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Deanna Ballin
Operator's Signature

10/22/03

Date

2003 SENATE JUDICIARY

SB 2328

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2328

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/04/03

Tape Number	Side A	Side B	Meter #
1	X		5.8 - 30.4
Committee Clerk Signature <i>Maia L Solberg</i>			

Minutes: Senator Stanley W. Lyson, Vice Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of SB 2328

Sen. Dever - Introduced the Bill. (meter 5.9) Handed out and discussed amendment -

Attachment #1

Bonnie Palecek - Behalf of ND Council on Abused Women's Services. (meter 7.3) Attachment

#2. Average time a victim stays, before leaving for good is seven (7)

John Olson - Behalf of ND State Attorneys office. (meter 19.2) Spoke of support of bill and reaffirmed Bonnie Palecek's position on victims being manipulated.

Testimony in opposition of SB 2328 None

Testimony Neutral to SB 2328 None

Senator Stanley W. Lyson, Vice Chairman closed the hearing

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10/22/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2328

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/12/03

Tape Number	Side A	Side B	Meter #
1	X		22 - 25.9
Committee Clerk Signature <i>Mimi L. Salberg</i>			

Minutes: Senator Stanley W. Lyson, Vice Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Lyson requested meeting starts with committee work on the bill: Discussion on Amendment (meter 22.5) Sen. Dever reviewed what was discussed at the committee hearing for those not in attendance that day (meter 23).

Motion Made to DO PASS Amendment on SB 2328 by Senator Carolyn Nelson and seconded by Senator Dick Dever.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Motion Made to DO PASS SB 2328 as amended by Senator Dick Dever and seconded by Senator Dennis Bercler.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Dever - Senator Stanley Lyson, Vice Chairman closed the hearing

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Dennis Bercler
Operator's Signature

10/22/03

Date

30723.0101
Title.0200

Adopted by the Judiciary Committee
February 12, 2003

JB
2-12-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2328

Page 1, line 15, replace "sexual assault as provided in" with "is a violation of"

Page 1, line 16, replace "12.1-20-10.1. or 12.1-20-10.2" with "12.1-20-12.1. or 12.1-20-12.2"

Renumber accordingly

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Deanna Walker
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10/22/03
Date

Date: February 12, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2328

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30723.0101

Action Taken Amendment

Motion Made By Senator Carolyn Nelson Seconded By Senator Dick Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	A	A	Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE

Floor Assignment _____

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

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Dennis Bercier
Operator's Signature

10/22/03
Date

Date: February 12, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2328

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30723.0101

Action Taken DO PASS as Amended

Motion Made By Sen. Dever Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	A	A	Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE

Floor Assignment Sen. Dever

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

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Dennis Bercier
Operator's Signature

10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 8:35 a.m.

Module No: SR-23-2520
Carrier: Dever
Insert LC: 30723.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2328: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2328 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "sexual assault as provided in" with "is a violation of"

Page 1, line 16, replace "12.1-20-10.1. or 12.1-20-10.2" with "12.1-20-12.1. or 12.1-20-12.2"

Renumber accordingly

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Deanna M. Hall
Operator's Signature

10/22/03
Date

2003 HOUSE JUDICIARY

SB 2328

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Deanna Walker

Date

10/22/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2328

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-18-03

Tape Number	Side A	Side B	Meter #
1	xx		0-15
2	xx		19.3-21.1
Committee Clerk Signature <i>APenrose</i>			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on SB 2328.

Sen. Dick Dever: Introduced the bill, support (see attached testimony).

Chairman DeKrey: Thank you.

Rep. Lois Delmore: Introduced the bill.

Chairman DeKrey: Thank you. Further testimony in support.

Bonnie Palacek, ND Council on Abused Women's Services: Support (see attached testimony).

Rep. Wrangham: If I understand correctly, this legislation is to prevent someone from settling a dispute out of court and that person not being charged with the misdemeanor or has the person already been charged with the misdemeanor.

Ms. Palacek: The person would already have been charged, what this bill would do would make sure that the last sentence of the bill, on page 1, simply adds "and with the consent of the state",

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Operator's Signature

10/22/03

Date

Page 2
House Judiciary Committee
Bill/Resolution Number SB 2328
Hearing Date 3-18-03

it means that the prosecutor would be involved in the contract that may be drawn up, but there would already be, as I indicated, an arrest would have been made, the person would have been charged, the case would be moving forward, this would simply assure that the state's attorney would be involved in that process.

