

2019 HOUSE JUDICIARY

HB 1396

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1396
1/29/2019
31693

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring; and to provide a penalty.

Minutes:

Attachment 1,2,3

Chairman Koppelman: Opened the hearing on HB 1396.

Rep. Schauer: Introduced the bill. (Attachment #1) Read testimony. Stopped 6:35)

Rep. McWilliams: Do you know how the sentence of this man was reduced to 5 months in jail and how does this apply to the 85% rule and how that got reduced to 12 days?

Rep. Schauer: I do not know, but the Prosecutor does and he will come to testify on that.

Rep. Satrom: Why not any child up to six or ten?

Rep. Schauer: This case was on the case discussed.

Rep. Paur: Page 2 you have that bold type where you are eliminating the use of GPS. Do you know if GPS is used in protection orders to keep people away?

Rep. Schauer: I assume it is.

Rep. Hanson: Would this apply to juveniles?

Rep. Schauer: To my understanding it does not.

Chairman K. Koppelman: Should we have a provision that clarifies the placement of the child in a home?

Rep. Schauer: That doesn't make sense.

Amy Kempfer: Citizen: (Attachment #2) Read testimony. Stopped 22:00
The criminal has more rights than the victim. What do parents do that have nothing?

Representative Simons: Could you get a restraining order?

Amy Kempfer: I applied for it, but it was denied.

Chairman K. Koppelman: You have separate testimonies for different bills.

Amy Kempfer: We knew the mandatory minimums would be tough so we chose that age for that reason.

Rep. McWilliams: You mentioned that you applied for a domestic restraining order and were denied because there is already a criminal case in order. When that criminal restraining ran out, were you then eligible for the domestic restraining order?

Amy Kempfer: No. On the criminal side the judge was saying I am not going to issue one because he had visitation rights given by the civil judge.

Rep. McWilliams: Is there an opportunity in our current system that you could have appealed the decision of the civil judge.

Amy Kempfer: That was going to be at my cost. We had discussed appealing it.

Representative Simons: What is the visitations like? What are they doing?

Amy Kempfer: The only reason my son was protected with supervised visitations. Brooks, her son, is so traumatized. Discussed how the child reacted to his father. This man has rights as a father; and if he shows up, he has visitation rights.

Chairman K. Koppelman: You are currently trying to get the visitation revised.

Amy Kempfer: I am filing in juvenile court now instead of one court I have 3. I am filing to terminate his parental rights on the basis of an aggravated circumstance.

Carrie Leopold, Foster Mom from Fargo: I could write a book on my child's adoption that I am working on now. Described the environment this child lived in before she got her and the abuse. Her foster child asked why didn't my mom ever go to jail for what she did to me? Mental abuse and trauma the brain gets smaller. When she came to me four years ago she did not know how to use toilet paper. The mother has never been to jail for this or had any consequences. Our story is not unique. I just wanted to let you know that this abuse had long term affects for life.

Representative Simons: Was this proven in court. Were they able to convict her?

Carrie Leopold: No they were not.

Reid Brady, Ass't States Attorney for Cass County: I support HB 1396. (Attachment #3) The State sought 5 months to serve in jail. We looked at child support and how that would affect it. We wanted him behind bars more than two weeks. The defense said they would

do home monitoring, but that we wanted five months. We did not have a strong way to fight the electronic monitoring.

Rep. Hanson: You had mentioned that this would not apply to juveniles who specifically about the minimum sentencing or ultimate registration recording.

Reid Brady: Juveniles may be required to register, so I was not intending to address the offender registration fees. As a practical matter many juveniles regardless if it is a sex offense or offense against a child are not registered, but this bill would not distinguish between adult and juvenile.

Rep. McWilliams: The court in this case preferred the ability of the defendant to pay child support over the child's safety?

Reid Brady: It was certainly a factor.

Rep. McWilliams: Is there ever a case where the plaintiff can choose or have a say in Whether they prefer incarceration over the ability to pay child support?

Reid Brady: In the state, the criminal judge would not do child support. That is a separate issue.

Chairman K. Koppelman: With the information we heard there were multiple assaults? Were you able to stack charges in a case like that?

Reid Brady: There two time injuries. We did draft a second charge and present that to the defense along with the resolution proposal to use that effectively to accelerate the process to the outcome.

Chairman K. Koppelman: Was there an agreement between the prosecutor and attorneys.

Reid Brady: No it was a guilty plea so we capped.

Rep. Paur: Would you have had better luck in a jury trial?

Reid Brady: He did plead guilty. It is possible, but the outcome would have been the same. The judge does the sentencing.

Representative Simons: Someone brought up the fact that a rape victim, the baby, could technically have visitation with the person that raped the baby?

Reid Brady: There was some confusion in Cass County; that the offender should be allowed to have contact with a victim.

Representative Simons: The would be one that raped would have custody rights to the child?

Reid Brady: The criminal charge we would ask that judge to order no contact.

Rep. Paur: There aren't many cases that go to trial. Do you regret not pushing the chargers harder and instead of coming to an agreement going to trial?

Reid Brady: Yes I should probably have pressed harder. I thought we were going to get the jail time.

Opposition: None

Neutral: None

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1396
2/12/2019
32550 (15:37-27:04)

☒ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring; and to provide a penalty.

Minutes:

15:47 Recording begins.

Chairman Satrom: Opens the subcommittee on HB1396. Not a lot of change. This says shouldn't be eligible for electronic home detention. I have problems with the home detention because are we going to let someone that is abusive like that go back into the same home.

Rep Paulson: Yes that is the issue and no we should not.

Chairman Satrom: There isn't any changes until page 9. This is like a violence registry similar to sex offenders. Do any other states do that? We would ask legislative council. Should we have people who are abusive in that way registered? What parameters would you use? Are you comfortable with that? Would we have different levels like you do sexual abuse

Rep Paulson: Currently a person who is a moderate or high risk and registration information is necessary for public protection is in current statute. We currently can look at a person.

Chairman Satrom: If you are abusive you can be put on that list and it is not limited to one thing. Number 4 on page 10, are you good with that?

Rep Buffalo: It is the same language.

Chairman Satrom: 19:46 Page 19 on line 14. Can you make a list of questions that we will take to the committee?

Rep Paulson: Yes. On Page 19 I feel like this bill is formatted improperly, how is this different on page 19 from page 9? I can take that to Legislative Council and try to get an answer on that.

Chairman Satrom: page 21 line 17-18 of the bill. My concern with this is you fed my child broccoli and therefore you have abused by child. I think we are locking people into these punishments. There is a way if you are a judge he can adjust this if the punishment is excessive or not necessary.

Rep Paulson: I don't think he can adjust this.

Chairman Satrom: The must is my concern. North Dakota Century code has a safety valve for judges in dealing with minimum or mandatory sentences and it is called manifest injustice allowing judges to go outside guidelines if deemed necessary. I am a little concerned about something that someone would get two years for some little thing.

Rep Buffalo: Wouldn't the judge determine that'?

Chairman Satrom: The problem is, are we locking them in, it says must be sentenced to a minimum of two years. Are you okay with those minimums?

Rep Paulson: I am not sure I am okay. There is a couple of ways we could adjust this. There are some scenarios where you could meet that threshold fairly easily and accidentally and get 2 years in jail. The question is would a judge be inclined to adjust the sentence. We could adjust the language. I would hope they would do the right thing.

Chairman Satrom: I would hope the judges would. We will meet again and you will find that out from Legislative Council.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1396
2/12/2019
32629

☒ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring; and to provide a penalty.

Minutes:

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Present: Rep. Satrom, Chairman; Rep. Paulson, Rep. Buffalo.

Rep. Bob Paulson: Confusion on the language that was the same so discussed it with legislative counsel. What other states are doing with regard to requiring people to register after they have been found guilty of crime against a child.

Rep. Satrom: We are starting a new category? Should we go through the amendments?

Rep. Bob Paulson: This is different than registering as a sex offender? I think we got the wrong thing? This is found guilty of abuse of a child; may not be sexual.

Rep. Buffalo: I thought this was to create a register for child abuse?

Rep. Satrom: Are you good with that; should it be a registry item?

Rep. Buffalo: Maybe it could be a deterrent? It is for adult and child abuse.

Rep. Bob Paulson: It says and is ordered by the court to register under this section so a judge would decide this.

Rep. Satrom: How about the mandatory minimum of two years.

Rep. Bob Paulson: I have a problem with telling a judge to do his job. The least is two years for bodily injury on line 13 of page 21.

Rep. Buffalo: For a child I would like more years. They will be affected for life.

Rep. Satrom: We have a sex offense with a minimum of 2 years on line 27. Class A felony; maximum of 20 years; fine of \$20,000? Against a two-year-old or less?

Rep. Satrom: Concern is the years as legislative counsel explained it.

Do Pass Motion Made to by Rep. Buffalo; Seconded by Rep. Bob Paulson

Roll Call Vote 3 Yes 0 No 0 Absent

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1396
2/13/2019
32678

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring, and to provide a penalty.

Minutes:

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Chairman Koppelman: Opened the meeting on HB 1396.

Rep. Satrom: This has three components to it. The first page we have the provision about not allowing someone under this section to be eligible for electronic home detention or GPS monitoring. Our committee did not have a problem with that. Page 9 a registry where the information would be disclosed to the public. Apparently that is in place and we had no problem with that.

Rep. Rick Becker: What we are having them do is register on the sex offender registry?

Rep. Satrom: I am not sure?

Rep. Rick Becker: From what I can tell this is not a new registry for people who are physically abusive to children. It is to lump them in to the sex offender list.

Rep. Roers Jones: My concern is there is a note on the bill that it looks like a new register? My concern is we are creating an entirely new registry. The information is available now. There are different levels too.

Chairman K. Koppelman: It looks like it is at the discretion of the court.

Rep. Paur: On page 1 and the last page it says is not eligible for electronic home detention or GPS. I asked about that and they will use the GPS system so that they don't get close to someplace.

Chairman K. Koppelman: The concern in the case we heard about was that the abuser was sent back to the home where the child was.

Rep. Satrom: Went over the bill. There was concern about the minimum sentencing. No recommendations came out of the subcommittee.

Rep. Vetter: I am concerned about the register thing.

Motion Made to amend the Section 1, page add on line 11 after monitoring will say for electronic home detention or home based global position system monitoring if the minors are present in the home and strike all the rest of the bill by Rep. Rick Becker; Seconded by Rep. Roers Jones.

Rep. McWilliams: I don't like putting minors in the home.

Rep. Vetter: I don't have a problem with the first part or getting rid of this registry part and I am not normally for minimum mandatory stuff. I think in this case that was the whole purpose of the bill. If this happened, we are talking about abuse of a small child. I am going to resist it because I like to keep the minimum.

Chairman K. Koppelman: So if the current motion before us fails the committee can further amend.

Rep. Jones: I just wondered what was his sentence? The judge has discretion.

Rep. Roers Jones: A lot of the elements of this bill are addressing one case; we need to be cautious about creating mandatory minimum sentences that would apply to all cases in the future based on one really crappy story. We got all of one side of the story. I think we want to leave the mandatory minimum at the hands of the judge. With regard to the concerns about home monitoring and whether that is the appropriate punishment for a person. I think what we are looking to do with the amendment; making sure we are not putting that person in contact with other minors is protecting the minors in that situation, but not necessarily telling the judge where he needs to punish a person. If we have to incarcerate the; it is going to cost the tax payers more money.

Rep. Jones: We are not striking at the issue if they do not go back to their home.

Chairman K. Koppelman: Discussed concerns on the bill. It is in the same section as the sexual registration offense I do have some concerns about that because I don't believe it is the same issue. Mandatory minimum sentencing; I do believe taking another look at that is appropriate. Referring to the justice reinvestment last session. I am not sure the lengths of time in the bill are appropriate. I will resist the motion for those reasons.

Rep. McWilliams: It is a hard choice. Concerns about no child support if in jail. By having a minimum sentencing you restrict that process of being able to help the family.

Chairman K. Koppelman: The amendment on the home monitoring does make some sense since it does restrict it to the minors in the home piece.

Rep. Vetter: As far as I am concerned finances don't matter when a judge shouldn't be allowed to say you get 12 days because I want to make it easier financially. We are not talking about a minor thing. There needs to be some punishment for this.

Chairman K. Koppelman: In a case like this it doesn't mean there is child support. It doesn't mean there is a divorce or separation. It means there is a crime. We shouldn't make laws based on one case, but it does show flaws in the system.

Rep. Hanson: I like the changes we have made to the home monitoring so if the group doesn't support the motion for the amendment because they would like to make further amendments I would hope we would still keep some of that language.

Representative Simons: There needs to be punishment-justice.

Rep. Paur: This mandatory minimum; why two years?

Rep. Rick Becker: There are three branches of government. Judges are tasked with carrying out the sentences. Law enforcement limited to enforcing the laws; not drafting it; not carrying out sentences. There is no way we can know what is good for two or three years old. That is not our job.

