

2021 HOUSE JUDICIARY

HB 1105

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1105
1/12/2021

Relating to sentencing violent offenders; and to provide for retroactive application.

Chairman Klemin called the meeting to order at 9:30AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Rep. Dobervich, Introduced the bill. 9:35

Discussion Topics:

- Private business rights
- Offender incidents
- Penalties for infraction

Karen Erhrens: Testimony #574 9:47

Kristie Wolff, Executive Director, ND Women's Network: Testimony #631 9:47

Willow Hall, Professional Birth Doula and Certified Childbirth Educator: Testimony #632 9:50

Sara Woods: Mother: Testimony #521 10:00

Tracy Simons: Mother: testimony in opposition. 10:09

Mikaela Schlosser: Maternal & Child Health Nutritionist, ND Dept. of Health:
Testimony #575 10:10

Rep. Karls closed the hearing at 10:18.

Additional Testimony: 369, 372, 379, 560, 564, 579

Delores Shimek,
Committee Clerk

Karen K. Ehrens, RD, LRD
Testimony HB 1105
January 12, 2021

Chair Klemin and Members of the Judiciary Committee:

Good day. I am Karen Ehrens, a mother, a Licensed Registered Dietitian, member of the North Dakota Public Health Association, and a person who works to reduce hunger in our state and our communities.

Breastfeeding benefits infants in numerous ways. In addition to providing optimal nutrition, breastfeeding decreases the risk of childhood obesity, guarantees safe, fresh milk, enhances the immune system, protects against infectious and non-infectious diseases, protects against allergies and intolerances, decreases risk of diarrhea and respiratory infections, increases cognitive function, reduces risk for heart disease, and increases bonding with mother.¹

Breastfeeding benefits mothers' health by decreasing the risk of breast and ovarian cancer, decreasing the risk of developing Type 2 diabetes, improving blood sugar level in women who develop gestational diabetes, improving bone density and decreasing risk for hip fracture and strengthening the bond with the baby. Breastfeeding eliminates the need for preparing and mixing formula and saves money by not spending it on formula.¹ Breast milk is the first food; it is available in times of emergency.

Breastfeeding benefits businesses and provides a return on investment. Employees who are breastfeeding their child miss work less often, with up to two times fewer maternal absences to care for children. Breastfeeding lowers health care and health insurance costs and reduces sick time taken by both mothers and fathers for their children's illnesses. Breastfeeding helps to retain experienced employees.²

It's time to update this legislation. The idea for this bill was first launched in 2003. At that time my daughter was 5 years old. Today, she is 23 and is a thriving young woman. My family asks that you support this legislation to send a message to the young families we are trying to keep in the state and the young professionals we are trying to attract to the state. Thank you for the opportunity to speak.

Breastfeeding is **not** indecent; keeping food from people **IS** indecent.

Reference:

1. Position of the Academy of Nutrition and Dietetics: *Promoting and Supporting Breastfeeding*, Journal of the Academy of Nutrition and Dietetics, 2015 (J Acad Nutr Diet. 2015;115:444-449).

2. *The Business Case for Breastfeeding*, U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau, 2008.

<https://www.womenshealth.gov/files/assets/docs/breastfeeding/business-case/business-case-for-breastfeeding-for-business-managers.pdf>



January 12, 2021

Kristie Wolff – Executive Director, North Dakota Women's Network
Support HB 1105
North Dakota House Judiciary

Chairman Klemin and members of the House Judiciary Committee, my name is Kristie Wolff, I am the Executive Director of the North Dakota Women's Network.

North Dakota Women's Network is a statewide organization with members and advocates from every corner of the state. Based on our mission to improve the lives of women, I am testifying in support of HB 1105.

I don't think there's disagreement about the clear benefits of breastfeeding for both mom and baby, so I'm going to take a more personal approach to my testimony.

I was shamed for breastfeeding my children. My children's father said he was ok with me breastfeeding during my pregnancy, but I soon found out he was ok with it, as long he did not have to see it, or others did not see it. To him being discreet about breastfeeding meant being out of sight. Examples:

- Shortly after giving birth to my first son I was told I could not breastfeed at the table during meals.
- I was reprimanded for breastfeeding in the car in the mall parking lot.

My intention was to breastfeed my boys for six months each, however because of lack of support, breastfeeding became stressful. I lost my milk at 5 weeks with my first son and six weeks with my second son. I felt like I had failed my boys.

So how does this bill tie into my story when it was happening in my home. I believe it does in two ways. First it sends a clear message, breastfeeding is not indecent. This helps change the conversation. It is a piece of the puzzle that will help eliminate the stigma, the shaming and empower women be successful at breastfeeding. My personal experience has also helped me understand that there are individuals who think being discreet about breastfeeding means being out of sight. Sharing my personal story has led to others sharing their story with me, some who have experienced public shaming.

I want touch on one last point. I took the time to reach out to local law enforcement on the language in the current law and the proposed language in HB 1105. I spoke with someone in a

Good Morning Chairman Klemin and members of the House Judiciary Committee,

My name is Willow Hall, and I am here to ask you today for a "Do Pass" recommendation on HB1105. I am here as a professional in the field of lactation, to provide testimony in regards to the following:

First, the importance of early establishment of breastfeeding, and to provide context about how the current language of the North Dakota Century Code inhibits breastfeeding goals in our state.

Second, I would also like to provide the members with the national and international benchmarks of achieving healthy breastfeeding rates in the population.

Before I get into these points, I would like to give a quick background on my professional qualifications that I am drawing on to address you here today. I am a Certified Lactation Counselor, Birth Doula, and Certified Childbirth Educator. My role professionally is to support women during pregnancy, birth and the early postpartum period. I use my role to prepare women for breastfeeding, through prenatal education, as well as helping with early initiation of breastfeeding at birth, and in the weeks directly following birth. I have been intricately involved in the community that supports birth and breastfeeding choices and education since 2009 when my oldest child was born. I have the experience of over one hundred months of breastfeeding between my four children, and am currently still breastfeeding my youngest child. The entirety of my professional and personal breastfeeding experience has been in the state of North Dakota.