Rep. Wrangham: What about 29-01-19 on line 19, page 1, wouldn't that already, if the person had been charged, wouldn't that be a public defense at that point. I don't know if I'm asking the question right.

Ms. Palacek: My understanding as a non-lawyer, is that our current statute would allow that compromise to move forward. There are a couple of exceptions, as you can see above. If the offense is committed upon a judge or a peace officer, or if the offense was intended with an intent to commit a felony, those are already exceptions. We are adding another exception is what it amounts to in number 3; in an ongoing misdemeanor crime. In a felony, the prosecutor is always going to be involved. But with the misdemeanor, which is the largest bulk of the domestic violence assaults that are charged out under simple assault which are misdemeanors, that brings in that narrow category.

Rep. Grande: When I am looking at these particular sections that were put in on #3, line 14, I don't know why these ones were particularly put in, especially the 20-12.2. That's kind of a peeping tom one, and I don't know where that is sitting in this domestic violence part.

Ms. Palacek: The 12.2...

Rep. Grande: The 12.2, surreptitious intrusion; there's others that I would have liked to see listed and it would seem kind of odd that one is there vs. some of the others that were skipped over.

Page 3
House Judiciary Committee
Bill/Resolution Number SB 2328
Hearing Date 3-18-03

Ms. Palacek: Not knowing and not wanting to second guess which you would want to include, those that are included here would be all misdemeanors. Some of the more serious ones, if you are looking through, may not be included because if they are a felony, they are already included as being an exemption. I know that surreptitious intrusion was added as a crime in which the person being found guilty of that, has to register as a sex offender. We did consult with the Attorney General's office on the list and that's what they used.

Rep. Grande: I guess where I'm headed is that we're dealing with domestic violence and I think, this kind, I don't want to muddy up the bill, and I think that kind of muddies what we're trying to do; especially when you skipped over the 20-06, which is sexual abuse of a ward, and that's only listed as a class A misdemeanor, and you skipped over that one, why aren't we including that. We've missed some good ones, and we've got some that you kind of question as to why they are there.

Ms. Palacek: I don't see that we would have any objections to adding that, I know we were looking at personal violence crimes dealing with adults.

Rep. Grande: But this 5, is corruption of a minor and solicitation of a minor, so we've got minors in there again already, and so I don't think we're real clear on which ones we should have listed here.

Rep. Eckre: What is surreptitious behavior?

Rep. Kretschmar: Window peeping.

Rep. Grande: And that is listed as a class B felony; yet it's listed under here.

Rep. Kretschmar: It says that if an offense is committed by a judge.

Deanna Waller
Operator's Signature

10/22/03
Date

Page 4
House Judiciary Committee
Bill/Resolution Number SB 2328
Hearing Date 3-18-03

Rep. Delmore: If you go to the amended part in the back, the sexual abuse of a ward is a class B felony, so they've changed it. It has been upgraded and I assume that perhaps that is why the Attorney General's office put in here the misdemeanor crimes and left off the felonies, because the sexual abuse of a ward is a class B felony.

Rep. Grande: But, again we have corruption of a minor, the 05 is a class B felony and that's listed in here too, so is the surreptitious intrusion is listed as a class B felony also. I guess I would like it to be really clear; I just want us to be clear as to what we are trying to accomplish.

Rep. Delmore: First is a class A misdemeanor and the second is a class B felony, so I would assume they are covering the first part, an adult who engages in or solicits with the intent to engage in a sexual act with a minor is guilty of a class A misdemeanor if the victim is a minor, 15 years or younger. But one part of it is a misdemeanor, the other is a felony.

Rep. Grande: But we are still going back and forth between minor and adult, and still going back and forth between what is the domestic violence side vs. a peeping tom.

Ms. Palacek: I would be happy to speak with Bob Bennett again to clarify.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. I would ask that Rep. Grande and Rep. Delmore get together with Ms. Palacek and clear up these questions.

(Reopened later in the session).

Chairman DeKrey: What are the committee's wishes in regard to SB 2328.

Rep. Grande: I move a Do Pass.