Chairman K. Koppelman: Proposed amendment is on line 11, it would say after the word or home base would be inserted; and after the end of the sentence the word monitoring the words added would be if a minor is present in the home. The rest of the bill would be deleted.

Voice vote failed.

**Motion made to amend the bill to remove Section 1 from the bill by Rep. Satrom
Seconded by Rep. Rick Becker**

Voice vote carried.

**Motion made to amend to remove the registry requirements in the bill by Rep. Vetter;
Seconded by Rep. Hanson**

Discussion:

Rep. Hanson: It is my understanding child abuse have always been required to register as offenders against children so the language we are looking at simply add offenders against children.

Chairman K. Koppelman: So there is a separate registry for crimes against children. It is the understanding of the committee removing this is not substantive because the requirement is already there for perpetrators to be registered as offenders.

Rep. Roers Jones: That would be the entire section 2.

Voice Vote Carried.

Rep. McWilliams: Recently we passed out dropping it from the minimum mandatory?

Rep. Hanson: The 85% rule applies to just those seven crimes.

Rep. Jones: You can have this in here that they are going to get a sentence for two years. The judge will determine how that will be handled. I am not sure if it would functionally do much.

Rep. Roers Jones: How it is written here it says must be sentenced to a minimum of two years in prison. There is no discretion here.

Motion Made to amend to delete lines 5-7 on page 22 by Rep. Paur; Seconded by Rep. Satrom.

Voice vote carried.

Motion Made to amend Class B minimum mandatory from 2 years to 1 years; Class A minimum mandatory in this section from 5 years to 3 years on page 21 by Rep. Vetter. Seconded by Rep. Bob Paulson

Voice Vote Carried.

Do Pass as Amended Motion Made by Rep. Roers Jones; Seconded by Rep. Vetter

Rep. McWilliams: Minimum mandatories if in that situation a family ends up getting divorced it will end up wrecking the financial condition of the family and it takes out a lot of discretion for the judge.

Roll Call Vote: 8 Yes 6 No 0 Absent Carrier: Rep. Satrom

Closed.

February 13, 2019

DB 2/13/19
16f2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1396

- Page 1, line 2, replace "sections 12.1-32-15 and" with "section"
- Page 1, line 3, remove "registration requirements for a crime"
- Page 1, line 4, remove "against a child,"
- Page 1, line 4, remove ", and electronic monitoring"
- Page 1, line 11, after "or" insert "home-based"
- Page 1, line 11, after "monitoring" insert "if a minor is present in the home"
- Page 1, remove lines 12 through 24
- Page 2, remove lines 1 through 30
- Page 3, remove lines 1 through 31
- Page 4, remove lines 1 through 30
- Page 5, remove lines 1 through 30
- Page 6, remove lines 1 through 31
- Page 7, remove lines 1 through 31
- Page 8, remove lines 1 through 30
- Page 9, remove lines 1 through 31
- Page 10, remove lines 1 through 30
- Page 11, remove lines 1 through 29
- Page 12, remove lines 1 through 30
- Page 13, remove lines 1 through 30
- Page 14, remove lines 1 through 31
- Page 15, remove lines 1 through 31
- Page 16, remove lines 1 through 31
- Page 17, remove lines 1 through 31
- Page 18, remove lines 1 through 30
- Page 19, remove lines 1 through 29
- Page 20, remove lines 1 through 30
- Page 21, remove lines 1 through 7
- Page 21, line 27, replace "two years" with "one year"
- Page 22, line 3, replace "five" with "three"

Page 22, remove lines 5 through 7
Renumber accordingly

DP 2/13/19
2 of 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

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 Buffalo Seconded By Rep. Paulson

Representatives	Yes	No	Representatives	Yes	No
Rep. Satrom	X				
Rep. Paulson	X				
Rep. Buffalo	X				

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

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

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: **Section 1, page add on line 11 after monitoring will say for electronic home detention or home based global position system monitoring if the minors are present in the home and strike all the rest of the bill**

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. Becker Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: **Voice Vote Failed**

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: remove Section 1 from the bill

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. Satrom Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Remove the registry requirements in the bill

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. Vetter Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: To delete lines 5-7 on page 22

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. Paur Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: **Class B minimum mandatory from 2 years to 1 years; Class A minimum mandatory in this section from 5 years to 3 years on page 21**

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. Vetter Seconded By Rep. Paulson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1396**

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. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Representative Buffalo	X	
Vice Chairman Karls	X		Representative K. R. Hanson	X	
Representative Becker		X			
Representative Terry Jones	X				
Representative Magrum		X			
Representative McWilliams		X			
Representative B. Paulson		X			
Representative Paur		X			
Representative Roers Jones	X				
Representative Satrom	X				
Representative Simons		X			
Representative Vetter	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Satrom

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

REPORT OF STANDING COMMITTEE

HB 1396: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1396 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "sections 12.1-32-15 and" with "section"

Page 1, line 3, remove "registration requirements for a crime"

Page 1, line 4, remove "against a child,"

Page 1, line 4, remove ", and electronic monitoring"

Page 1, line 11, after "or" insert "home-based"

Page 1, line 11, after "monitoring" insert "if a minor is present in the home"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 30

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 29

Page 12, remove lines 1 through 30

Page 13, remove lines 1 through 30

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 30

Page 19, remove lines 1 through 29

Page 20, remove lines 1 through 30

Page 21, remove lines 1 through 7

Page 21, line 27, replace "two years" with "one year"

Page 22, line 3, replace "five" with "three"

Page 22, remove lines 5 through 7

Renumber accordingly

2019 SENATE JUDICIARY

HB 1396

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1396
3/11/2019
#33530 (36:45)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 12-67-02 of the North Dakota Century Code, relating to electronic monitoring; to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to mandatory sentencing for abuse of a child; and to provide a penalty.

Minutes:

3 Attachments

Chair Larson opens the hearing on HB 1396.

Austen Schauer, District 13 Representative, testifies in favor (see attachment #1)

Senator Bakke: We heard a bill earlier which had to do with childcare providers. Do you consider “custodian” as a childcare provider?

Representative Schauer: I don’t know. I would myself, but the next speakers can address that.

(4:35) Amy Kempfer, citizen, testifies in favor (see attachments #2-3)

(16) Senator Luick: How old is the perpetrator? Did he have a record of any kind?

Kempfer: 36 and no, not even a speeding ticket.

Vice Chairman Dwyer: You picked the age of 2 because you thought it would be the only possibility to get this passed, but somewhere along the way the legislature wrestled with when to increase the felony from b to a or c to b as under 6. Wouldn’t it be better to be consistent?

Kempfer: Yes, I think so. Six is a very good age considering we have volumes of research that discusses the developmental sensitivity of children five and under. The struggle that we

recognize is that we are a corporal punishment state, and we didn't want any grey area for parents who want to properly discipline their children. We picked under the age of two because that took the corporal punishment argument off the table, and it's at least a start.

Vice Chairman Dwyer: Did you have any discussion in the House on this subject?

Kempfer: There was one person on the floor who stood up and said he was against the bill because he didn't know the other side of the story, and there was another representative who stood up in support saying a lot of these cases the defendants hire fancy defense attorneys and get off easier because of it. That was really the only discussion on the floor. I haven't read the committee notes on how they addressed it, but they did reduce our mandatory request. We had asked them to mirror the way we kept a sex offender registry for people that abuse children. I didn't even know there was violent offenders against children list until this was a part of my life. If you pull up the list, it's very difficult to navigate; it's literally just names in alphabetical order and addresses. That was struck out in committee on the House side.

Senator Luick: On page 2 lines 12-15, the amount of time sentence is to minimum of 3 years of imprisonment. Why 3 years?

Kempfer: We started with 5 years under the assumption that we were trying to protect those developmentally sensitive years. The committee lowered it from 5 to 3 years. We asked for 5 years if you caused permanent damage, primarily because we were trying to cover that up to age of 5 for the developmentally sensitive years. Then I believe the original one on the bill for nonpermanent physical damage was 3 years, and that was reduced to 2; 1 for a caregiver, and 2 for a parent.

(21:15) Reid Brady, Cass County States Attorney's Office, testifies in favor

Brady: This is the other side of HB 1395 and is a punitive bill. It seeks to impose minimum mandatories in a small sliver of cases. In Cass County, we found only one case in 2018 of a person convicted of abusing a child under 2 years of age. The year before that, there were just 2 such persons. State-wide, I believe the estimated number is 91 for all the child abuse cases of any age. We're looking at the quality of justice in a small sliver involving our most vulnerable population, those under 2 years of age that effectively cannot speak for themselves or indicate what happened to identify the perpetrator. The electronic home monitoring (EHM) prohibition would apply to any child abuse offender regardless of age of victim. Of course, there's no minimum mandatory that would apply to an offender against a child who's 2 years of age or older, so whether that person gets incarceration imposed of any sort is up to the judge to begin with. If there is jail time imposed, that offender would not be eligible for EHM. The paid caregiver would be subject to the one-year minimum mandatory under section 2; that's the proposed amendment to subsection 2 of 14-09-22. Initially we recommended that those minimum mandatories be the same, but it was changed. I'm not sure the rationale for that. The manifest injustice outlet- I'm not aware of one that would apply to this. There is one in section 12.1-32-02.3 which expressly applies to chapter 19-03.1 which is a drug chapter. There's also a specific one within 12.1-20-03 sub 3a; that's gross sexual imposition offense. Here I'm not aware of one that it would apply.

Senator Bakke: Manifest injustice?

Brady: There was discussion about a manifest injustice outlet for the judge. It would allow the judge to depart from the minimum mandatories that these proposed amendments contemplate. I'm not aware of that being applicable to these.

Senator Bakke: The judge has no latitude on these sentences because of that?

Brady: That is my understanding. There are various qualities of minimum mandatories. Some are without benefit of parole. These documents do not indicate without benefit of parole, so they aren't as stringent as some. For instance, the armed offender statute says that those armed offenders must serve those sentences without benefit of parole. This does not go that far; it does not go as lenient as providing for a departure such as a manifest injustice based one.

Senator Bakke: Part 2 covers caregivers, so there it would be a minimum of 1-year imprisonment but only if the child is under two?

Brady: Correct, for the paid caregivers.

Senator Bakke: Then they're guilty of a class b if they're older than 2?

Brady: Ironically a paid caregiver who inflicts injury upon any child is guilty of a b felony as of now. For some reason that is a greater offense than a family or household member simply inflicting injury upon any child. As long as that age provision isn't triggered by a family or household member, it's simply a c felony. The paid caregiver is a higher offense level to begin with.

Senator Luick: What's your thought about moving it to age 6?

Brady: I believe there is wisdom in raising that. As Ms. Kempfer indicated, we were trying to target the most vulnerable as well as those for which we didn't think there would be a corporal punishment defense. It would be much less likely that a caregiver or family member would say that this was appropriate corporal punishment. We thought this piece was important for justice in the small sliver of cases. I'm comfortable with age 2.

Chair Larson: Do you think by saying the minimum is 2 years, that that would lead a judge to automatically go with the minimum instead of longer?

Brady: That's a possibility, and we do see judges impose the minimum because it's required. I think it would depend on the facts and how persuasive and egregious the case was whether the state would seek more than that minimum. Having a minimum threshold for justice would be appropriate.

Vice Chairman Dwyer: Could you explain the corporal punishment piece?

Brady: Spanking is the traditional corporal punishment. We have a statute within chapter 12.1-05 that provides for a family member, household member or caregiver to impose corporal punishment as a reasonable force to in part discipline and control over the child. Those are litigated and argued routinely, and it's a factor that goes into play pre-charge as well before a prosecutor decides to charge whether we can prove beyond a reasonable doubt that this was not a reasonable use of force by a person in a caregiver or custodial role. That's the primary focus that we're looking at. With the younger age of a child under 2, we thought that it would be less likely that discipline should be given at all and the reasonableness of the level of force would be much less than an older child as well.

Senator Luick: In those cases, is there some sort of an offset for children that aren't developed on the usual scale or one with disabilities? Is there something in law that protects them?

Brady: This legislation does not address that; it would be a chronological age that we would be looking at, not developmental. That developmental age likely would be considered within reasonable use of force depending on the factors.

Senator Luick: Should we consider language in this bill that covers those that are developmentally slower than their peers?

Brady: It certainly is possible. Factually and legally proving it would certainly be much easier with a set age. That is a vulnerable population as well, one that we hadn't necessarily contemplated when proposing this legislation.

Senator Bakke: When a child is 6, they are in school and have teachers that may notice if there's any of this abuse. I'm a little uncomfortable with cutting it off at 2 because then your 3 and 4 year olds who are at home have no protection and no one seeing them during the day to know if something is going on. I like the idea of going up to 6 years old.

Brady: We started at 2 to try to target that very young age, the most vulnerable. I don't believe we'd have any objection to raising that, but 2 and under are the most vulnerable with the inability to defend themselves.

Senator Luick: I would be in favor of stretching this as much as we dare but to make sure we get it passed as well. I'd like to have discussion on where we should put this number.