Medical and scientific literature has established the fact that a woman's body creates the perfect biological food. The American Association of Pediatrics recommends exclusive breastfeeding for the first six months of life where and when possible. This is supported by every other major medical community, including the Center for Disease Control and the World Health Organization.

While breastfeeding is natural, it does not come naturally to many women. Most women in the first few weeks and months after birth struggle to some extent with breastfeeding. There are changes in the woman's body, especially within the breasts, that can be uncomfortable and make feeding challenging.

There are many obstacles to the early establishment of breastfeeding. These obstacles include difficulty in the following: (1) accessing appropriate information; (2) obtaining support from peers and family; and (3) living in a society that supports breastfeeding. This last point, living in a society that supports breastfeeding, directly pertains to the proposed amendments before you today.

For a new mother, the first few outings with her new baby can be incredibly stressful. Often it seems that anything that can go wrong usually does. Specifically regarding breastfeeding, newborn babies often require patience to latch properly in order to nurse. In plain terms, a woman needs to be able to see the baby's mouth and her nipple to visually verify that the baby is latched properly to ensure proper milk transfer. This also confirms that the woman's nipple is not being actively damaged by a latch that is not ideal. A latch that is incorrectly formed between the baby and the mother can cause, but is not limited to the following:

- Poor milk transfer causing or contributing to babies suffering through low weight gain or failure to thrive
- Damage to the mother's breast tissue
- Increased risk of plugged milk ducts
- Increased risk of mastitis, which are infections to the mother that can cause serious medical emergencies
- Significant increase in pain
- Cracked or bleeding nipples

Each of these situations cause significant stress to new mothers who are often physically uncomfortable recovering from childbirth, not sleeping well, and now worried about the ability to feed their babies breastmilk.

From my professional experience, the language in North Dakota's current law regarding indecent exposure and breastfeeding without question causes unnecessary anxiety in women. They are already adjusting to a new baby and learning the ropes of infant feeding while facing laws that hinder their establishment of breastfeeding.

Under the current North Dakota law, the language "modest" and "discreet" is not clearly defined. What is modest? What is discreet? Defining these words frankly is an unfair burden for mothers to carry. This wording both is arbitrary and subjective and is unable to offer women a universal definition of acceptable breastfeeding. It also implies that the act of feeding your child is indecent, or that it has the potential to become so, which has no basis in medical or scientific literature. I strongly believe that this actively works to create barriers in establishing a strong and resilient breastfeeding culture.

The frequency and timing of feedings is the way that a woman produces an appropriate amount of milk for her baby. Additionally, discouraging breastfeeding in public may cause mothers not to nurse at all. This would create both short and long term negative health effects in women and their babies.

Members of this committee, consider what we are really discussing here. We are talking about mothers who want to do what is best for their children. They want to breastfeed where and when to establish breastfeeding. All of this happens while they operate on little sleep, have concerns about milk supply and monitor their babies' weight. Mothers do not want to expose themselves to the public, they want to feed their babies. It is the babies who decide when and where to feed, not the mothers.

Secondly, we are fortunate enough to have dedicated professionals who have conducted vast amounts of research over the years in a variety of countries and determined what public health approaches help us to reach and maintain ideal breastfeeding rates. These rates are beneficial not only to the specific mom and baby in question, but also in society at large. Higher breastfeeding rates have directly correlated with the rates of diabetes and heart disease most especially, and obesity, asthma, along with other long-term health conditions in lesser quantities.

Research has been done with individual women who have set breastfeeding goals of exclusive breastfeeding for six months. This is the recommendation both by the American Association of Pediatrics and the World Health Organization. This data shows that four main reasons exist why women struggle to meet their objectives. These reasons are as follows:

- Not enough milk
- The baby won't latch
- Breast pain, soreness
- Work/school/social concerns

Each of these are exacerbated in specific situations I have encountered over my years of working with women due to anxiety of public shaming or removal for breastfeeding. For these reasons, I am asking you to recommend this bill for passage. In doing this, you will send the message to North Dakota mothers that they are free and welcome to breastfeed without having to appease someone else's comfort level.

I ask you to consider and recommend a "Do Pass" on the proposed amendments.

January 11, 2021

Dear Chairman Klemin and Members of the Judiciary Committee,

I am writing seeking a DO NOT PASS recommendation on HB1105.

As a business owner and pastor's wife who also breastfed my 3 children, I believe that the proposed removal of the word "discreet" and the addition of a penalty to the current legislation is unnecessary and could have dangerous implications. In our endeavor to protect one group of people, we must not take away the rights and protection of another. It is possible to protect all parties involved, and I believe the current wording already does this.

When I breastfed my children, I did not consider myself as part of a disabled or protected group. I am a strong woman who knows my rights and convictions. If, at any time, an individual in a public setting would dare to criticize me for a choice I made for personal, religious, or medical reasons, I feel fully capable of fighting back using the tools available to me in the free market. I would boycott the business and call for my friends, relatives, and acquaintances to do the same. I would not expect the government to get involved on my behalf to penalize someone for THEIR personal choices. I, as a mother, have the right to choose where I do business. I will choose businesses and churches, etc, that support my choice to breastfeed my children in the way that I feel comfortable. However, as a business owner, I should also have the right to decide how I expect people to act in my place of business. I want the right to choose, both as a breastfeeding mother AND as a business owner. Since I am both, I can't possibly be in favor of wording that would give more rights to one group over the other.

