporters in North Dakota, thank you for the opportunity to testify in support of SB2158.

As an animal protection organization, we ask your favorable consideration of this proposal. It's important to create an environment that protects animals, particularly hard-working, highly-trained support and service animals.

We often send Law Enforcement Support Animals into challenging and worrisome situations to protect North Dakota Law Enforcement and the general public. This also includes training, and benefitting from their ability to perform tasks law enforcement officials may not be able to do.

We, also, easily see the benefits of using law enforcement support animals, but the costs are not as obvious:

- Adapted Vehicles
- Use of vehicles
- Training equipment such as training clothes, suits or sleeves, harnesses, etc.
- Veterinary services, such as shots, health checkups, spay or neuter and on the job injury
- Food
- Certification and Licensing

Service animals are equally important to the day-to-day activities of many North Dakotans who rely heavily on these animals to support them. Whether it's a dog, or mini-horse, these animals bring self-sufficiency, personal security, physical therapy, psychological and social benefits, and much more.

This bill recognizes that any harm done to Law Enforcement Support Animals and Service Animals, is not only costly, but also socially and emotionally tolling to many. It sends a strong message that harming, or killing, these animals will be met with consequences.

Thank you for your time. We ask for a favorable recommendation on Senate Bill 2158.



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SB 2158

1/23/17



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**Testimony of Dr. Del Rae Martin
NDVMA Legislative Committee Member
In Opposition to SB 2158
January 23, 2017**

Chairman Armstrong and members of the Senate Judiciary Committee:

My name is Dr. Del Rae Martin, and I am a veterinarian at Heart River Animal Hospital in Mandan. I am also a member and past president of the North Dakota Veterinary Medical Association (NDVMA). I am here today on behalf of NDVMA in opposition to SB 2158.

NDVMA has spent more than a century representing the interests of veterinarians, their clients and patients. Today, the organization has more than 275 members representing small, large animal, exotic, bovine and equine practitioners, as well as those veterinarians working in research, academic and government capacities.

NDVMA understands and appreciates the concerns addressed by this bill. We also recognize and value the bond that exists between law enforcement support animals and their handlers.

NDVMA views SB 2158 as exceeding the regular punishment for animal cruelty as defined in North Dakota Century Code 36-21.2-02. We are uncomfortable with the penalty changes in this bill given the immense amount of time and research that resulted in significant changes in prior sessions regarding animal cruelty.

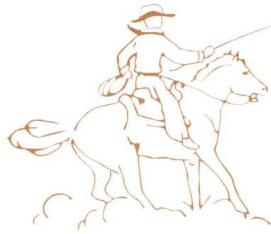
Although there are no changes other than the penalty assessments in SB 2158, NDVMA is concerned with the potential liability of veterinarians in treating law enforcement animals as defined in this code. Both sections only exclude veterinarians in the case of euthanasia of law enforcement animals and service animals.

NDVMA would also like to see the definition of "service animals" further clarified as there is a wide scope of service animals in use today. Unfortunately, not all animals described as a service animal by their owners are affiliated or certified by officially recognized organizations.

We appreciate your time and would be happy to answer any questions.

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North Dakota
STOCKMEN'S ASSOCIATION



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**North Dakota Stockmen's Association
Testimony on SB 2158
Jan. 23, 2017**

Good morning, Chairman Armstrong and Senate Judiciary Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association (NDSA), a 3,000-plus-member cattle industry trade organization.

Thank you for the opportunity to comment on SB 2158.

It is important for me to note that our organization is a strong believer in the stewardship of animals – it's how we make our living – and we do not condone inhumane acts against them. It's also important for me to note that our organization is a strong supporter of law enforcement and providing our officers with all the tools they need to do their jobs. We recognize the important role that support animals play alongside their human partners in enforcing the law and protecting our citizens.

Still, the North Dakota Stockmen's Association must oppose this bill, as it has explicit policy cautioning against the incremental elevation of the social status of animals to the same levels of humans and opposing any new laws that grant animals protective status equal or higher than that afforded to humans. As you will notice on the attached chart, which indicates various offenses and penalties associated with crimes against people and animals in North Dakota, SB 2158 would cross that threshold and, therefore, should be re-evaluated.

Additionally, SB 2158 may cause confusion, as it establishes stricter penalties than those associated with animal cruelty, even though the definitions are very similar.

We ask that you keep these concerns in mind as you consider the bill.

Offenses and Penalties Associated with Crimes Against Humans and Animals

Offense	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	Class C Felony	Class B Felony	Class A Felony	Class AA Felony
Simple assault of a peace or correctional officer, state hospital employee, person engaged in judicial proceedings or member of a fire department, emergency medical services provider or emergency department worker in official capacity				X			
1st simple assault offense against a family or household member		X					
2nd simple assault offense against a family or household member			X				
Simple assault in other instances		X					
Assault			X				
Assault of a victim under age 12				X			
Aggravated assault				X			
Aggravated assault of a victim under age 12 or if the victim suffers permanent loss or impairment of the function of a bodily member or organ					X		
Murder							X
Murder if person is emotionally disturbed						X	
Manslaughter					X		
Negligent homicide				X			
1st or 2nd animal abuse offense			X				
3rd animal abuse offense				X			
Animal cruelty				X			
Shooting, torturing, tormenting, beating, kicking, striking, mutilating, disabling or injuring a law enforcement animals				X			
Harrassing, taunting, provoking or interfering with a law enforcement animal			X				