Brady: Yes. Part of the reason to carve out this sliver is to not go against our trend that evidence based criminal justice system does over incarcerate, but with this piece targeting this sliver, there can be good arguments made for 2 years and even older.

Chair Larson closes the hearing on HB 1396.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1396
4/1/2019
#34393 (15:52)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 12-67-02 of the North Dakota Century Code, relating to electronic monitoring; to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to mandatory sentencing for abuse of a child; and to provide a penalty.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1396.

Chair Larson: This was the mandatory sentencing for child abuse.

Senator Bakke: Personally, I think if they hurt a 2-year-old, they could go to prison forever. However, we're not giving the court any latitude on this at all.

Chair Larson: Right. The stories we heard were horrific. The parents whose children were badly beaten is a terrible thing, but the judges heard those same stories. I think there are times that people come back from war and are mentally broken for a while. To make mandatory sentencing when we don't know what the circumstances are in each individual situation, maybe mandatory treatment and psychiatric help might be what would be needed rather than imprisonment. I don't know, but I agree that leaving it up to the judge's discretion might be the better thing when they can hear that whole, individual story.

Senator Luick: You touched on military, and that's not fair to everybody else. Law enforcement, fire departments, medical personnel and others get into a position where they may lose it for a while. I agree that you have to cut some latitude.

Senator Myrdal: We've tried very hard to get away from mandatory sentencing in the last four years. What does the law allow for now? There is a penalty under section 2, and we're putting in a mandatory. I think it's already there.

Senator Bakke: If we put the minimums in, the judge will have a tendency to go towards the minimums. If we just leave it as a class b or class c felony, that gives the judge more latitude depending on the circumstances and frequency of the abuse. I would hate if a father gets only 2 years when he beats his kid every day because we put that as the minimum. That's the problem I have.

Senator Luick: On page 2, it talks about a sex offense rather than physical abuse. Are they lumped into one, or is there separation of the two? Does chapter 12.1-20 deal with sex offenses?

(6:55) Joseph Jensen, UND Law Intern, neutral party

Jensen: Yes. Chapter 12.1-20 deals with all the sex offenses in the code.

Senator Luick: Does this bill deal with that or just physical abuse?

Senator Bakke: What is 14-09-22?

Jensen: That is the section of the code dealing with abuse of children.

Senator Bakke: The title mentions both codes.

Chair Larson: They're referring to mandatory sentences in two different sections of code.

Senator Myrdal: These are difficult decisions, but as I read the code as is, it escalates from class c up to a class a. Those are heavy penalties with up to life in prison. Depending on the evidence and seriousness of the crime, it's difficult for us to mandate the judges.

Senator Myrdal: Motions for a Do Not Pass.

Senator Bakke: Seconds.

Senator Lemm: I'm struggling with this like everyone else. I had a long talk with the lady involved with this, and it was gut wrenching.

Chair Larson: We just have to do the best we can with the information we have.

Senator Bakke: This isn't saying they're getting away with anything; they're still getting a felony. We're just not saying that the judge has to put them in prison for at least 2 years. I think if it's bad enough, the judge is going to do that or more anyway. I'm afraid that if we say the minimum is 3 years, then they may lower the sentences. I don't want them to give them less because we gave them this small number.

Vice Chairman Dwyer: In the instance during testimony, did the perpetrator get a sentence?

Senator Bakke: I don't think the wife felt he got enough time. I think it was his first offense

Senator Luick: He got 12 days in jail and a year probation.

Chair Larson: We don't know what other circumstances there were.; we only know the part that was told to us. It's like looking through a prism.

Vice Chairman Dwyer: Another difficulty with the bill is that committing any of these offenses under section one, two and three is no less worse for a 3-year-old than a 2-year-old. It's pretty horrific no matter the age. Just picking that 2 years is a little arbitrary.

Chair Larson: We're elected to say what is good policy. Judges are elected to judge the situation and the person in front of them. We have to be cognizant of what our role is. We have to give the judges the tools to do their job. There has been a shift away from telling the judges how they need to do their job but instead give them parameters and guidance maybe. We have over the past 5 biennium been moving more of our laws away from that type of mandatory penalty. If the judge isn't doing their job, then they need to be unelected rather than changing the mandatory rules for judges all across the state. That has been the movement across the country. To be able to leave this up to more discretion is kind of the way things have moved over the years.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Motion carries.

Senator Myrdal will carry the bill.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1396
4/1/2019
#34415 (19:45)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 12-67-02 of the North Dakota Century Code, relating to electronic monitoring; to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to mandatory sentencing for abuse of a child; and to provide a penalty.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1396.

Vice Chairman Dwyer: I think we made a mistake. I looked at section one which prohibits electronic home detention if the minor is present in the home. HB 1395 is if you're convicted of child abuse or domestic abuse, we mandated that there be a mental health evaluation, parental capacity evaluation and anger management. That's now included. I talked to the sponsor about why 2 years. He said that kids that are over that might be able to talk and tell what happen, but if they're under 2, they can't communicate. I wonder if we could give this another look.

Senator Myrdal: I sent an email to the chair mentioning the same concern. It's a deeply concerning and emotional issue, but we also need to pass good policy. It passed almost unanimously in the House.

Chair Larson: I did talk with him when this first came out and told him that I didn't think our committee would be in favor of mandatory sentencing. He was disappointed but understood.

Vice Chairman Dwyer: Motions to Reconsider HB 1396.

Senator Myrdal: Seconds.

Vice Chairman Dwyer: We should either pass it or take a look at what we did on HB 1395 and at least impose those kinds of mandatory evaluations because the same principles apply. These domestic abuse people are repeat offenders, and that's why we need this. If we don't do something like this, they're just going to keep doing it. These are horrific things, and it seems like there should be something.

Chair Larson: at least mandatory treatment of some sort.

Vice Chairman Dwyer: Yes.

Senator Bakke: We have the mandatory evaluation in 1395. Instead of minimums do we want to say that there has to be mandatory treatment? They've done the evaluation here, and now we want them to do treatment based on the evaluation?

Vice Chairman Dwyer: At least I think we should keep section 1. That relates to the repeat business. If we added the mandatory evaluations, it's the same arena.

Senator Myrdal: It's in abuse of a child chapter 14, so I'm sure we have that provision already and might be covered in HB 1395. I think the intent of this bill is imprisonment and punishment, not evaluations. We passed that in several other bills, so it would be redundant. If you do have section 1, that they don't qualify for that, that gives it a bite because now the judge can't just say they can stay home for an amount of time. If we kept section 1 and didn't pass the other mandates, would that give more leeway or stronger judgement for the judge? It could also give less. He can do probation with nothing.

Senator Bakke: I agree. I like keeping section 1 in, but could we do something that says the offender must be sentenced to imprisonment for a period of time determined by the courts?

Senator Luick: That's what they do now. This individual who has committed this is facing what we passed in HB 1395. That I believe should be covered. This bill identifies the ages and the mandatory sentences of either 2 years or 3 years. I think that's what we have to focus on. I believe that the age of 2 should be raised to 3 because some kids aren't talking by then either. This is in line 22 page 1, line 7 page 2 and line 14 page 2.

Senator Myrdal: Chapter 12 class c felony and b felony then a felony. That's the criminal code; now we're taking the criminal code part, which also affects children, and going into the abuse of children in chapter 14. We're saying for someone specifically for someone under 2 or 3, it's this punishment. If that child is 5 or 4 and is abused, why is that different than 2? I know they can't speak, but they can't defend themselves. My problem with the whole premise of the bill is does this actually improve it? Yes, there are judges out there that aren't doing their job. Obviously in this case, they weren't. The guy almost killed a 2-year-old, and he got a poor punishment. We deal with that all the time here, but we don't enforce the law; we write good, consistent policy. I don't see that doctoring this up is going to have any affect that's going to be positive in policy.

Senator Luick: It doesn't matter about the age because you do have children that don't talk at all. The damage can be just as severe for a 10-year-old as it is for a 2-year-old.

Senator Bakke: Page 1, line 19, it says except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony. They put 6 years there, and by 6 years, most children are in a 1st grade classroom and have someone who will see them if they've been abused. Maybe that's the magic age once they hit a school environment where someone will see them daily and be able to notice some of the things that you see in a child that's been abused.

Chair Larson: I would still contend that we didn't hear the whole story. We heard what the victim said, and that was only part of the story that the judge heard. For us, given the information we had, it sounds abhorrent and stomach turning, but I will not be in support of establishing mandatory minimum sentences for any crime when we're talking about prison sentencing. Now, when we're talking about treatment and making sure that someone is getting the kind of treatment and education that they need, I don't have a problem with that because that's more preventative and restorative. Prison should be left in the hands of a judge; that's their job.

Senator Luick: Would that other bill that we passed cover this?

Vice Chairman Dwyer: Yes, both that one and this one amend the same section. That amendment would become part of this law. I didn't realize that until I got a copy of it. The mandatory evaluations and treatment as part of probation will become part of this.

Senator Myrdal: Page 2, subsection 3 talks about a person that commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment except if the victim of the offense is under age six, it's a class A felony. That's pretty safeguarded.

Chair Larson: It should impact your ability to get a job as a teacher and those kinds of things, but in terms of sentencing to prison...

Vice Chairman Dwyer: Would it be an alternative approach to amend out the minimum mandatory underlined section in paragraphs 1,2 and 3 and keep section 1 of the bill?

A Roll Call Vote Was Made: 6 yeas, 0 nays, 0 absent. The bill is reconsidered.

Vice Chairman Dwyer: Motions to remove section 2.

Senator Myrdal: Seconds.

Senator Myrdal: They're not eligible if the minor is present in the home. The judge cannot send that person into the home even with an ankle bracelet, so that strengthens it a little bit.

Chair Larson: I agree. Also if the judge was leaning towards jail time, it would probably go there since home isn't an option, but it doesn't mandate jail time.

Senator Bakke: We're eliminating the new language to section 2.

Chair Larson: Yes, eliminating it from the bill not the code.

A Roll Call Vote Was Made: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Senator Myrdal: Motions for a Do Pass as Amended.

Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Made: 6 yeas, 0 nays, 0 absent. Motion carries.

Senator Myrdal will carry the bill.

April 1, 2019

86
100
4/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1396

Page 1, line 2, remove "; to amend and reenact section 14-09-22 of the"

Page 1, remove line 3

Page 1, line 4, remove "provide a penalty"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 15

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1396**

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 Myrdal Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick		X			
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Myrdal

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

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1396**

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 Vice Chairman Dwyer Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1396**

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 Vice Chairman Dwyer Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Remove section 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1396**

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 Myrdal Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

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

REPORT OF STANDING COMMITTEE

HB 1396, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1396 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "; to amend and reenact section 14-09-22 of the"

Page 1, remove line 3

Page 1, line 4, remove "provide a penalty"

Page 1, remove lines 12 through 24

Page 2, remove lines 1 through 15

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1396

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1396
4/19/2019
34870

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring, and to provide a penalty.

Minutes:

Members Present: Rep. K. Koppelman, Chairman, Rep. Satrom, Rep. Magrum; Senator Myrdal, Senator D. Larson; Senator Bakke

Rep. K. Koppelman opened the conference committee meeting on HB 1396.

Senator Myrdal: Our judiciary committee looked hard at this. It was a difficult bill to carry on the floor. The biggest concern was the minimum mandate. Our biggest concern was what if you are two or two and a half years old; what is the difference. In the section of code on Subsection 3 it talks about if you are six years of age or under it is an a felony. Doesn't that part of code cover the incident we are talking about here so the law as it stands here today without this new legislation insufficient or does the law need to be tweaked on what happened in this particular case. Was it the enforcement that was wrong or is it the century code that needs fixing? I hope we can come to an agreement.

Senator D. Larson: The other part of it was to have a mandatory minimum sentence of any kind for any reason rather than the voters choosing the judge that they want to have seated because certainly you were here when we were doing a lot of mandatory minimum sentences; because we would hear of stories that were so terrible; and we would say we need a law or mandate against that so we started doing those and then we filled up our prisons and we didn't have people be able to return. Our struggle is the mandatory minimum sentencing, but the situation that brought that here was very compelling.

Senator Bakke: I didn't have as much problem with mandatory minimums, but I understood where my other committee members were coming from. My concern is stopping at the age of two because I feel it should be five. That is the age where children are in school and some other adult is seeing them; hearing them and listening to them. Before that the only people interacting are family members so I would like to see the age be at five; then there are other people that can take on that responsibility.

Rep. K. Koppelman: Here are some of the House concerns: There are good reasons for what was in the original bill. The two-year-old questions is a good question. In our state we have very stern and adequate penalties for sexual abuse of children. Told a story about abuse of the system by social workers and Dept. of Human Services that happened in Fargo; where the case went all the way to the Supreme Court regarding parental rights. The reason that was placed in the bill they didn't want to have any gray lines in terms of whether anyone would be aquised of this when all they are doing is spanking in an appropriate way for those who agree that corporal punishment is occasionally appropriate and is certainly legal in ND versus abuse.