Rep. Delmore: Seconded.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Grande

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Date: 3/18/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2328

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Motion Made By

Rep. Grande

Seconded By

Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment

Rep. Grande

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Deanna Hallen

Date

10/22/03

REPORT OF STANDING COMMITTEE (410)
March 19, 2003 7:59 a.m.

Module No: HR-49-5146
Carrier: Grande
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2328, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO
PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2328 was
placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-49-5146

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2003 TESTIMONY
SB 2328

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10/22/03
Date

BISMARCK
Abused Adult Resource Center
222-8378

BOTTINEAU
Family Crisis Center

LAKE
Safe Alternatives for
Abused Families
1-888-662-7378

DICKINSON
Domestic Violence and
Rape Crisis Center
225-4506

ELLENDALE
Kadish House
349-4729

FARGO
Rape and Abuse Crisis Center
800-344-7273

FORT BERTHOLD RESERVATION
Coalition Against
Domestic Violence
627-4171

GRAFTON
Tri-County Crisis
Intervention Center
352-4242

GRAND FORKS
Community Violence
Intervention Center
746-0405

JAMESTOWN
Shelter
7233

MC DONALD COUNTY
McLain Family
Resource Center
800-651-8643

MERCER COUNTY
Women's Action and
Resource Center
875-2274

MINOT
Domestic Violence Crisis
Center
852-2258

RANSOM COUNTY
Abuse Resource Network
683-5061

SPIRIT LAKE
Victim Assistance
766-1816

STANLEY
Domestic Violence Program,
NW, ND
628-3233

VALLEY CITY
Abused Persons Outreach
Center
845-0078

WAHPETON
Family Crisis Center

WYOMING
Family Crisis Shelter
572-0757

Chair John Traynor
Testimony on SB 2328
Senate Judiciary Committee
February 10, 2003

Same testimony given to House AH #1

Senator Traynor and Members of the Committee:

I am Bonnie Palecek speaking on behalf of the North Dakota Council on Abused Women's Services in support of SB 2328.

The impetus for SB 2328 came from several incidents in the South Central Judicial District in which a very old provision of the Century Code (actually enacted initially in territorial days in 1877) has been invoked (inappropriately we believe) to address family violence issues.

The current statute, as we understand it, allows any misdemeanor or infraction to be "compromised" (or settled) between the parties without going through a full court process.

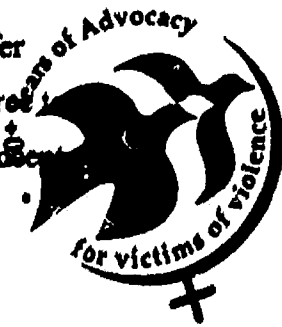
Of course, we all know that most court cases are settled before they go to trial and that, in fact, that appears to be an essential part of keeping our criminal justice system moving.

However, particularly in cases of domestic violence and sexual assault we see the kind of settlement provided for under 29-01-16 as problematic for the following reasons:

This is what is happening: A man assaults his partner. An arrest is made, and he is released on bond, probably with a no contact order or a protection order. Then, as is often the dynamic with domestic violence situations, one party initiates contact and wants to reconcile.

But remember, the legal process has already started. There has been an arrest, a prosecutor and a defense attorney have been engaged, and things are moving forward.

It is at this point that some attorneys are encouraging their clients to offer some kind of payment to the victim (\$25, gift certificates, etc.) if she/he will agree to settle. They have a contract drawn, sign it, and take it to a judge. If the judge agrees



North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
ndcaws@ndcaws.org • 418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-888-255-6240 • Fax 255-1904

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Date

it, the deal is done. The prosecutor is not involved in the transaction at all, even though the case was the state's case.

We would assert that this statute is one of those which perhaps had use a century ago but does not fit the system we have established over the last 25 years to deal with personal violence crimes.

As advocates, we have worked with the criminal justice system to develop an affirmative response to domestic violence, for example to require treatment, or enhanced penalties for violations of protection orders, and to establish a formal process for dropping orders. This statute defeats that purpose.

The current statute also raises an equal protection issue because it provides a way by which those who can afford to play can "buy off" their victims. We don't think this is right either.

The dynamics of intimate partner violence have always been problematic. Frankly, as an advocacy community we have struggled over the years with the sometimes conflicting needs of offender accountability and victim safety. And sometimes, truth be told, we disagree with prosecutorial decisions in this area.