Breastfeeding mothers AND business owners are both protected by the language currently used in the century code. The term "discreet" allows businesses or churches to have certain dress requirements; however, it also does not allow anyone to force a breastfeeding mother to leave in order to feed her child. My concern is that if this wording is removed, it takes away all protection for those who have religious or personal convictions regarding dress. For example, the current dress code to enter a mosque requires men to wear "loose and clean clothes that do not reveal the shape of the body. Women must also wear loose clothing, and it must reach to their wrists and ankles. Women must also cover their heads with a hijab or similar covering." If this wording were changed, would the mosques lose their right to ask women to be covered if a woman happened to be breastfeeding her child?

Furthermore, the original wording for extra protection for breastfeeding mothers was added to the indecent exposure century code, in which the woman's breast being exposed is not even listed. Even if a woman accidentally, or even purposely, exposed her breast while feeding her child, she isn't even at risk of an infraction in any place of business. The rights of the breastfeeding mother are already provided for with the current wording, and the mother currently cannot be penalized in any way.

I am opposed to changing the current wording, which incites no penalties while also protecting the rights of breastfeeding mothers, to wording that could impose unnecessary infractions and penalties upon another group of citizens for standing up for their convictions. Business owners want to make a living. We want to make our customers happy, because we need our customers to stay open. The power of the free market is enough motivation for me, as a business owner, to accommodate a breastfeeding mother to the best of my ability. Additionally, as a breastfeeding mother, this was also my experience in every public place I frequented.

The proposed wording of HB 1105 seems vindictive, harsh, and unnecessary to me with my perspective as both a mother and business owner.

Thank you so much for your consideration of my testimony. I also plan to be present on Tuesday, January 12, 2021 to provide oral testimony.

Please feel free to contact me with any questions! I would love to speak to you.

Sincerely,

Sara J. Woods
Woods Works, LLC
701-516-3124
sara@woodsworks.co

Good Morning Chairman Kelmin and members of the House Judiciary Committee. My name is Mikaela Schlosser and I am the Maternal and Child Health Nutritionist with the North Dakota Department of Health. I do not have testimony for HB1105 but want to let you know I am available virtually to answer questions, if needed. Thank You.

ND HB 1105

I am writing in support of the revision to Section 23-12-16 of the North Dakota Century Code which will eliminate the subjective language "modest and discreet," and provide penalties for anyone attempting to restrict the breastfeeding of a child.

Breastfeeding is a natural and wholesome activity, and should not be restricted or shamed.

Thank you,
Rachel Johnson
Jamestown, ND

Public Testimony for HB 1105.

Hello Members of the House Judiciary Committee,

I am writing in regards to HB 1105 in support of removing the language “discreet and modest manner” and adding a penalty for prohibiting a person from breastfeeding her child.

Thank you for considering this issue. It is incredibly important for women, especially new moms, to feel comfortable breastfeeding in public. Reducing barriers to breastfeeding can help women feel comfortable leaving their home with their baby.

When I had my first baby, I would breastfeed wherever I went, because I felt comfortable, but I had friends tell me that they had trouble breastfeeding in public because they were worried about what other people would think or having people stare. Changing the laws and continuing to destigmatize breastfeeding will help individuals like my friends feel less anxious and encourage a breastfeeding relationship.

It is about feeding your baby and keeping that connection with them no matter where you are.

There have been news stories about women being told to cover up and some being asked to leave restaurants or swimming pools for feeding their babies. Adding a penalty will send a strong message that feeding your baby is okay and publicly acceptable.

Thank you for the opportunity to address the committee. Breastfeeding is hard enough without having the fear of being asked to leave a space and the embarrassment that would come with that.

Whitney Oxendahl
Fargo, ND

My name is Lara Jones and I am a mother of two young children living in West Fargo. I am writing in support of HB1105, regarding breastfeeding in public. I strongly ask that you consider changing the wording of current breastfeeding laws in North Dakota.

Current wording of the law allows women to breastfeed in public if it is in a "discreet and modest manner". This wording is ambiguous and open to a VERY wide variety of interpretation. No other state includes such ambiguous language in their breastfeeding laws. Let me share with you my story, and how this phrasing could be problematic for mothers trying to provide nutrition to their babies.

When my first child was born, we were living in a rural area. The drive to the clinic for well child visits took an hour, so by the time we arrived in the waiting room, I had a hungry newborn. It takes time for new moms and new babies to figure out an easy and comfortable breastfeeding relationship, and we were no exception. I tried to feed my screaming baby in the waiting room with a cover over us, but he was struggling to latch and fighting the blanket placed over his head. We struggled for a while, and finally, I gave up, and decided to try again later. We got called into our appointment, and soon after, he fell asleep, greatly delaying his feeding session.

When we arrived home after what was a very long trip for a newly postpartum mom and newborn, I began experiencing symptoms: exhaustion, fever, and chills. It felt like a terrible case of influenza. Mastitis was setting in because I had delayed the feeding of my newborn son for the sake of "modesty". It took many days for me to recover. My husband, with directives from our healthcare provider, diligently nursed me back to health and took over the infant care that I could not manage to do during my illness. I vowed that very day that I would never let someone else's interpretation of "modesty" stand in the way of meeting my family's basic needs for health and nutrition.

We do not choose when or where our infants become hungry. No mother should have to wonder if she should meet her infant's basic needs based on someone else's interpretation of modesty. Please support mothers as they work hard to provide the best possible nutrition for their children when and where they need it.

I will be eagerly watching the progress of this bill. I truly appreciate your time!

Sincerely,
Lara Jones

My name is Maura Ferguson and I am a resident of District 18. I am also a mother of three children, all of whom were exclusively breastfed until 6 months old as recommended by all major health organizations. My children also breastfed until they were ready to wean, up to age three. This legislation is very important to me personally and I would like to express my support of bill HB1105.