Senator Myrdal: Under section 2, subsection 3 on the second page of the .03000 version; section 1 on line 20-22; I feel it is already covered when it says in section 3 it says except if the victim is under the age of 6 years in which it becomes a class a felony. That is current law of abuse. Doesn't the judge already in law have the ability to do this?

Rep. K. Koppelman: Yes. Your question to whether the judge could have already done that. We don't make law based on one case. Discussed laws passed on mandatory minimums. The fact in ND we passed legislation a couple sessions ago that says a judge in ND can depart from the requirement for mandatory minimum if he or she finds it would represent a manifest injustice to impose that sentence. So we already have a law on the books that allows the judge to do that. That does give the judges the discretion we are talking about.

Senator Myrdal: One thing that concerns me; we have two issues here the age and the minimum mandatory. Let's say next session a three-year-old was injured; now what do we do? This case the was represented here; justice was not served. We need to set a ceiling on that number. The judge still has the say on minimum standards so by setting it we are binding the hands of that judge. I understand the intent that we need to go after those people and get that pangolin back; the age is a problem for me and the minimum; what do we leave the judges in those cases where there is the consensus that don't warrant that mandatory minimum?

Rep. K. Koppelman: I think the age issue we do need to discuss. The mandatory minimum we do need to look at the treads in ND.

Senator Larson: Is there a mandatory sentence for somebody that sexually abuses a child?

Senator Myrdal: My intent was after this discussion go to legislative counsel and discuss this.

Senator Bakke: Page 2 subsection 3 it says six years of age in there. To be consistent it might be appropriate to go to the age of six. Six year olds are more accurate to what they tell people.

Rep. K. Koppelman: In this case sentence could have been much higher. The judge has the discretion.

Rep. Satrom: When you talk about the two versus six-year-old. I think we do have a pattern. I think we are all on board with the justice reinvestment thing, but this is violent. We have filled out jails with people and prisons with people that have addictions; non-violent offenders who have them; but this is violent.

Senator Myrdal: I appreciate a committee that actually digs into the issue. Let's come up with what is hopefully the right thing to do.

Rep. K. Koppelman: I just got some data and let's try to review that. Talk to legislative counsel and get this done.

Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1396
4/23/2019
34870

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring, and to provide a penalty.

Minutes:

1

Members Present: Rep. K. Koppelman, Chairman, Rep. Satrom, Rep. Magrum; Senator Myrdal, Senator D. Larson; Senator Bakke

Rep. K. Koppelman opened the conference committee meeting on HB 1396. We met once before on this bill and I have been told there is discussions going about possible meetings of the mind between the House and the Senate version, but I don't know if there is anything specific out there to be offered, but we are back.

Senator Myrdal: Rep. Satrom and I spoke with Legislative Counsel and the AG's office on some of these issues and met with the sponsor a couple of times. The discussions were down to the two issues of age two and the mandatory minimums. One of the issues for the Senate is that we felt on page 2, line 11 under subsection 3 there is the age of six; which is already in that part of the code on version .03000. We had a problem with age two. We agreed to taking that age out. Six years old is already in that section of code. (Attachment #1) Went over the amendment proposal. What we are removing of the language that came from the house in subsection 1; there is a two-year mandate and section 2 is a one year and subsection 3 and does a three year. We equalized them all to one year. I think this is acceptable to the Senate to vote on. If this would be adopted by the committee. I would carry it and explain the reasons for it and push it on the Senate side and the chamber can decide.

Rep. Satrom: I am not so sure about the bodily injury function; if the one year is appropriate for that part of it and maybe move that up. My other concern about this we need to pass the best and strongest bill possible on both sides. Is there any way with these minimums; that someone still end up with 18 days?

Senator Myrdal: What happens in any of these cases is if you are a good prosecutor and you prosecute one of these cases you are going to look at your case and you might charge you with something different to get around the minimum or might charge you with manifest

injustice; which is a high bar but it is up to the judge. I think that is one of the reasons the Senate felt comfortable with a minimum mandate. On bodily injury, if you look on subsection 3 on page 2 it already says currently in codes line 11 after impairment of functional body member organ, except if the victim is under age 6 years in which case it is a class a felony. With this amendment we are keeping section 1 of the home electronic thing and that is a strong directive to the judges. I think we have a ceiling of an a felony which is ten years. I think we are meeting the intent of the sponsors while still addressing some of the concerns of the Senate. I think going any further than this would be difficult to convince the Senate side so that is where we are at.

Rep. K. Koppelman: When you look at the differences between the House and Senate it looks like the Senate weakened the bill. Going to six looks like it is strong than either the House and Senate; I don't want to endanger the bills passing. There are some that have concerns the older you go. What about finding a compromise like four years old. The thinking is if you are five or older you are probably in preschool. On the House side if we were to go as low as a year for the minimum mandatory that perhaps a two year or permanent or serious bodily injury might be an option.

Senator Bakke: I don't have any problems going to five. I know the kids are probably going to kindergarten. If you set, there and take all the things you can do to a child from sexual abuse to verbal abuse to physical abuse to neglect; to say they are all equal; that is hard for me having been a foster mother and having dealt with children who have gone through all of that. We are just trying to open the door and get something on the books and I am OK with that.

Rep. K. Koppelman: If we do this it sends a message to our law enforcement, prosecutors and courts and they will get serious about these kinds of crimes. We have become tough on child sexual abuse in the state, but not on child physical abuse. There is so much that goes into this; what is the prosecutor think her or she can do with that case; are they going to plea it down and accept a plea agreement that doesn't have the mandatory minimum in it. Also the levels of penalty in the current law are pretty severe.

Senator Myrdal: To address the spanking issue. It is already in the statute that you can't leave a mark or bruise. I think it is unfounded when it comes to this; because ii think this is clear language that talks about the levels and whether people like it or not we already have in statute that you can't leave major bruises on a child. The second thing; on the issue or going up to two years; it is still in code in subsection 3 that it can go up to a class a felony if the child is under six years. The reason we went with six that takes care of it for a judge.

Rep. K. Koppelman: When you talk about the consistency; that is what triggers the offense. I do understand the Senate's concern with two. When you talk about consistency there are several places in code and that triggers the offense. The six-year-old; the class a felony; when you add a mandatory minimum there is usually an aggravated element to that crime and that is why the mandatory minimum is there. The Senate has strong feelings about that an I am certainly willing to entertain some movement on that; but that compromise might be the best place to land from the standpoint of selling it in the House? It passed pretty handily in the House, but I Rep. McWilliams concerned that might be a trigger that would really raise come concerns.

Senator Myrdal: If it passed that well in the House so if you changed that I don't think the argument is not Jermaine to the bill. I agree we need to pass this or do as much as we can to pass it.

Rep. K. Koppelman: When we pass laws we think about and go back and live under the laws we pass among those we represent who sent us here so when our legislature passes bills we are thinking not only about ourselves, but our neighbors; how are they going to respond to this.

Rep. Magrum: I would like to see the bill put together in its form.

Senator Myrdal: Age seems to be the problem? That is what I understand?

Rep. K. Koppelman: Maybe the willingness to go down to one year the House would be there. Maybe a two year for the bodily harm might be a twostep thing they would be interested in seeing. When we do one year typically we have a year and a day. County jail or state prison. What is the appropriate place where these people ought to serve that sentence and we should be mindful of that too?

Senator Larson: In the Senate; when we were talking about a minimum mandatory; when you say two years, then in the eyes of the judge that brings that level down to here rather than saying here is the maximum you can sentence somebody for so they are going to be more likely to go down here to this minimum rather; if you are telling me that is what I must do then I will give them two years. That was one of the reasons we chose to take it out. The work that Senator Myrdal has done on this to bring it to one year is certainly appropriate so I think it is a better solution than to put a little bit of a higher number in there. When we have been changing those for the jail the prison is a year; and when we change it to 360 days so they can stay at the jail level; I am perfectly comfortable with the amendments Senator Myrdal came up with.

Rep. K. Koppelman: I we were in a circumstance where judges were sentencing them tougher; and we were saying here is the mandatory minimum sentence I agree with your concern way to often they are being sentenced to less.

Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1396
4/24/2019
34983

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek Typed by Carmen Hart
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Explanation or reason for introduction of bill/resolution:

Relating to registration requirements for a crime against a child, mandatory sentencing for abuse of a child, and electronic monitoring, and to provide a penalty.

Minutes:

Attachment 1

Members Present: Rep. K. Koppelman, Chairman, Rep. Satrom, Rep. Magrum; Senator Myrdal, Senator D. Larson; Senator Bakke

Rep. K. Koppelman opened the conference committee meeting on HB 1396.

Senator Myrdal: I have had lots of discussion with representatives and legislative council. The biggest concern was the age of a two-year old. The Senate said it is already on Page 2, Subsection 3, Page 6. It makes no legal sense to make it age four. What I received from all my discussions with different entities that it would be a concern to make it four because of the vote possibly on the chamber side. They expressed the age was no concern at all. The concern is what the definition of what bodily harm is. We are back to our amendment .03002, (Attachment 1) and that is where the Senate stands.

Rep. K. Koppelman: I know you feel strongly about the age, but I am hearing the opposite that the Senate would not have a big problem with four. There is one member of our chamber that did raise the concern about the definition of bodily harm. A parent spanking his or her child is legal in ND and clearly trumps any concern about that nexus. The idea of a general definition somewhere in code of bodily harm including pain would disallow someone from spanking or would result in someone being charged with child abuse if all they were doing was spanking a child in a measured non abusive way. I don't know how else to deal with that.

Senator Myrdal: The four versus six; I don't see the legal reason for that. It is already in code.

Rep. K. Koppelman: Why are we stuck on the six-year old? There is no minimum mandatory in the century code now. The reason the sponsors of the bill went with two was to avoid the very concern we are talking about. If you are two or under, there isn't that worry

of spanking typically being an issue. I think the reason we talked about four and under is what Senator Bakke brought up last time about school age. The House bill passed with two. The Senate didn't attach six, so we in conference committee would be making the mandatory sentence three times as severe as what it came in at.

Senator Larson: I don't understand when you are dealing with a very small child whether that child is 18 months old or 5 years old, that is a very small child that is too innocent to try to protect themselves or get away from any kind of abuse. I am not sure why there is a resistance to making that age at six.

Rep. K. Koppelman: No matter what we do it is still arbitrary. We want to see this bill pass. Maybe we should take it down to six and see what happens. I would hate to see them accept the conference committee report and then defeat the bill over that kind of an issue is my only concern.

Senator Myrdal: I asked several individuals whether it matters 2,4, or 6. We want to remain consistent. Every number is arbitrary. These are small children. To have a minimum mandatory is a stretch on our side, so I think the compromise is pretty strong.

Rep. K. Koppelman: With the House bill we had a 3, 2, and 1, kind of a ladder level. By going to 1, the House is moving considerably on that as well, up with the age and down with the time.

Senator Larson: Senator Myrdal has worked hard to get legislation that would pass in Senate. We could accede to your amendments and take it, and I think it would fail.

Rep. Satrom: We have the same situation on the House side. We have a lot of passion to make this happen. I don't want this to die.

Rep. Magrum: It sounds like the one and four years of age was okay, but getting any higher in age was probably going to be bad. This is for bodily injury. If they are two or younger, they can't explain what happened. When they are older the child can talk, and they felt we don't need to go any higher than four. Perhaps it could be strengthened next session.

Senator Bakke: What were some of the concerns the representatives heard?

Rep. Satrom: I have just heard parts of comments and just people that have been doing canvassing. I have heard comments similar to what Rep. Magrum said. How can we make this work? Right now I don't feel a clear path.

Senator Myrdal: We are looking at the penalties for people that hurt small children. I agree with Senator Larson that anybody under six is a little child.

Senator Myrdal: **Motion made that Senate recede from Senate amendments and amend as follows with 19.0790.03002.**

Senator Bakke: Second. Are you leaving the age of two?

Senator Myrdahl: All the removal removes that; six and under which is already in that section.

Rep. K. Koppelman: (18:05) Let us walk through the amendment. (18:58) We are lumping all the offenses together and doing a standard mandatory minimum sentence of a year regardless what level of those offenses they are violating, and we are taking it to six years under this amendment. Is that correct?

Senator Myrdal: That is correct. This is just the minimum. Judges can use manifest injustice, so we are leaving as much judiciary discretion as possible. I think it can pass both chambers.

A roll call vote was taken. 6-0, 0 absent.

House carrier: Rep. K. Koppelman Senate carrier: Senator Myrdal

The meeting was adjourned.

April 22, 2019

5/24/10
10/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1396

That the Senate recede from its amendments as printed on page 1459 of the House Journal and page 1217 of the Senate Journal and that Engrossed House Bill No. 1396 be amended as follows:

Page 1, line 20, remove "Any person who has pled guilty or nolo contendere to, or has been"

Page 1, remove lines 21 and 22

Page 2, line 5, remove "Any person who has pled guilty or nolo contendere"

Page 2, remove lines 6 through 8

Page 2, line 12, remove "Any person who has pled guilty or nolo contendere to,"

Page 2, replace lines 13 through 15 with:

"4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment."