One of the hardest aspects of domestic violence for most people to understand is why victims stay in dangerous situations and why when they do leave, they often return. An oft quoted statistic indicates the average number of times a victim leaves and returns is seven.

Those who have studied victimization explain this behavior as part of a learning behavior during which the victim tests out help seeking behavior and finds resources.

This behavior, we must remember, is in the context of the offender's power and control behavior through which he ironically keeps what he is abusing close to him. The offender becomes very skillful at manipulating victims and also the system by a combination of arbitrary give and take, fear and intimidation, and rewards and punishments. Every time the manipulations work, the offender is affirmed and empowered to continue the abusive behavior.

This particular statute seems to play into the dangerous dynamic of offenders' manipulation of the system and their victims, and the victims' desire to reconcile or at least return to a more familiar, and thus more predictable state, even as the violence escalates.

We ask your support of SB 2328 in an effort to bring this part of the Century Code into the 21st Century, and in the interest of victims of intimate partner violence throughout the state.

Thank You

Bonnie Palumbo

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*This was submitted
Subsequently.*

Committee Testimony
Senate Bill 2328
House Judiciary Committee
3/18/03
Senator Dick Dever

Mr. Chairman, members of the committee, for the record, I am Dick Dever, Senator from District 32, which includes most of south Bismarck, and the area sometimes referred to as the "Cathedral area".

We all know that domestic violence usually involves two people of unequal power. One generally "controls" the other.

When a person is charged with committing violence against another, the perpetrator hires an attorney and the State's Attorney represents the interests of the state and of the victim.

The defense attorney will then encourage the perpetrator to reconcile his differences with the victim in order to get the charge dismissed. Because the perpetrator has "control" over the victim, the victim often signs an agreement that may not be in their best interest. The agreement goes to the judge who has little choice but to ratify the agreement, and the case is settled.

This bill simply provides that the case can not be compromised except with the consent of the state. It allows the State's Attorney to represent the interests of both the state and the victim.

There are others here to speak to the bill that are in a far better position to answer any technical or procedural questions than I, but I would be happy to respond to any questions the committee might have.

Thank you and I urge a do pass recommendation for SB 2328.

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10/22/03

Date

CHAMBERS OF
BURT L. RISKEDAH
JUDGE
BISMARCK, NORTH DAKOTA

State of North Dakota
DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

BOX 1013
514 EAST THAYER AVENUE
BISMARCK, ND 58502
(701) 222-8882
FAX: (701) 222-8888

March 17, 2003

HONORABLE DUANE DEKREY
CHAIRMAN JUDICIARY COMMITTEE
NORTH DAKOTA HOUSE OF REPRESENTATIVES
600 EAST BOULEVARD AVENUE
BISMARCK ND 58505

Re: Senate Bill 2328

Dear Representative DeKrey and Members of House Judiciary Committee:

I am writing to you in support of SB 2328, which would amend existing N.D.C.C. § 29-01-16 to provide for a restriction upon the civil compromise provisions for certain misdemeanor criminal offenses.

I am pleased that Representative Delmore has joined in sponsoring this legislation which would address a problem which exists when the offense involves domestic violence.

The use of control and manipulation by offenders in domestic violence cases can make a victim vulnerable. Agreement to compromise a criminal offense in this context by a victim would be suspect and may represent a further "playing out" of the type of unhealthy pattern of behavior which frequently exists in domestic violence cases.

The effect of the change will be to enhance the ability of the State to make a determination, with the assistance of input from the appropriate resources, whether or not to pursue a prosecution in a criminal case which has involved domestic violence.

I strongly urge a Yes vote on the part of the Committee with regard to this proposed change in existing law.

Thank you for the opportunity to comment. I regret I was unable to appear personally at your hearing on this bill.

Sincerely yours,

Burt L. Riskedahl

Burt L. Riskedahl, District Judge
South Central Judicial District

cc: Andrew Maragos
LeRoy G. Bernstein
Randy Boehning
Pat Galvin
Bette B. Grande
Joyce Kingsbury
Lawrence R. Klemin
William E. Kretschmar
Dwight Wrengham
Lois Delmore
Bruce Eckre
Kenton Onstad

Deanne Hall
Operator's Signature

10/22/03

Date