It is unequivocally true that breastfeeding is the ideal way to feed babies as it has many benefits to both physical and mental health of the mother/baby pair. The American Academy of Pediatrics recommends that mothers breastfeed exclusively for at least six months and continue breastfeeding up until the baby is at least one year old or as long as mutually desired by mother and baby. Additionally, the World Health Organization states: "Breastfed children perform better on intelligence tests, are less likely to be overweight or obese and less prone to diabetes later in life. Women who breastfeed also have a reduced risk of breast and ovarian cancers." However, I can state from firsthand experience that as babies get older and more capable, it becomes harder to nurse them with a cover. We cannot expect nursing mothers to stay home every single time babies need to eat. Moreover, we should not make nursing mothers feel unwelcome in public if their baby gets hungry. Feeding babies is not sexual nor political, it is simply doing what is best for baby. I think we can all agree that babies deserve to be fed when they are hungry.

The largest problem with NDCC 23.12.16 as it stands is the verbiage "discreet and modest", as it leaves far too much room for interpretation. This ambiguity could pose a problem for a mother who is nursing in public, as "discreet and modest" does not have a universal definition. This leaves nursing mothers vulnerable to potential arrest, which could prove to be a traumatic incident that could discourage the mother from continuing her nursing relationship with her baby.

Other states have statutes with more clear protection for nursing mothers. In Minnesota, MN Statute 145.905 reads as follows: "A mother may breastfeed in any location, public or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast-feeding."

I urge you to pass HB1105, as breastfeeding sets up children for success from day one. I can speak firsthand of how difficult it is to be a nursing mother, and I believe that women should be free to nurse their babies wherever they are otherwise authorized to be. Additionally, the postpartum period can be isolating and dangerous for a mother's mental health. Feeling confident and legally supported while nursing in public can both help new mothers to combat feelings of loneliness and to further strengthen the mother/infant bond. Nursing should not be viewed as shameful and it should not in any way be prohibited, conversely it should be a welcome act that is normalized and even celebrated. You can help empower new mothers by passing HB1105. Thank you for your time.

My name is Karen Oxendahl from Williston, North Dakota. I am the mother of five adult children and seven grandchildren, with number eight due in two months.

Having breastfed all of our children, I strongly support a mother's right to do so in a public place without fear of being told to cease and/or leave the premises.

I would like to offer my support to update the language of HB 1105 regarding breastfeeding in public and am not opposed to imposing a fine on an establishment if they ask a woman to cease breastfeeding while on their premises. Eating is, without question, a natural function for babies and they should be allowed to do so whenever they get hungry, whether they are bottle-fed or breastfed.

Having breastfed our children during a time when it was not so acceptable, I am pleased that my daughters-in-law have been blessed with the freedom that was not readily granted to me.

Thank you for taking the time to listen to my position in support of HB 1105.

Good morning,

My name is Amber Flynn and I am a resident in Grand Forks, ND. I write to you today in support of bill HB 1104. I am a mother of three children, Emma age 7, Eleanor age 5, and Joseph who is 12 weeks old. I have nursed all three of my children for various lengths of time. With all three of my children, I have attempted to be as discrete as possible, nursing in my vehicle instead of in a restaurant or store, attempting to find a private place, nursing in a bathroom stall or changing room, wearing clothing that wouldn't show much while I nursed, etc. However, sometimes, my child's schedule or fussiness did not allow for finding a more private setting or my outfit choice that day may have prevented me from being less discrete. Depending on the individual, it also may be hard to use a nursing cover. If you are sitting in a chair without armrest and you have to prop up your child, while covering them and ensuring proper placement of the breast to feed, a cover can be very uncomfortable and irritable for a baby and the mother.

I chose to breastfeed all three of my children because it was right for us. The milk is always the right temperature. It is sterile. It is natural. It has antibodies to keep my children healthy. There are many benefits of breastfeeding. At the end of the day, nursing one of my children keeps them healthy and alive and does no harm to any other person. It is natural.

What do you think happened in history long ago? No one worried about who was watching them or covering up. Nursing a child is a natural, non-sexual, act. If individuals have a problem with seeing a breast in public or are uncomfortable while a mother is nursing, that is more on them than it is the nursing mom and her child.

I urge you to protect the rights of mothers who choose and who are able to nurse their children in public. Trust me, we try to be as discrete as we can. But sometimes it's harder than others. Why should a mom feel shamed for protecting and feeding her child in public? And, why should a business get away with shaming or not allowing a mom to feed a hungry child? They shouldn't.

Thank you for your time.

~Amber Flynn

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1105
2/15/2021

Relating to sentencing violent offenders; and to provide for retroactive application.

Chairman Klemin called the meeting to order at 5:22PM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Buffalo

Discussion Topic:

- Amendment

Chairman Klemin: Proposed amendment 21.0228.01003 Testimony #6691

Rep. Roers Jones: Motion to adopt amendment LC 21.0288.01003

Rep. K. Hanson: Seconded

Voice vote carried

Rep. Roers Jones: Motion to do pass as amended

Rep. Satrom: Seconded

Roll Call Vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Rick Becker	N
Representative Ruth Buffalo	AB
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	N
Representative Jeffery J. Magrum	N
Representative Bob Paulson	N
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	N

5-8-1 Failed

Rep. T. Jones: Moved to adopt amendment to change individual to woman.

Rep. Roers Jones: Seconded

Voice vote carried

Rep. Satrom: Do Pass as amended with 21.0228.01004

Rep. T. Jones: Seconded

Roll Call Vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	N
Representative Ruth Buffalo	AB
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

Motion carried 10-3-1 Carrier: Rep. Roers Jones

Stopped at 5:46 PM

Delores Shimek, Committee Clerk
Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 2, line 3, remove the overstrike over "~~The act of a woman~~"

Page 2, line 3, remove the overstrike over "~~breastfeeding her child is not a violation of this section.~~"

Page 2, line 4, remove the overstrike over "5."