Renumber accordingly

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

HB 1396 as (re) engrossed

House Judiciary Committee

- Action Taken** ☐ **HOUSE accede to Senate Amendments**
☐ **HOUSE accede to Senate Amendments and further amend**
☐ **SENATE recede from Senate amendments**
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Myrdal Seconded by: Senator Bakke

Representatives	4/19	4/23	4/24	Yes	No		Senators	4/19	4/23	4/24	Yes	No
Rep. K. Koppelman, Chairman	x	x	x	x			Senator Myrdal, Chairman	x	x	x	x	
Rep. Satrom	x	x	x	x			Senator D. Larson	x	x	x	x	
Rep. Magrum	x	x	x	x			Senator Bakke	x	x	x	x	
Total Rep. Vote				3			Total Senate Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. K. Koppelman Senate Carrier Senator Myrdal

LC Number 19.0790 . 03002 of amendment

LC Number 19.0790 . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 19.0790.03002
House Carrier: K. Koppelman
Senate Carrier: Myrdal

REPORT OF CONFERENCE COMMITTEE

HB 1396, as engrossed: Your conference committee (Sens. Myrdal, D. Larson, Bakke and Reps. K. Koppelman, Satrom, Magrum) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1459, adopt amendments as follows, and place HB 1396 on the Seventh order:

That the Senate recede from its amendments as printed on page 1459 of the House Journal and page 1217 of the Senate Journal and that Engrossed House Bill No. 1396 be amended as follows:

Page 1, line 20, remove "Any person who has pled guilty or nolo contendere to, or has been"

Page 1, remove lines 21 and 22

Page 2, line 5, remove "Any person who has pled guilty or nolo contendere"

Page 2, remove lines 6 through 8

Page 2, line 12, remove "Any person who has pled guilty or nolo contendere to,"

Page 2, replace lines 13 through 15 with:

"4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment."

Renumber accordingly

Engrossed HB 1396 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1396

Good Morning Mr. Chairman and members of the Judiciary committee.

Thank you for your time and service.

My name is Austen Schauer, a representative from West Fargo - District 13, and I'm here to ask for your support of **HB 1396**.

This bill seeks to bring **justice and respect** to the victims of child abuse in three section:

1. **Electronic Home Monitoring.**
2. An update to the **registration requirements** of a crime against a child.
3. **Minimum levels of punishment** for convicted abusers of children **under the age of two.**

This proposed legislation comes on the heels of a tragic story of abuse in West Fargo.

As you have heard, a West Fargo man admitted to abusing his son during the first three months of his life hitting the baby at least twice in the face.

In August of 2018, the father was given a five-month sentence. The judge waived all but **12 days of jail time** based on the man's "good behavior" and electronic home monitoring or EHM.

Mr. Chairman and committee members, we believe justice was **not served** in this case and we believe **your approval of HB 1396** will enhance the protection of children under the age of two.

#1
HB1396
1-29-19
page 2

Section Number One:

Eliminate the **Electronic Home Monitoring** option for felony offenders of children.

The crime was committed **at home**. Forcing the offender to stay **at home** where he committed the crime and getting reduced jail time doesn't make much sense to us.

We propose adding a new subsection to section 12-67-02. Page 1, lines 9-11:

Notwithstanding any other provision of law, an offender who has pled guilty or nolo contendere to, or has been found guilty of a felony under section 14-09-22, is not eligible for electronic home detention or global position system monitoring.

The restriction is repeated on page 22 of the bill, lines 5 through 7.

Section Number Two:

We propose an addition to Section 12.1-32-15 requiring child abusers to be **included** with the current **sexually violent predator's registration requirement**.

That registry would be maintained by the Attorney General's office and would have similar website access as the Sex Offender Registry.

If you turn to page 9, beginning with line 16 (the change coming at line 20):

Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is:

1. A moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection; or
2. incarcerated or is on probation or parole, has pled guilty or nolo contendere to, or has been found guilty of a crime against a child, and is ordered by the court to register under this section.

The same phrase is also added to Page 19, lines 18 to 20.

Section Number 3:

We proposed **Minimum-Mandatory** sentencing for child abusers whose victims are under the age of **two**.

The change in law comes on page 21, under Section 14-09-22.

For context, let's begin on line 11:

"Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child **mental injury or bodily injury, substantial bodily injury, or serious bodily injury** as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony."

We propose adding lines 16 to 18:

Any person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this subsection, and the victim of the offense is under the age of two years, must be sentenced to a minimum of two years imprisonment.

The same phrase is to be added to subsection 2, lines 25 to 28.

In addition, we propose a **five-year minimum mandatory** sentence under the following conditions beginning on page 21, line 29:

"A person who commits an offense under this section is guilty of a class B felony if the victim suffers **permanent loss or impairment of the function of a bodily member or organ**, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.

We propose adding on page 22, lines 1-4:

Any person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this subsection, and the victim of the offense is under the age of two years, must be sentenced to a minimum of five years imprisonment."

The **2-year minimum-mandatory** is for a child who suffers mental injury or bodily injury, substantial bodily injury, or serious bodily injury.

The **5-year minimum-mandatory** is for a child who suffers **permanent loss** or impairment of the function of a bodily member or organ.

Page 5

Mr. Chairman, as you know, the North Dakota Century Code has a **safety valve** for judges in dealing with minimum mandatory sentences. It's called "**manifest injustice**" allowing judges to go outside the sentencing guidelines if deemed necessary.

Mr. Chairman and members of the Judiciary Committee, we are seeking **your support** to pursue **justice** and assure **protection of children** under the age of two years old.

We ask for your support of **HB 1396** and I am open to questions.

#2
HB1396
1-29-19
Page 1

Chairman Koppelman and Members of the Judiciary Committee-

Again for the record, my name is Amy Kempfer. As you have previously heard me discuss my story, I will skip that for the record, and allow the written testimony to be written in if that is ok. I'm sure you don't want to listen to that twice!

To summarize, we are essentially here today because this man abused an infant, multiple times, within the four walls of his home, behind his wives back. This man beat his baby, his own flesh and blood, multiple times, to the point of hospitalization, and blamed his mother for doing it. This man, who had the answers and explanations for his sons suffering, chose to stand by and pretend to care when in front of others, and continued to harm a helpless baby that was withering away when no one was watching. This man had every opportunity to succeed and be a successful parent, and who chose instead to fracture five bones and potentially concuss a two-month old. We have this man on video, confessing to this crime in a police station. This man, despite the pleadings of a prosecutor, a mental health professional, pediatrician, and a mother- walked away with nothing more than a slap on the wrist.

I understand that my family doesn't look like a stereotypical family where child abuse happens. I run my own successful business, I have my own vehicle, a Cadillac health insurance plan, and a network of people willing to help with whatever I need. There were no prior anger management issues within our home, or underlying addiction problems. I'd like to say that my story is unique, but it is not. Child abuse happens every day- a no one is immune. It happens within every socioeconomic class, within every race, and within every city. Our system is overwhelmed with the effects of transgenerational abuse. This could have been your children, or grandchildren. What is relatively unique about my story is that my son has a mother who is willing to move a literal mountain if need be for him and the other children in our state.

I was actually really shocked when Representative Schauer mentioned to me that adding a mandatory minimum was going to be the most difficult portion of these bills passed. A stroll through any child abuse story that hits the media highlights that the majority of the states constituents basically think we should lock people who harm children away and throw away the key.

I do understand that there have been extensive legislative efforts in ND to clear our prison system. I understand that judges need the room to be flexible. However, I feel violent crimes against voiceless children should be treated differently. **This is a different issue.** Class B Felony Child abuse relates to those who abuse infants under the age of 6. The proposed mandatory minimums under HB1396 are very specific. We know that through the age of 5, children are extremely developmentally sensitive. Children that have been harmed under the age of two deserve physical and emotional space to heal. They deserve to not be subjected to potentially compounding trauma all in the name of "parenting". Our system fails to address the re-victimization that happens emotionally every time children are forced to interact with their abusers at an age where they are unable to advocate for themselves or cognitively understand their feelings. Let's all put ourselves in an abused child's shoes- can you even fathom the emotional distress that occurs when they are forced to interact with their abuser in a strange place? Would you want this for your children? Please, look at the two pictures of my son again. I

want to ask you, doesn't a two-year prison sentence for this feel like common sense? The maximum of this law as it sits is 10 years. I ask you, what do you think my child would have had to look like **other than dead**, for his abuser to have gotten 10 years? I have also included for your review the letters that were submitted to the judge from my son's pediatrician and also his trauma specialist at the time of sentencing, pleading for at least no contact time until my son was 5. We had twenty people in court gathered to support us. We had a supportive prosecutor. I gave a statement, as did my parents. The defendant's statement was three sentences and didn't include an apology. The abuser in this case was given 5 months, credit for VOLUNTARY electronic home monitoring that the prosecutor objected to for 4 months, as well as good behavior while on EHM, and served less than TWO WEEKS behind bars. Basically, he got two days for each bone he broke. My family was given TWO WEEKS before being forced to interact with this man. HB1396 makes it explicit that EHM is not an acceptable substitute for jail time for anyone who commits Class B Felony Child abuse. This seems like common sense to me- why would an abuser be allowed to remain in the same place where they committed their crime?

The abuser in this case has since moved to a home within a block of an elementary school. He lives across the street from a licensed daycare. All of his neighbors have small children. I was contacted by many of them after being on the news, as they were absolutely shocked to find out the man who lived next to them was capable of these crimes. Not surprisingly, he didn't mention his ongoing criminal case with any of them. Many of them expressed feeling like they had the right to know this. I agree. While there is a current PDF sheet on the AG website, it doesn't list offenders by location, instead they are organized by name. Not to mention, not one person- not even social service workers, knew how to access this list to begin with, or that it even existed. No details are provided on the crime on the current list other than the charge. HB1396 asks that those who commit felony child abuse be maintained in a similar manner as our sex offender list. This would include photos of the felon, details of their crime, risk levels, and their address, which they are already required to maintain through the current list, be added to a more informative map.

As parents, it is one of our many jobs to protect our children. That is why I am here today, reading you this novel to ensure this committee understands the serious nature of child abuse, and how our state fails to protect the voiceless. I'm not sure there is an adequate punishment that will make victims of these crimes feel like justice is served, but I think these laws are a great start. People who harm children deserve to be in prison. They deserve to have the label of a felon and the consequences as such. It makes a difference to have abusers responsible for their actions and acts of betrayal. I implore you to vote yes as a committee, 14-0, and send an unmistakable message to those who perpetrate crimes against children that the justice system will prosecute them to the fullest extent of the law and that the people and government of ND are willing to support them.

North Dakota 66th Legislative Assembly
HOUSE JUDICIARY COMMITTEE
Hon. Rep. Kim Koppelman, Chair
Hearing on January 29, 2019

Re: Testimony in Support of House Bill 1396

Chairman Koppelman and members of the Committee, I am Reid Brady, Assistant Cass County State's Attorney. I support House Bill 1396.

Protecting our youngest children against abuse is the primary purpose of House Bill 1396. Children under two years of age are especially vulnerable. They are developing at extraordinary rates - both physically and cognitively. They are totally dependent on caregivers. And, realistically, they are unable to disclose abuse.

One way that House Bill 1396 protects that vulnerable group is through minimum mandatory periods of incarceration for those who injure children under two years of age. Because a large percentage of child victims are at least two years of age, many offenders will not face the minimum mandates. In Cass County, for instance, only one person was convicted in 2018 of abusing a child under two years of age. And in 2017, there were just two such persons. Yet those offenders who do abuse our youngest children, would face an appropriate measure of justice - two years imprisonment if the abuser inflicts mere injury and five years if the abuser wreaks permanent physical injury.

Another way the bill protects our youngest children is by precluding an offender from avoiding incarceration through electronic monitoring outside a correctional facility. It should be noted that the electronic monitoring prohibition is not limited to those who abuse children under two years of age. On the other hand, no minimum mandatory penalties would apply to those who abuse children who are two years of age or older. Further, sentences for offenders in that category often don't involve lengthy periods of incarceration, especially when no serious bodily injury occurs. Since 2016, only one offender convicted of abusing a child two years of age or older in Cass County has been sentenced to serve more than six months in jail.

Illustrating the importance of the bill's provisions is the Aaron Kempfer case. I recently prosecuted Aaron Kempfer for inflicting serious bodily injuries – including broken bones and facial bruises – upon his infant son. He perpetrated the abuse on more than one occasion. Upon conviction, he was sentenced to serve five months in jail. But with credit given (over the state's objection) for time he spent on electronic home monitoring, Aaron Kempfer spent less than two weeks behind bars.

House Bill 1396 provides prosecutors valuable tools to seek fair and appropriate outcomes for offenders like Aaron Kempfer. It helps ensure that justice will rightfully confront those who perpetrate abuse upon our most vulnerable children. For these reasons, I ask you to support House Bill 1396.

Good Afternoon Madam Chair and members of the Judiciary committee.

Thank you for your time and service.

My name is Austen Schauer, a representative from West Fargo - District 13, and I'm here to ask for your support of **HB 1396**.

WE, the people of North Dakota, have a history of protecting children while punishing the perpetrator but also supporting rehabilitation.

We've passed some of the strongest laws in the nation dealing with sexual abuse crimes against children. For that, I congratulate this committee (the members today and in previous sessions).

We now have another opportunity to send a **clear** and **undeniable** message to those who abuse our children (specifically victims under the age to two) that it will **not** be tolerated, and the abuser will be held **accountable**.

House Bill 1396 calls for a sentence of at least **two years** for a parent, household member or other custodian found guilty of a **Class B Felony** for inflicting **serious and substantial bodily injury** to a child **under the age of two**. (page 1, lines 20 to 22).

House Bill 1396 calls for a sentence of at least **one year** for a person caring for a child found guilty of a **Class B Felony** for **sexually abusing** a child **under the age of two**. (page 2, lines 5 to 8).

And at least three years for a person found guilty of a **Class A Felony** for inflicting **permanent injury** to a child under the age of two. (page 2, lines 12 to 15).

Page 2

If for some reason, a judge needs to come out of those guidelines, he or she can use the "manifest injustice" clause.

In 2017; 2,064 North Dakota children were confirmed victims of abuse. Unfortunately, some perpetrators have walked away with a **light sentence** that does **not** serve justice.

One such case happened in West Fargo. The abuser slammed his fist at least twice in the face of his two-month-old baby breaking multiple bones. But even after admitting to the crime, the abuser spent just 12 days in the Cass County jail. 12 days for beating up his baby son.

Electronic Home Monitoring is also addressed in this bill. Abusers should not be sent back to the same home where the battered baby lives just because they are wearing an ankle bracelet. This Bill will see to this as well. (page 1, lines 8-11).

House Bill 1396 strengthens the state's child abuse laws. It brings **justice** to abuser and **respect** to the abused.

Madam Chair and Committee members, only **you** have the power to be the **voice of the voiceless**. We ask for your full support of **House Bill 1396**.

Thank you for listening and I stand open for questions.

Chairman Larson and Members of the Judiciary Committee-

Again for the record, my name is Amy Kempfer. As you have previously heard me discuss my story, I will skip that for the record, and allow the written testimony to be written in if that is ok. I'm sure you don't want to listen to that twice!

To summarize, we are essentially here today because this man abused an infant, multiple times, within the four walls of his home, behind his wives back. This man beat his baby, his own flesh and blood, multiple times, to the point of hospitalization, and blamed his mother for doing it. This man, who had the answers and explanations for his sons suffering, chose to stand by and pretend to care when in front of others, and continued to harm a helpless baby that was withering away when no one was watching. This man had every opportunity to succeed and be a successful parent, and who chose instead to fracture five bones and potentially concuss a two-month old. We have this man on video, confessing to this crime in a police station. This man, despite the pleadings of a prosecutor, a mental health professional, pediatrician, and a mother- walked away with nothing more than a slap on the wrist and leaving behind a community outraged.

I understand that my family doesn't look like a stereotypical family where child abuse happens. We were a financially comfortable and educated family. There were no prior anger management issues within our home, or underlying addiction problems. I'd like to say that my story is unique, but it is not. Child abuse happens every day- a no one is immune. In fact, from 2010-2017 in ND, there were almost 98,000 (97693) reports of suspected child abuse and neglect in our state, with over 12,500 confirmed victims (12,510). Imagine how many abuse and neglect cases weren't reported. It happens within every socioeconomic class, within every race, and within every city. Our system is overwhelmed with the effects of transgenerational abuse. This could have been and still has the potential to be your children or grandchildren. What is relatively unique about my story is that my son has a mother who is willing to move a literal mountain if need be for him and the other children in our state.

I was actually really shocked when Representative Schauer mentioned to me that adding a mandatory minimum was going to be the most difficult portion of these bills passed. A stroll through any child abuse story that hits the media highlights that the majority of the states constituents basically think we should lock people who harm children away and throw away the key.

I do understand that there have been extensive legislative efforts in ND to clear our prison system. I understand that judges need the room to be flexible. However, I feel violent crimes against voiceless children should be treated differently. **This is a different issue.** Class B Felony Child abuse relates to those who abuse infants under the age of 6. The proposed mandatory minimums under HB1396 are very specific and address children under two. While ND is still a corporal punishment state, there is absolutely no room for corporal punishment under the age of 2. We know that through the age of 5, children are extremely developmentally sensitive. Children that have been harmed under the age of two deserve physical and emotional space to heal. They deserve to not be subjected to potentially compounding trauma all in the name of "parenting". Our system fails to address the re-victimization that happens emotionally every time children are forced to interact with their abusers at an age where they are unable to advocate for

themselves or cognitively understand their feelings. Let's all put ourselves in an abused child's shoes- can you even fathom the emotional distress that occurs when they are forced to interact with their abuser in a strange place? Would you want this for your children? Please, look at the two pictures of my son again. I want to ask you, doesn't a two-year prison sentence for this feel like common sense? The maximum of this law as it sits is 10 years. I ask you, what do you think my child would have had to look like **other than dead**, for his abuser to have gotten 10 years? I have also included for your review the letters that were submitted to the judge from my son's pediatrician and also his trauma specialist at the time of sentencing, pleading for at least no contact time until my son was 5. We had twenty people in court gathered to support us. We had a supportive prosecutor. I gave a statement, as did my parents. The defendant's statement was three sentences and didn't include an apology. The abuser in this case was given 5 months, credit for VOLUNTARY electronic home monitoring that the prosecutor objected to for 4 months, as well as good behavior while on EHM, and served less than TWO WEEKS behind bars. Basically, he got two days for each bone he broke. My family was given TWO WEEKS before being forced to interact with this man. HB1396 makes it explicit that EHM is not an acceptable substitute for jail time for anyone who commits Class B Felony Child abuse. This seems like common sense to me- why would an abuser be allowed to remain in the same place where they committed their crime?

As parents, it is one of our many jobs to protect our children. That is why I am here today, reading you this novel to ensure this committee understands the serious nature of child abuse, and how our state fails to protect the voiceless. I'm not sure there is an adequate punishment that will make victims of these crimes feel like justice is served, but I think these laws are a great start. People who harm children deserve to be in prison. They deserve to have the label of a felon and the consequences as such. It makes a difference to have abusers responsible for their actions and acts of betrayal. Please stand together with the ND House of Representatives who supported this bill 86-7-1. I implore you to vote yes as a committee, 6-0, and send an unmistakable message to those who perpetrate crimes against children that the justice system will prosecute them to the fullest extent of the law and that the people and government of ND are willing to support them.

#2
HB 1396
3/11/19



#2
HB 1396
3/11/19



January 25, 2019

Re: Brook's Law (HR1395 and HR 1396)

To Whom It May Concern:

I am writing today in support of HR1395 and HR1396, otherwise known as Brooks' Law. The reason why this is important to me is because I am the mother of two child abuse victims, both at the hand of their father.

To give you some background, my daughter was physically abused at two months old. Her biological father put cayenne pepper in her bottle and eyes, hit her, moved her from hot to cold bath water, held her nose until she turned blue and snapped a towel into her face causing black eyes. At the hospital, she underwent Xrays, an MRI, EEG, and wore a cast for two months. Her brother, my son, had to watch his father inflict these injuries upon his sister. Both of my children will carry internal scars from this forever, and the courts don't consider my son a victim because he wasn't "physically harmed." Although he was not physically harmed, he carries the emotional trauma of the situation, and is continuing to work to heal through therapy.

I had a firsthand seat to how broken the court system, and the injustice the children of abuser's face. My ex-husband, after sitting in jail for 14 months, was finally sentenced because he took a plea deal. Without that plea, he more than likely would have only received probation, I'm told, as he had no prior record. He received 30 months of jail time, with credit for time served. This left him with roughly 6 months in prison, which in my opinion, isn't nearly long enough for the horrible things he did to his children. I fail to understand why it matters if there is a prior record or not in cases such as this. I was told I saved my little girl's life by bringing her into the hospital that night, and the doctors were shocked she has no lasting physical injuries. Minimum sentencing laws are so important in these cases; I've seen that without them there is a very real possibility of the abusers not serving any time for what they do to their victims.

I would also agree with the stipulations in the bills requiring mental evaluations, including capacity, health, and anger management. It is my belief that if a person is capable of hurting a child, there is something "off" and that person needs help. If he or she is to ever be around any children or venerable parties again, getting the help he/she needs is the only way to begin to ensure the safety of those children. This evaluation was done on my ex-husband, and in his case, they found him capable to stand trial, and having antisocial personality disorder. Because of this, I was able to secure a no contact order; however, so many victims are required to see the abusers through court ordered visitation as there's no "legal reason" to separate them. That's simply not true. **No victim should be required by the state to see their abuser, no matter how young or old they were when the abuse occurred.** For this same reason, I would agree with the point in the bill stating the offender cannot serve a sentence with electronic home monitoring. If the crime was committed in the home, why should he/she be able to serve the sentence out there? He should be taken out of the home and face justice, not wear an ankle monitor while sitting on their couch.

I write this from an outside perspective. While I live in the Fargo/Moorhead area, I reside on the Moorhead side. In speaking with other parents of abuse victims, I have realized that while Minnesota's

state laws also fall short, I was very fortunate to be on that side of the river in this situation. North Dakota current laws made it impossible to get protection orders, or to keep the abuse victims away from the abuser. With no anger management requirements, in home sentencing, and mandatory visitation, the kids in North Dakota are continued to be subjected to their abusers, all in the name of "parenting." These kids are terrified, and their real parent, the one that protected the kids, must take their babies to face their abusers over and over. That's completely unfair to the parent and damaging to the children. These bills, and the state of North Dakota, has a chance to turn the tide and really set laws into place to protect abuse victims.

North Dakota is a good place to live and work, and like much of the Midwest, a great place to raise children. Family is a priority here, and children should be safe in their families. They shouldn't have to live with seeing their abusers because the courts say the parent should have visitation. Not in these situations, and not without required classes and evaluations on the part of the abuser.

As I stated above, as the mother of abuse victims, these proposed laws make all the sense in the world and are much more lenient and reasonable than the abusers deserve. Do the right thing and protect the children in North Dakota. Thank you for your time.

Sincerely,

Belinda Bailor

Chairman Larson and Members of the Judiciary Committee

My name is Kim Radermacher.

Thank you for your time this morning and the opportunity to speak with you regarding HB1395 and 1396. These bills, Knick Named "Brooks Law" are important to me because I am a very close family friend with Amy and Brooks Kempfer. Amy's oldest son calls me Gamma Kim as I am sure Brooks will once he is verbal. The subject of these bills is a difficult one and involves our States voiceless citizens. The topic of child abuse is not something we like to sit around and casually discuss. The details are heart wrenching and they disturb the picture in our mind of how children are supposed to be treated. I wont bombard you with statistics and studies, but rather I will share with you a story of survival.

I the mid 70's, between the ages of 8-10, I suffered unspeakable childhood trauma at the hands of a distant relative. My brain repressed this trauma until I was in my mid twenties. I am now 50 years old and have spent the last 25 years trying to figure out how to function as a survivor. You may be wondering what this even has to do with these two bills that seek to define mandatory sentencing and mental health of abusers. You've heard Amy's testimony about the horrific physical abuse Brooks suffered as a tiny infant. Over the passed 15 months I have shared this story countless times and far too often, people will summarize the account by saying "Thank God he'll never remember." Well, I didn't "remember" either until many years later. Brooks will, at some point in his life, know that he was violently injured at the hands of his father. A parent is one of the few people who should want to die in an effort to protect you, not hurt you. Not only will he

one day know he was hurt by his father, but he will know that his father spent a mere 9 days in jail as punishment. He will know that his suffering was only worth 9 days, in the eyes of our states Judicial System. While Brooks physical injuries have long since healed, his emotional and physiological trauma will last his lifetime. Brooks has been court ordered to begin the reunification process with his abuser. His abuser spent the better part of the last 15 months avoiding mental health evaluations, parental capacity exams and has even testified in court, under oath that he still isn't even sure he actually DID the abuse. When asked why it happened he nonchalantly says "I don't know, I guess I just snapped." But by all means, lets put this non-verbal, highly traumatized child in a room with his abuser who hasn't been evaluated for the threat of repeating his snapped behavior. We wouldn't take an adult abuse survivor and but them in a room with their abuser and tell them to just deal with it....Why do we expect this of an infant. These mental health evaluations and therapy should take place BEFORE the abuser is allowed to embark on potential reunification. I can assure you Brooks will have triggers of the actual events, the rest of his life. A certain smell, a certain look, a sound...any one of these things or all of them will trigger his fight or flight and put him right back in his moments of terror. The conscious mind may not remember but the subconscious mind never forgets. Over the last 25 years I have been diagnosed with depression, anxiety and PTSD. I have nightmares. I have struggled with substance abuse, risk taking behaviors, blaming myself for the abuse, bouts of anger and fear that seemingly have no explanation. I've been counseling in some capacity or another over this long time span as well. So when someone says "thank god Brooks won't remember", I nod, because the truth of the matter is just too grim.