Page 2, line 9, remove "- **Penalty**"

Page 2, line 12, remove "Any person that prohibits or attempts to prohibit an individual from"

Page 2, remove line 13

Renumber accordingly

February 15, 2021

DR 2/15/21
1041

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 2, line 9, remove "**Penalty**"

Page 2, line 10, after the second "a" insert "A"

Page 2, line 10, remove the overstrike over "woman"

Page 2, line 10, remove "An individual"

Page 2, line 11, remove the overstrike over "~~where the woman~~"

Page 2, line 11, remove "the individual"

Page 2, line 12, remove "Any person that prohibits or attempts to prohibit an individual from"

Page 2, remove line 13

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1105: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1105 was placed on the Sixth order on the calendar.

Page 2, line 9, remove "**Penalty**"

Page 2, line 10, after the second "a" insert "A"

Page 2, line 10, remove the overstrike over "~~woman~~"

Page 2, line 10, remove "An individual"

Page 2, line 11, remove the overstrike over "~~where the woman~~"

Page 2, line 11, remove "the individual"

Page 2, line 12, remove "Any person that prohibits or attempts to prohibit an individual from"

Page 2, remove line 13

Renumber accordingly

21.0228.01003
Title.

Prepared by the Legislative Council staff for
Representative Klemin
January 14, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 2, line 3, remove the overstrike over "~~The act of a woman~~"

Page 2, line 3, remove the overstrike over "~~breastfeeding her child is not a violation of this section.~~"

Page 2, line 4, remove the overstrike over "5."

Page 2, line 9, remove "**- Penalty**"

Page 2, line 12, remove "Any person that prohibits or attempts to prohibit an individual from"

Page 2, remove line 13

Renumber accordingly

HOUSE BILL NO. 1105

Introduced by

Representatives Dobervich, P. Anderson, Buffalo, Hanson, Pyle

Senators Bakke, Heckaman, Hogan, Mathern, Oban

1 A BILL for an Act to amend and reenact sections 12.1-20-12.1 and 23-12-16 of the North
2 Dakota Century Code, relating to breastfeeding; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 12.1-20-12.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-20-12.1. Indecent exposure.**

- 7 1. ~~A person~~An individual, with intent to arouse, appeal to, or gratify that
8 ~~person's~~individual's lust, passions, or sexual desires, is guilty of a class A
9 misdemeanor if that ~~person~~individual:
- 10 a. Masturbates in a public place or in the presence of a minor;
11 b. Exposes ~~one's~~the individual's penis, vulva, or anus in a public place or to a minor
12 in a public or private place;
13 c. Exposes ~~one's~~the individual's penis, vulva, or anus by unsolicited electronic
14 means; or
15 d. Exposes ~~one's~~the individual's penis, vulva, or anus by any electronic means to a
16 minor.
- 17 2. ~~A person~~An individual is guilty of a class C felony if the ~~person~~individual violates
18 subsection 1 after a previous conviction for violating subsection 1, after a previous
19 conviction for violating section 12.1-20-12.2, or after being required to register under
20 section 12.1-32-15.
- 21 3. ~~A person~~An individual who commits a violation of subdivision a or b of subsection 1
22 within fifty feet [15.24 meters] of or on the real property comprising a public or
23 nonpublic elementary, middle, or high school is guilty of a class C felony. ~~A person~~An
24 individual who commits a violation of subsection 2 within fifty feet [15.24 meters] of or

1 on the real property comprising a public or nonpublic elementary, middle, or high
2 school is guilty of a class B felony.

3 4. The act of a woman ~~discreetly~~ breastfeeding her child is not a violation of this section.

4 5. As used in this section, "electronic means" includes images and pictures transmitted
5 via electronic mail, electronic messaging, or from an electronic communications
6 device.

7 **SECTION 2. AMENDMENT.** Section 23-12-16 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **23-12-16. Right to breastfeed—~~Penalty.~~**

10 ~~If the woman acts in a discreet and modest manner, a woman~~An individual may breastfeed
11 her child in any location, public or private, ~~where the woman~~the individual and child are
12 otherwise authorized to be. ~~Any person that prohibits or attempts to prohibit an individual from~~
13 ~~breastfeeding her child, as authorized under this section, is guilty of an infraction.~~

MEMORANDUM

TO: Chairman Lawrence Klemin (Judiciary Committee)
FROM: Katie Winbauer, Legislative Council Intern
RE: HB 1105
DATE: January 18, 2021

Chairman Klemin, you asked me to research the “Void for Vagueness” doctrine, North Dakota authority interpreting the words “discreet” and “modest,” and consequences of multiple infractions against individuals and entities encompassed by the word “person.” You also asked me research penalties under chapter 23-12, which pertains to Section 2 of HB 1105.

1. Void for Vagueness

In accordance with the Due Process clause of the Fourteenth Amendment, laws that fail to establish standards for police and public citizens to follow may be considered “vague” and unconstitutional.¹

All laws must meet two requirements to survive a void-for-vagueness challenge: (1) the law must create minimum guidelines for the reasonable police officer, judge, or jury charged with enforcement of the statute; and (2) the law must provide a reasonable person with adequate and fair warning of the proscribed conduct.²

When analyzing whether the law gives adequate and fair warning, courts view the law “from the standpoint of the reasonable person who might be subject to its terms.” The important tenant of the Void for Vagueness doctrine is that the “legislature establish minimal guidelines to govern law enforcement.”³ In the criminal law context, the standard of certainty required is more stringent.⁴ “This is simply because it would be unthinkable to convict [an individual] for violating a law he [or she] could not understand.”⁵ Notably, vagueness challenges can be cured by definition contained in other statutes or clear definitions in the dictionary.⁶

2. Discreet and Modest

I could not find any North Dakota authority interpreting the words “discreet” or “modest.” Nor could I find any statutory law in other states defining the words “discreet” or “modest.” The word “discreet” has been used in some North Dakota Supreme Court opinions, most of them from the early 1900s.⁷ “Modest” is used more frequently in North Dakota Supreme Court opinions, but it is most often used in reference to money or assets.⁸

¹ See *City of Belfield v. Kilkenny*, 2007 ND 44, ¶¶ 7-9, 729 N.W.2d 120, 123-24.