I never accused my abuser. You didn't do those things back then. I have traveled this road of childhood trauma mostly alone. My abuser went to his grave only having to deal with his own demons. There has to be better than this. Abusers have to be held accountable for their actions, have intense therapy to figure out why they "snapped" and children need better protection in the reunification process if it is to happen at all! The ability to produce a child should not give you the RIGHT to be in that child's life if you have violently abused them. I think of all the very tiny children who have been abused or even DIED at the hands of their parents or guardians in this state in the last 15 months at it is atrocious. Many of them were repeat offenders or had just slipped through the cracks of CPS. Mandatory sentencing and mental health therapy may have made all the difference in any one or all of those cases. Children who cannot verbalize or emotionally process their surroundings deserve better protection from their abusers.

I have spent decades saying "why me, why did something so terrible have to happen to me." I now know that it was for this moment in time. This moment to be able to speak to each of you, as a childhood trauma survivor, and say HB's 1395 and 1396 are important, they matter, and our voiceless citizens of this great state deserve our help. Thank you

3
HB 1396
3.11.19

Fwd: Bill's 1395 & 1396

Deb Olson <deb.olson26@gmail.com>

Wed 3/6/2019 1:24 PM

To: docamydc@hotmail.com <docamydc@hotmail.com>

----- Forwarded message -----

From: **Deb Olson** <deb.olson26@gmail.com>

Date: Wed, Mar 6, 2019, 10:34 AM

Subject: Bill's 1395 & 1396

To: <kkoppelman@nd.gov>

Please give these Bill's your attention and support.

You have grandchildren and I know the mother of a 3 month old child that suffered at the hands of his father with nothing more than a slap on the wrist. Please help this pass! Thank you

#3
HB 1390
3-11-19

Please Support Brooks Law

Marissa Willits <marissa.taylor1@gmail.com>

Fri 1/18/2019, 12:03 PM

To: dclemens@nd.gov <dclemens@nd.gov>; bkoppelman@nd.gov <bkoppelman@nd.gov>;
amarschall@nd.gov <amarschall@nd.gov>
Cc: Amy Kempfer <docamydc@hotmail.com>

Legislators,

I am writing to you in regards of "Brooks Law" - HR1396 and HR1395.

Child abuse affects over 1,000 children a year in North Dakota and I have seen the effects personally. I have held my friend's child that had been systematically abused and felt how this trauma changed him. Rather than lean into someone offering him comfort, if his chest was too close to mine he would violently push and swing away. Several months after his abuse and before he could talk his body reacted to and remembered the effects of his abuse. It broke my heart that I, nor this child's mother, could offer Brooks's comfort.

What's frustrating still, is the fact that his abuser wasn't required to take a mental health, parental capacity or anger management evaluation. He served only TWO WEEKS in jail for breaking the bones and slapping the face of a 3 month old baby. He stayed at home, in his air conditioned house, "serving his time" using Electronic Home Monitoring.

This bill would make it a requirement for abusive parents to complete parental capacity, anger management, and mental health evaluations before being granted parenting time with children they have abused as well as eliminate the option for EHM. All of which I think are VITAL to serving the best interest of the child in question.

A part of this bill asks for minimum mandatory sentences for those who harm victims under the age of 2 (2 years without permanent physical damage, 5 years with). I believe in mandatory minimum sentences, and that these are completely reasonable. These time frames not only give the abused and the caretaker time to recover from the trauma of abuse but allow for the aforementioned evaluations to be scheduled and completed well in advanced of any reunification, if granted.

The fact that Brooks was ushered back into the arms of his abuser so soon after not only the abuse, but his abusers brief stint in jail, makes me disappointed in our system.

Please support these bills as our children deserve better.
Thank you for your consideration and support of "Brooks Law."

Marissa Willits
218-791-9394

3
HB 1396
3.11.19

Fwd: Bills HR1395 and HR1396

Thomas Mohagen <tmohagen50@gmail.com>

Thu 3/7/2019 1:25 PM

To: Amy Kempfer <docamydc@hotmail.com>

Here you go!

Thomas J. Mohagen

(701) 866-1233

Begin forwarded message:

From: Thomas Mohagen <tmohagen50@gmail.com>

Date: March 7, 2019 at 12:56:31 PM CST

To: kroers@nd.gov, dklarson@nd.gov, madwyer@nd.gov, jbakke@nd.gov, lluick@nd.gov, jmyrdal@nd.gov

Subject: Bills HR1395 and HR1396

I am emailing you requesting your support for bills: HR1395 and HR1396 related to child abuse, neglect and reporting.

As a father of two (2) children in the State of North Dakota this story of abuse upsets me beyond belief. Under no circumstances should a parent abuse a child in their care, let alone a child under the age of two (2) years inflicting 3 broken ribs, 2 broken/fractured arm bones and black and blue eyes over the course of several months. The story of what Ms. Kempfer and her son have had to go through the past year is heartbreaking and a complete let down of our government funded systems in the State of North Dakota. No mother and child should have to be let down by the system at every turn. A 5 month sentence for Ms. Kempfer's ex-husband with reductions for EHM and good behavior for abusing a child in his home is not acceptable punishment for the physical harm, mental stress and additional medical treatments he caused his son and ex-wife. This also doesn't touch on the mental health, ability to parent or ability of Ms. Kempfer's ex-husband to be a productive and safe member of society. There need to be steps in place for individuals to get evaluated and make sure they are safe and mentally stable. In the case of Ms. Kempfer and her son I would have liked to see her ex-husband get a 5 year minimum in a federal prison and termination of his parental rights, no individual deserves to be a father to a child they have hurt and could potentially hurt again in the future. All though this may seem like a harsh punishment, it is my belief that someone who abuses once will do it again and it is just a matter of time before that happens and we need to protect individual's that are not able to protect themselves.

This is why I support and believe the State of North Dakota needs to establish much greater consequences for individuals that abuse or neglect others in their care. As I was made aware during a conversation with a counselor the other day you can get a harsher jail sentence for abusing an animal in your care than you can for abusing a child in your care. Not to mention it is easier for me a loving, caring, supportive father who has



9 8:53 AM

9

9 8:53 AM

Thomas J. Mohagen
(701) 866-1233

3

HB 1396

3.11.19

In Regards to HB1395 and HB1396

Kayla Goebel <kayla.goebel@gmail.com>

Thu 3/7/2019 1:23 PM

To: Amy Dusek <docamydc@hotmail.com>

Protecting our children, protecting our future, is one of the most important tasks we as adults have been given. HB1395 and HB1396 should be an easy 'yes' to ensure children have a chance at a bright future, and those who harm children are given some sort of consequence to their actions.

I have learned over the last year and a half that the rights of those who abuse children are taken more seriously than for the defenseless children themselves. This goes against all natural instinct to protect and raise children in the safest ways possible. Please take a moment to consider the positive effects these bills could have on families, on children, and working towards rehabilitation for the children and their families.

First, mandatory minimums are an important addition to have for perpetrators. We need to be serious about showing perpetrators that their actions are unacceptable, and mandatory minimums are one way we can show that.

Second, I would support the notion of not allowing Electronic Home Monitoring to count for time in abuse situations. If you commit a crime in your home, staying at home should not be rewarded.

Third, Class B Felony Child Abuse should be required to undergo a **mandatory** parental capacity evaluation, mental health evaluation, and anger management eval. This is **critical**. Not only does it help our social services divisions enforce these often times standard exams, it serves as the "rehabilitation" component of the sentence. Let's set children up to be around healthy humans, and set people up with tools to try and be successful parents.

Pushing these two bills forward should be an easy and resounding 'Yes!' These bills could be helpful in not only sentencing but also in having successful rehabilitation for families and most importantly, the children who are victim to the abuse.

Thank you for your time and consideration.

Kayla Goebel

Design. Photo. Illustration.

701.261.1798

kayla.goebel@gmail.com

<http://sheadesign.carbonmade.com/>

Fwd: 1395 & 1396

#3
HB 1396
3-11-19

Kristin Smillie <smillielady@hotmail.com>

Thu 3/7/2019 6:36 PM

To: Amy Kempfer <docamydc@hotmail.com>

Sent from my iPhone

Begin forwarded message:

From: Kristin Smillie <Smillielady@hotmail.com>

Date: March 7, 2019 at 3:35:18 PM MST

To: "dklarson@nd.gov" <dklarson@nd.gov>, "madwyer@nd.gov" <madwyer@nd.gov>, "jbakke@nd.gov" <jbakke@nd.gov>, "lluick@nd.gov" <lluick@nd.gov>, "jmyrdal@nd.gov" <jmyrdal@nd.gov>, "aosland@nd.gov" <aosland@nd.gov>, "dgschaible@nd.gov" <dgschaible@nd.gov>, "rwardner@nd.gov" <rwardner@nd.gov>

Subject: 1395 & 1396

To Whom it May Concern:

I am contacting you to request your support for HR1395 and HR1396. As a child protection worker in the state of North Dakota, there are so many reasons that I not only support this bill, but find it completely necessary.

I strongly believe in the work that I do, and that it is our job as a society to protect children. Our legal system, in the state of North Dakota, completely fails the victims of child abuse – especially in severe cases. The fact that there are not mandatory minimums is appalling. You need to consider that these children are being hurt, in the one place that they are supposed to feel safe, by the people that are supposed to protect them. If that isn't the worst kind of crime, I don't know what is.

I am asking, begging really, that you vote in support of this legislation. Mandatory minimum sentencing is not an outrageous request for these situations. Often, people convicted of child abuse serve minimal jail time. Take Aaron Kempfer (West Fargo), for example, who admitted to assaulting his three month old child, on multiple occasions, over the course of an entire month. He served 12 days in jail for inflicting trauma on a helpless baby. Thankfully, Brooks will be ok as far as physical injuries go (he suffered a fractured arm, fractured ribs, and two bruised eyes), however the trauma has likely impacted him in ways that we have yet to see. Additionally, how is it acceptable that this person, who committed the crime in his home, was punished with electronic home monitoring. He was able to enjoy all the things that he regularly loves – his bed, having friends over, football games and control of the television remote – while the mother and the child did the hard work of recovery. He took no part in that, but yet was given visitation by a judge that likely isn't trauma informed on a minimal

Fwd: Bills HB1395 & HB1396

3
HB 1396
3.11.19

Vigdis Gjerde <vigdisg12@gmail.com>

Wed 3/6/2019 7:50 PM

To: docamydc@hotmail.com <docamydc@hotmail.com>

Amy,

Here you go :)

You are amazing, good work!!!!

Vigdis

----- Forwarded message -----

From: **Vigdis Gjerde** <vigdisg12@gmail.com>

Date: Wed, Mar 6, 2019 at 7:48 PM

Subject: Bills HB1395 & HB1396

To: Diane Larson <dklarson@nd.gov>, jbakke@nd.gov <jbakke@nd.gov>, jmyrdal@nd.gov <jmyrdal@nd.gov>, lluick@nd.gov <lluick@nd.gov>, madwyer@nd.gov <madwyer@nd.gov>

Dear, Senators.

First I want to Thank you for all you do!

We need your help, Please consider supporting bills HB1395 and HB1396, it is time we start standing up for our children and protecting them as well as getting the appropriate sentence for child abusers.

Appreciate any support,

Vigdis Gjerde
West Fargo, ND

Fwd: Support of Senate HB 1395 and 1396

Karmen Sandberg <karmeylavelle@icloud.com>

Wed 3/6/2019 9:38 AM

To: docamydc@hotmail.com <docamydc@hotmail.com>

3

HB 1396

3.11.19

Karmen Sandberg

Begin forwarded message:

From: Karmen Sandberg <karmeylavelle@icloud.com>

Date: March 6, 2019 at 9:36:57 AM CST

To: dclarson@nd.gov

Subject: Support of Senate HB 1395 and 1396

Good morning-

I'm contacting you today to tell you of my support of HB 1395 and 1396. It is our responsibility to stand up for the littlest ones in our state..to protect the ones incapable of protecting themselves...those who harm our children need to be held responsible for their actions and held accountable...not just a slap on the wrists...please do the right thing and vote yes!

Thank you!

Karmen Sandberg

Fw: HB 1395 & 1396

wanjanwil@aol.com

Wed 3/6/2019 9:06 AM

To: docamydc@hotmail.com <docamydc@hotmail.com>

#3
HB 1396
3.11.19

Sent from my Verizon LG Smartphone

----- Original message-----

From: wanjanwil@aol.com

Date: Wed, Mar 6, 2019 8:51 AM

To: galee@nd.gov;

Cc:

Subject: HB 1395 & 1396

A little boy I know who at 3 months old was being treated for failure to thrive when it turned out his daddy was abusing him.

Aaron Kempfer served his time with less than 2 weeks in jail and home monitoring. There wasn't even a requirement to have a mental health or parental evaluation to determine if he should even be allowed to have contact with his son without re-abusing.

HB 1395 and 1396 (Brook's Law) overwhelmingly passed the House and now we are asking for your help in passing these bills through the Senate. Please vote yes to these two bills.

Thank you.

Wanda J Wilcox
422 3rd Avenue S
Casselton ND 58012

#3
HB 1396
3-11-19

HB1395 and HB1396

Holly Meyer <Holly.Meyer@noridian.com>

Wed 3/6/2019 10:42 AM

To: dklarson@nd.gov <dklarson@nd.gov>; madwyer@nd.gov <madwyer@nd.gov>;
jbakke@nd.gov <jbakke@nd.gov>; lluick@nd.gov <lluick@nd.gov>; jmyrdal@nd.gov <jmyrdal@nd.gov>;
aosland@nd.gov <aosland@nd.gov>

Members of the senate judiciary committee,

I have been a North Dakota resident my whole life. My father is a deputy sheriff in the state, sworn to protect citizens in his jurisdiction. One of the reasons I choose to live in North Dakota is because it is a safe place to raise my family. However, there is an issue in our state today that fails our children and compromises the safety of children throughout the state. As you prepare to vote on HB1395 and HB1396, please take steps to increase the safety of North Dakota children.

You have an opportunity to protect North Dakota children, and assist law enforcement throughout the state in deterring abusers ... hopefully deterring a first case of abuse, but certainly minimizing the chance of repeat offenders. Children that are victims of repeat offenders have truly been failed not only by the abuser, but also by the rest of us in this state that have an opportunity to speak up, enforce laws, or make laws to help protect these children. Adults who abuse children undermine the wellbeing not only of that child, but also creates trauma for the family of the abused child, and often extends a cycle of abuse that further undermines our youth in subsequent generations.

I believe mandatory minimums for offenders are necessary to 1) deter abuse, 2) prevent repeat offenders, and 3) create accountability for the abuser to accept consequences and seek rehabilitation. Please support these bills to protect the youth of North Dakota for generations to come.

Holly Meyer, PMP

701-371-0486 (mobile)

hmarbonne@yahoo.com

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Fwd: HB 1395 & HB 1396

#3
HB 1396
3.11.19

Breanna Gronaas <breanna.l.olson@gmail.com>

Wed 3/6/2019 11:45 AM

To: docamydc@hotmail.com <docamydc@hotmail.com>

----- Forwarded message -----

From: **Breanna Gronaas** <breanna.l.olson@gmail.com>

Date: Wed, Mar 6, 2019, 11:44 AM

Subject: HB 1395 & HB 1396

To: <jlee@nd.gov>, <madwyer@nd.gov>, <jbakke@nd.gov>, <lluick@nd.gov>, <jmyrdal@nd.gov>, <aosland@nd.gov>

Hello,

I am writing this email to make change and help be a voice for innocent children, beaten at the hands of adults. Personally, the case involving Amy Kempfer and her young son, Brooks. I'm sure you know her case, but I'll give you a short refresher.

Over the course of Brooks short life, he suffered 5 broken bones, two black and blue eyes, and almost starved due to his failure to thrive. His mother was doing everything she could to figure out what was going on with her son and why he wasn't eating. After being out of town for a work event, she came home to an infant with black and blue eyes. She brought him to the hospital where they do tests and x rays and discover his broken bones, some of which were a month old. After much finger pointing and denying, and at one point during the week blaming his mother, Aaron fessed up to beating his own child. Fast forward MANY months later, a divorce, many court hearings, and over \$50,000 out of Amy's pocket trying to protect her son, Aaron basically got a slap on the wrist. He was given unsupervised visitation after a year. He was not required to complete any mental health evaluations. He beat his own child, and was given credit for voluntary electronic home monitoring with the luxuries of his home and given credit for good behavior. He served less than two weeks in jail. This is an atrocity. I've learned that Amy's case is not unique, and this happens across our state.

I often hear "well at least he was young enough, he wont remember." LIES! Brooks is now 18 months and still cannot come to my house when my husband is home, because my husband has a beard (as did Aaron). THAT is lifelong trauma.

I could go on and on, but if you cannot tell, this case is very dear to my heart. I personally know all involved. After many many talks with Amy about our judiciary system and lack of punishments for abusers like this; I lose sleep and wake up in sweats with nightmares. As a mother, I cannot imagine what Amy AND Brooks continually go through. I thank God every day that Amy is diligent enough to see some good in this and fight SO hard for change. For future children, who, no matter what the laws are, will still be harmed by adults. But what can happen, is helping PREVENT it from CONTINUING to happen after their pittly sentence.



Thank you for taking the time to read this lengthy email. I truly appreciate it and hope I can help make a difference for the protection of our youth.

#3
HB 1396
3.11.19

2
HB 1396
3/11/19

08/02/2018

BROOKS KEMPFER
307 MORRISON ST
WEST FARGO, ND 58078

MR#: E5100492

To Whom It May Concern:

Brooks Kempfer, date of birth 8/5/2017, is followed at Sanford Children's for his pediatric healthcare needs.

In his first 3 months of life, Brooks was subjected to significant trauma which resulted in long bone fractures, rib fractures, and significant facial bruising. We are aware that his biologic father has admitted to inflicting these wounds. It is very difficult to tell if Brooks facial bruising was associated with a significant concussion due to a young infant's inability to demonstrate subtle manifestations of postconcussive injury.

We are not sure at this time if Brooks' injuries will result in lifetime disability and we are monitoring closely for developmental deficits.

We do feel that it is extremely important that Brooks be protected from any further traumatic events, especially during his first 5 years of life, which are especially formative in an individual's development. This is a time, of course, in which children have virtually no means to protect themselves or to accurately relate their degree of trauma.

We ask at this time that all appropriate measures be taken to ensure that Brooks be kept in a safe nurturing environment during this. Your attention to this matter is surely appreciated.

Sincerely,


Patrick J. Welle, M.D., Pediatric

16618194/pjh7
7369828

August 14, 2018

#2
HB 1396
3/11/19

To Whom It May Concern:

Re: Brooks Kempfer (DOB: 8/5/17)

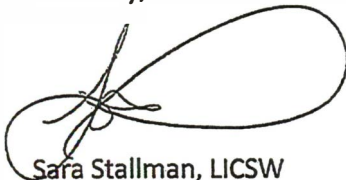
I have acted as Brooks' mental health therapist since January 2018. Brooks first arrived for a full mental health assessment after substantial physical injuries and observed trauma symptoms. He was diagnosed with a Trauma Disorder after three full assessment sessions. His father admitted responsibility for causing significant physical and emotional harm to Brooks.

Significant physical abuse and psychological trauma in infancy typically have long standing effects throughout childhood and into adulthood. The true consequences of the abuse inflicted on Brooks will not be fully known for years to come. Close monitoring for "soft signs" of regression, extreme consistency of caregiving, highly skilled parenting, positive nurturing and guaranteed safety will be vital to his recovery. Brooks will be most vulnerable to compounding trauma symptoms in the coming five years. Prior to the age of 5, most children struggle to express themselves, understand their feelings, maintain basic safety and be able to advocate for self. I would recommend that Brooks have the next years to heal, gain the skills he need to talk through visitation and process his feelings prior to having to interact with his abuser.

It is also important to note, that Brooks' father's abuse is now part of his developmental story and forever will be. As Brooks ages, through his teen years, into his adulthood and into his own possible fatherhood, he will need support to understand how his own father could have caused such injuries. In my years of doing trauma work, with children and adults, this often can cause extreme identity and self-worth concerns lifelong. Brooks will benefit from ongoing therapy support throughout his coming developmental years.

If you have additional questions, please feel free to call me at 763-229-4995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Stallman', with a large, loopy flourish extending to the right.

Sara Stallman, LICSW

Abound Counseling, Director

#2
HB 1396
3/11/19

North Dakota 66th Legislative Assembly
SENATE JUDICIARY COMMITTEE
Hon. Senator Diane Larson, Chair
Hearing: March 11, 2019

Re: Testimony in Support of House Bill 1396

Chairwoman Larson and members of the Judiciary Committee:

My name is Leslie Ann Brunette, Authentic Voice and Prevent Child Abuse North Dakota Lobbyist. **I support House Bill 1396.**

I shared a portion of the following in my previous testimony in support of HB 1395:

31 years ago - March 1988 - my father was arrested, charged w/multiple counts of child physical and sexual abuse and sentenced to 10 years in North Dakota State Penitentiary. The North Dakota Department of **Corrections and Rehabilitation** played a critical role in our family's journey to healing and freedom from abuse!

The proposed mandatory minimums under HB1396 are very specific and address children under two. Adults convicted of Class B Felony Child Abuse can **NOT** be allowed access to the victims of the child abuse! Removing the abuser from the victim(s) daily life is essential for the safety and improved emotional, physical and mental well being of all!

My family and I were fortunate to have our abuser convicted and sentenced to a decade in prison. I cannot fully articulate the gratitude and relief I felt for the immediate freedom from daily abuse!

Please take a moment to consider the immense and immediate life restoring impact your DO PASS vote will have on the lives of the North Dakota children and the families being victimized.

Please stand together with the ND House of Representatives who supported this bill:
86-7-1. **DO PASS = HOPE EMPOWERED RESTORATION & JUSTICE!**

Respectfully,

Leslie Ann Brunette
Authentic Voice, Prevent Child Abuse ND Lobbyist #730
1505 9th St NW West Fargo, ND 58078

North Dakota 66th Legislative Assembly
SENATE JUDICIARY COMMITTEE
Hon. Senator Diane Larson, Chair
Hearing on March 11, 2019

Re: Testimony in Support of House Bill 1396

Chairwoman Larson and members of the Committee, I am Reid Brady, Assistant Cass County State's Attorney. I support House Bill 1396.

Protecting our youngest children against abuse is the primary purpose of House Bill 1396. Children under two years of age are especially vulnerable. They are developing at extraordinary rates - both physically and cognitively. They are totally dependent on caregivers. And, realistically, they are unable to disclose abuse.

One way that House Bill 1396 protects that vulnerable group is through minimum mandatory periods of incarceration for those who injure children under two years of age. Because a large percentage of child victims are at least two years of age, many offenders will not face the minimum mandates. In Cass County, for instance, only one person was convicted in 2018 of abusing a child under two years of age. And in 2017, there were just two such persons. Yet those offenders who do abuse our youngest children, would face an appropriate measure of justice – one or two years imprisonment (depending on the relationship of the abuser to the victim) if the abuser inflicts mere injury and three years if the abuser wreaks permanent physical injury.

Another way the bill protects our youngest children is by precluding an offender from avoiding incarceration through electronic monitoring outside a correctional facility. It should be noted that the electronic monitoring prohibition is not limited to those who abuse children under two years of age. On the other hand, no minimum mandatory penalties would apply to those who abuse children who are two years of age or older. Further, sentences for offenders in that category don't often involve lengthy periods of incarceration, especially when no serious bodily injury occurs. Since 2016, only one offender convicted of abusing a child two years of age or older in Cass County has been sentenced to serve more than six months in jail.

Illustrating the importance of the bill's provisions is the Aaron Kempfer case. I recently prosecuted Aaron Kempfer for inflicting serious bodily injuries – including broken bones and facial bruises – upon his infant son. He perpetrated the abuse on more than one occasion. Upon conviction, he was sentenced to serve five months in jail. But with credit given (over the state's objection) for time he spent on electronic home monitoring, Aaron Kempfer spent less than two weeks behind bars.

House Bill 1396 provides prosecutors valuable tools to seek fair and appropriate outcomes for offenders like Aaron Kempfer. It helps ensure that justice will rightfully confront those who perpetrate abuse upon our most vulnerable children. For these reasons, I ask you to support House Bill 1396.

April 22, 2019

#1
HB 1396
4-23-19
P.1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1396

That the Senate recede from its amendments as printed on page 1459 of the House Journal and page 1217 of the Senate Journal and that Engrossed House Bill No. 1396 be amended as follows:

Page 1, line 20, remove "Any person who has pled guilty or nolo contendere to, or has been"

Page 1, remove lines 21 and 22

Page 2, line 5, remove "Any person who has pled guilty or nolo contendere"

Page 2, remove lines 6 through 8

Page 2, line 12, remove "Any person who has pled guilty or nolo contendere to,"

Page 2, replace lines 13 through 15 with:

"4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment."

Renumber accordingly

April 22, 2019

#1
HB 1396, 4-24-19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1396

That the Senate recede from its amendments as printed on page 1459 of the House Journal and page 1217 of the Senate Journal and that Engrossed House Bill No. 1396 be amended as follows:

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