² *Id.* at ¶ 10 (citing *Kolander v. Lawson*, 461 U.S. 652, 357 (1983)).

³ *Id.* at ¶ 11 (citing *Kolander*, 461 U.S. at 358).

⁴ *Id.*

⁵ *Id.* (quoting *Barenblatt v. U.S.*, 360 U.S. 109, 137 (1959)).

⁶ See *id.* at ¶ 19.

⁷ See *State v. Weber*, 191 N.W. 610, 612 (N.D. 1922) (“He must exercise a wholesome and **discreet** supervision over the jury in this respect.”); see also *De Roche v. De Roche*, 94 N.W. 767, 769 (N.D. 1903) (quoting a New York case which said “If the wife had been perfectly **discreet**, provident, and submissive to her husband, I should have allowed her half this property.”)

⁸ See *Donlin v. Donlin*, 2007 ND 5, ¶ 16, 725 N.W.2d 905, 909 (“[B]oth Daniel Donlin and June Donlin have a **modest** standard of living, which would remain **modest** for a period of time after divorce[.]”); see also *Knudson v. Knudson*, 2018

MEMORANDUM

Black's Law Dictionary,⁹ which is commonly referred to by courts, defines "discreet" as "wise in avoiding potential errors or in choosing the best, most creditable means for accomplishing an end, esp. when confidentiality is required; prudent; judicious; discerning." Black's does not define "modest," but the definition according to Merriam-Webster is "(3) observing the proprieties of dress and behavior: decent."¹⁰

3. Multiple Infractions Against a "Person"

House Bill 1105 (page 2, lines 12-13) provides that a "person" who prohibits someone from breastfeeding a child is guilty of an infraction. The word "person" includes "an individual, organization, government, political subdivision, or government agency or instrumentality."¹¹ An "individual" is a human being.¹²

A person convicted of an infraction is subject to a maximum fine of \$1,000.¹³ If a person who is convicted of an infraction has been previously convicted two times or more for the same offense within one year, then the infraction can be punishable as a class B misdemeanor.¹⁴ A class B misdemeanor carries a maximum punishment of thirty days' imprisonment and/or a fine of \$1,500.¹⁵ Penalties for organizations, which includes business entities, are different.¹⁶ Organizations are subject to a maximum fine of \$20,000 for a class B misdemeanor.¹⁷ Thus, if a business is convicted of three of the same infractions in one year, it could be punishable as a class B misdemeanor, which would subject the business to a \$20,000 fine.

4. Penalty in Chapter 23-12-16

Section 2 of HB 1105 pertains to § 23-12-16 of the century code, which is a public health chapter. Currently, "If the woman acts in a discreet and modest manner, a woman may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be."¹⁸ Although there is no penalty included in section 16, N.D.C.C. § 23-12-07 provides "Any person who willfully violates any provision of this title, if another penalty is not specifically provided for such violation, is guilty of an infraction." Therefore, there currently is a criminal penalty, an infraction, attached to the breastfeeding law.

ND 199, ¶ 14, 916 N.W.2d 793, 797 ("[T]hey resided in a **modest** farmhouse on the Knudson family farmstead, and they maintained a **modest** lifestyle during the marriage.")

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¹² N.D.C.C. § 1-01-49(3).

¹³ N.D.C.C. § 12.1-32-01(7).

¹⁴ *Id.*

¹⁵ N.D.C.C. § 12.1-32-01(6).

¹⁶ *See* N.D.C.C. § 12.1-32-01.1.

¹⁷ N.D.C.C. § 12.1-32-01.1(5).

¹⁸ N.D.C.C. § 23-12-16.

MEMORANDUM

5. Conclusion

In closing, it is possible the words “discreet” and “modest” as used in the current breastfeeding law could be viewed as vague and unconstitutional since there are no definitions contained in statute and a reasonable person may not feel she has adequate warning. Regarding the infraction, if a person or business is convicted for prohibiting breastfeeding multiple times, they may be subject to punishment as if the crime were classified as a class B misdemeanor. Finally, Chapter 23-12 of the century code provides an infraction for violation of the current breastfeeding law, codified at § 23-12-16.

2021 SENATE HUMAN SERVICES

HB 1105

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1105
3/16/2021

A BILL for an Act to amend and reenact sections 12.1-20-12.1 and 23-12-16 of the North Dakota Century Code, relating to breastfeeding; and to provide a penalty.

Madam Chair Lee opened the hearing on HB 1105 at 10:00 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Business policies
- Public breast feeding perception
- ND breast feeding tickets/911 response

[10:00] Representative Gretchen Dobervich, District 11. Introduced HB 1105 and provided testimony #9433 in favor.

[10:09] Kristie Wolff, Executive Director, ND Women's Network. Provided testimony #9508 in favor.

[10:16] Elise Erbele, Certified Lactation Consultant. Provided oral testimony in favor.

[10:27] Karen Ehrens, Licensed Registered Dietician. Provided testimony #9419 in favor.

Additional written testimony: (2)

Lara Jones, West Fargo Resident. Written testimony #9325 in favor.

Kristin Rubbelke, Executive Director, National Association of Social Workers. Written testimony #9406 in favor.

Madam Chair Lee closed the hearing on HB 1105 at 10:30 a.m.

Justin Velez, Committee Clerk

HB 1105 Amendment to 12.1-20-12.1 and 23-12-16 Related to Breastfeeding
Testimony from Representative Gretchen Dobervich
March 16, 2021

Good Morning Chairwoman Lee and Members of the Senate Human Services Committee,

For the record my name is Representative Gretchen Dobervich, I represent District 11 in Fargo. I come before you to request your support of the removal of subjective language relating to the way a woman may breast feed her child in a public setting.

Discreet and modest are subjective adjectives. They reflect an individual's feelings verses fact; they are a personal judgement. Utilization of subjective adjectives to describe the way in which a woman may publicly breastfeed her child does not clearly define how she must do this, therefore leaving her open to failure to comply to the law based on another individual's feelings.

In a January 18, 2021 memorandum from Legislative Council to House Judiciary Chairman Lawrence Klemin it was determined that under the "Void of Vagueness" doctrine the use of "discreet" and "modest" used in current breast feeding law are *"vague and unconstitutional since there are no definitions contained in statute and a reasonable person may not feel she has adequate warning."*

I respectfully request the House Judiciary Committee support the amendments to HB 1105 made by the House Judiciary Committee which strikes the unconstitutional, subjective adjectives so the law simply reads "An individual may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be." This will allow babies to be fed when hungry without mothers unintentionally breaking the law. At its core, this bill is about removing barriers to babies eating.

Thank you for the opportunity to come before you today and for your consideration of HB 1104. Ms. Chairwoman and Members of the Committee I stand for questions.

MEMORANDUM

TO: Chairman Lawrence Klemin (Judiciary Committee)
FROM: Katie Winbauer, Legislative Council Intern
RE: HB 1105
DATE: January 18, 2021

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MEMORANDUM

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March 16, 2021

Kristie Wolff – Executive Director, North Dakota Women's Network

Support HB 1105

North Dakota Senate Human Services Committee

Chair Lee and members of the Senate Human Services Committee, my name is Kristie Wolff, I am the Executive Director of the North Dakota Women's Network.

North Dakota Women's Network is a statewide organization with members and advocates from every corner of the state. Based on our mission to improve the lives of women, I am testifying in support of HB 1105.

I believe we can all agree on the clear benefits of breastfeeding for both mom and baby, so I'm going to take a more personal approach to my testimony.

I was shamed for breastfeeding my children. My children's father said he was ok with me breastfeeding during my pregnancy, but I soon found out he was ok with it, as long he did not have to see it, or others did not see it. To him being discreet about breastfeeding meant being out of sight. Examples:

- Shortly after giving birth to my first son I was told I could not breastfeed at the table during meals.
- I was reprimanded for breastfeeding in the car in the mall parking lot.

My intention was to breastfeed my boys for six months each, however because of lack of support, breastfeeding became stressful. I lost my milk at 5 weeks with my first son and six weeks with my second son. I felt like I had failed my boys.

So how does this bill tie into my story when it was happening in my home? My personal experience has helped me understand that there are individuals who think being discreet about breastfeeding means being out of sight. Sharing my personal story has also opened the door to others sharing their story with me, some who have experienced public shaming. HB 1105 sends a clear message, breastfeeding is not indecent. This helps change the conversation. It is a piece of the puzzle that will help eliminate stigma and shaming and empower women be successful at breastfeeding.

I want touch on one last point. I took the time to reach out to local law enforcement on the language in the current law and the proposed language in HB 1105. I spoke with someone in a

supervisory role at each location. I want to clarify that I did not ask anyone to take a stance on the bill and no one did take a stance on the bill. The individuals I spoke with did not see the full bill, our conversations were based on me reading section 23-12-16 Right to breastfeed to them followed by me asking what enforcement would look like for an officer. There was a common theme, subjective language makes an officer's job harder. Having clear language prevents the officer from also trying to interpret the language. Clear language also creates consistency, as each officer may interpret subjective language differently.

The current breastfeeding language in ND Century Code is subjective, the language in HB 1105 is very clear, breastfeeding is not indecent exposure.

So, today I am asking you to give a DO PASS recommendation to HB 1105, and send a clear message that North Dakota supports breastfeeding.

Thank you,
Kristie Wolff
kristie@ndwomen.org
701-712-9600

Karen K. Ehrens, RD, LRD
Testimony HB 1105
March 16, 2021

Chair Lee and Members of the Human Services Committee:

Good day. I am Karen Ehrens, a mother, a Licensed, Registered Dietitian, member of the North Dakota Public Health Association, and a person who works to reduce hunger in our state and our communities.

Breastfeeding benefits infants in numerous ways. In addition to providing optimal nutrition, breastfeeding decreases the risk of childhood obesity and diabetes; guarantees safe, fresh milk; enhances the immune system; protects against infectious and non-infectious diseases; protects against asthma, allergies and intolerances; decreases risk of diarrhea and respiratory infections; increases cognitive function, reduces risk for heart disease, and increases bonding with mother.^{1, 2}

Breastfeeding benefits mothers' health by decreasing the risk of breast, ovarian, endometrial and thyroid cancers; decreasing the risk of developing Type 2 diabetes and improving blood sugar level in women who develop gestational diabetes; improving bone density and decreasing risk for hip fracture; and strengthening the bond with the baby. Breastfeeding eliminates the need for preparing and mixing formula and saves money by not spending it on formula.^{1, 2} Breast milk is the first food; it is available in times of emergency.

Breastfeeding benefits businesses and provides a return on investment. Employees who are breastfeeding their children miss work less often, with up to two times fewer maternal absences to care for children. Breastfeeding lowers health care and health insurance costs and reduces sick time taken by both mothers and fathers for their children's illnesses. Breastfeeding helps to retain experienced employees.³

It's time to update this legislation. The idea for this bill was first launched in 2003, when my daughter was 5 years old. My family asks that you support this legislation to send a message to the young families we are trying to keep in the state and the young professionals we are trying to attract to the state. Thank you for the opportunity to speak and for your attention.

Breastfeeding is **not** indecent; keeping food from people **IS** indecent.

References:

1. Position of the Academy of Nutrition and Dietetics: *Promoting and Supporting Breastfeeding*, Journal of the Academy of Nutrition and Dietetics, 2015 (J Acad Nutr Diet. 2015;115:444-449).
2. *Benefits of Breastfeeding*, American Academy of Pediatrics, updated 3/2021, accessed at: <https://services.aap.org/en/patient-care/breastfeeding/breastfeeding-overview/>
3. *The Business Case for Breastfeeding*, U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau, 2008. <https://www.womenshealth.gov/files/assets/docs/breastfeeding/business-case/business-case-for-breastfeeding-for-business-managers.pdf>

My name is Lara Jones and I am a mother of two young children living in West Fargo. I am writing in support of HB1105, regarding breastfeeding in public. I strongly ask that you consider changing the wording of current breastfeeding laws in North Dakota.

Current wording of the law allows women to breastfeed in public if it is in a "discreet and modest manner". This wording is ambiguous and open to a VERY wide variety of interpretation. No other state includes such ambiguous language in their breastfeeding laws. Let me share with you my story, and how this phrasing could be problematic for mothers trying to provide nutrition to their babies.

When my first child was born, we were living in a rural area. The drive to the clinic for well child visits took an hour, so by the time we arrived in the waiting room, I had a hungry newborn. It takes time for new moms and new babies to figure out an easy and comfortable breastfeeding relationship, and we were no exception. I tried to feed my screaming baby in the waiting room with a cover over us, but he was struggling to latch and fighting the blanket placed over his head. We struggled for a while, and finally, I gave up, and decided to try again later. We got called into our appointment, and soon after, he fell asleep, greatly delaying his feeding session.

When we arrived home after what was a very long trip for a newly postpartum mom and newborn, I began experiencing symptoms: exhaustion, fever, and chills. It felt like a terrible case of influenza. Mastitis was setting in because I had delayed the feeding of my newborn son for the sake of "modesty". It took many days for me to recover. My husband, with directives from our healthcare provider, diligently nursed me back to health and took over the infant care that I could not manage to do during my illness. I vowed that very day that I would never let someone else's interpretation of "modesty" stand in the way of meeting my family's basic needs for health and nutrition.

We do not choose when or where our infants become hungry. No mother should have to wonder if she should meet her infant's basic needs based on someone else's interpretation of modesty. Please support mothers as they work hard to provide the best possible nutrition for their children when and where they need it.

I will be eagerly watching the progress of this bill. I truly appreciate your time!

Sincerely,
Lara Jones

Chairperson Lee and Members of the Senate Human Services Committee,

My name is Kristin Rubbelke, and I am Executive Director of the National Association of Social Workers, North Dakota Chapter (NASW-ND). On behalf of NASW-ND, we ask that you support HB 1105 so that women can feed their children in public without fear of retribution.


Breastfeeding and giving nourishment to a child is something that we should encourage mothers to do. This bill takes out broad language that could confuse and dissuade mothers from going out in public with their babies or feeding their babies when their children need it.

Women have been disadvantaged due to rules and laws, like in the underlying language, that puts broad restrictions and unnecessary, cumbersome burdens on mothers. Women should not feel restricted by motherhood. They should feel welcomed and supported. That is what this language does.

Referencing the NASW Code of Ethics, "Social workers seek to enhance clients' capacity and opportunity to change and to address their own needs." This includes individuals' need to breastfeed and provide nourishment for their children without worry of discrimination and judgment publicly or privately.

On behalf of NASW-ND, I thank you for your consideration and ask that you support HB 1105.

Sincerely,



Kristin Rubbelke
Executive Director
NASW-ND

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

HB 1105
3/17/2021

A BILL for an Act to amend and reenact sections 12.1-20-12.1 and 23-12-16 of the North Dakota Century Code, relating to breastfeeding; and to provide a penalty.
--

Madam Chair Lee opened the discussion on HB 1105 at 3:26 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Private businesses
- Federal statute
- Vague wording

Senator K. Roers moves **DO PASS**.

Senator Hogan seconded.

Senator Lee tabled the vote on HB 1105 pending additional discussion.

Additional written testimony: N/A

Madam Chair Lee closed the hearing on HB 1105 at 3:36 p.m.

Justin Velez, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1105
3/22/2021

A BILL for an Act to amend and reenact sections 12.1-20-12.1 and 23-12-16 of the North Dakota Century Code, relating to breastfeeding; and to provide a penalty.

Madam Chair Lee opened the discussion on HB 1105 at 3:05 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Discreet and modest language
- Enforcement consistency

Senator K. Roers moves to TAKE THE MOTION OFF THE TABLE.

Senator Hogan seconded.

Voice Vote – Motion Passed

[3:11] Kristie Wolff, Executive Director, ND Women’s Network. Provided clarification to the committee on discretion.

[3:15] Senator Oley Larsen, District 3. Provided the committee with an overview of Chief of Police John Klug, City of Minot’s position on HB 1105 (testimony #10494).

Senator K. Roers moves **DO PASS**.

Senator Hogan seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 6-0-0

Senator K. Roers will carry HB 1105.

Additional written testimony: N/A

Madam Chair Lee closed the discussion on HB 1105 at 3:19 p.m.

Justin Velez, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1105, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1105 was placed on the Fourteenth order on the calendar.

Committee Members,

I was asked to take a look at HB 1105 and consider the wording of the bill and how it would impact law enforcement's ability to enforce any violations pertaining to 23-12-16, Right to Breastfeed.

After reviewing the First Engrossment, I believe that it is best to leave it as written in that version of the bill. Adding language about "discreet and modest manner" leaves a lot for interpretation. I have 82 sworn officers that work for me and I expect all would have a different idea of what that language would mean. I can't recall the Minot Police Department receiving any calls about a woman breastfeeding her child in recent years. I think this is generally an accepted function of life, which doesn't even receive a second glance by most in public.

I am open to any questions or concerns you may have for me regarding this bill. I don't have a strong stance on the bill overall, but I think it should be as written in the First Engrossment.

Thank you for your time and attention.

Chief John Klug

City of Minot, Police Department

Office Phone: 701-857-9800