

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1313

2005 HOUSE JUDICIARY

HB 1313

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1313

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/25/05

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-23.8
2	xx		6.7-8

Committee Clerk Signature



Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1313.

Representative Koppelman: I am one of the sponsors of HB 1057, HB 1061, and HB 1313, I support the bill (see written testimony).

Representative Delmore: I support these bills.

Representative Onstad: On HB 1057, you reference the Executive Director, is that of Corrections ...

Representative Koppelman: I believe that is correct.

Chairman DeKrey: I believe it is head of State Hospital.

Duane Houdek, AG's office: Support HB 1057, 1061 and 1313 (see written testimony).

Representative Kretschmar: Would it be retroactive, for someone in the community now.

Duane Houdek: Yes, it could apply to anyone that is assessed now as a risk and for whom the states attorney in the counties see as a risk.

Representative Kretschmar: Did the task force, at any time, discuss any aspect of trying to prevent someone who's not an offender from doing it the first time.

Duane Houdek: We talked about extensively about the treatment that is available, what we'd do with people who come in from other states who may have never been part of our corrections system. As you know the corrections in the criminal system is the key way we find people and it is the biggest gate through which these assessments are made. This law would permit us to do it in any instance, in which a states attorney feels it would be necessary to pursue civil commitment. It could be someone who has not had a crime.

Representative Kretschmar: Someone who has committed a crime and been convicted comes under this bill. Someone with no conviction, but just out there, could be as dangerous as a criminal.

Duane Houdek: If we have a way of finding, through whatever source, that there has been an act committed, then this assessment could be made and such a commitment could be done.

Representative Onstad: On this assessment test, on the scoring, is 8 the basis where they require monitoring at that point.

Duane Houdek: You are exactly right. Eight is a critical point in the scoring of this particular test. We had the opportunity to talk to the doctor who developed this MnSOST test, a Dr. Efferson, and he showed us that between 7 and 8, over a period of 3-6 years, that's the point at which it becomes more likely than not, that the person will commit another act. Eight is also the point at which under our registration laws, we deem it necessary to have community wide notification. It is the point at which you change from moderate risk to a higher risk, and so 8 is a critical point and that's why it was chosen.

Representative Delmore: How many people do you foresee being on the outpatient side of this. One of the reasons I was very happy to be on these bills was because of what happened in my community in Grand Forks. How can we make sure that we can reassure the public that with an outpatient type of program, rather than incarceration, that the community is safe. Will we be able to monitor them so that we know where they are.

Duane Houdek: Yes. Thank you for your participation in this process. Yes, we can offer that assurance. We have to keep in mind, that those individuals who are scoring between 8 and 13 now, are not subject, we have not been referring them for civil commitment. So if they have a probationary part of their sentence, we would have that supervision. But if they were coming in from another state, or if they would have completed their criminal sentence, now what we have is registration and public notification. This would be an added layer of safeguards, including the monitoring you're talking about; the supervision by trained case managers and the court order requiring them to stay out of certain areas of the city; to stay away from schools, stay away from places where another offense might occur. So, although it is hard to predict exactly how many will end up in that status, we'll know that only after we run the tests and have the people assessed for that risk. I think we can say with assurance that we have the wherewithal to supervise, monitor and treat all those who fit that description. The GPS monitoring you mentioned, the sex offender specialist that we have added already out in the field, give us the opportunity and the ability to monitor this population.

Representative Delmore: What have we done, either with this committee, or with the Governor's office, with our border states. I look at MN as having fallen down with some of the things they probably should have had in place. Whether that would make the end result different,

nobody knows. I'm just wondering if we are working with SD, MT and MN to also make sure they're up to snuff with where they should be.

Duane Houdek: I know the Governor has spoken with Governor Polenti about this issue. We have changed our practices so that if a person would be subject to referral in ND for civil commitment, we notify any state that the person goes to that that is the fact, and that they may want to petition for civil commitment in their state, if they have such a law. Not all states do. We also apply our civil commitment laws to anyone who works in our state, even though they may live in a border state. We apply these laws to anyone, where we constitutionally can, who has sufficient contact with ND. We are hoping that people will leave. We want to be known as the state that sex offenders don't want to have anything to do with. We want to be known as the state where there are strict laws, where there is an ultimate level of protection.

Representative Koppelman: Are the other states reciprocating in that effort, are they also assessing people that come into their state in a like manner to which you are described.

Duane Houdek: I have seen more recently, that Gov. Polenti has convened a task force, similar to Gov. Hoeven and they are looking at those very same issues. I think Mr. Emmer would be able to tell you that we are getting a higher level of cooperation than we used to.

Representative Koppelman: We have to strike a balance between protecting freedom and liberties of people who have committed no offense of any kind and at the same time, dealing appropriately with those who have. Is it typical that sex offenders tend to violate on increasingly levels. Their first offense may not be as serious, but it kinds of ratchet up. We're dealing with folks that may be at risk, or a risk factor but have never offended, are they as likely to go out and do something as violent in their first act.

Duane Houdek: One thing I can see with certainty, is that your right about asking Dr. Etherington, instead of me.

Representative Delmore: There is evidence that the recidivism rate alone is very, very high with sexual predators, and that's one of the reasons they put this in there.

Chairman DeKrey: Thank you. Thank you for working with the Task Force. Further testimony in support of HB 1313.

Jonathan Byers, AG's office: I appear on behalf of the AG. He does send his apologies, he wanted to be here for this morning's committee hearings, but he is in an Industrial Commission meeting. I want to go on record in support of 1057 on behalf of the AG. I am going to provide more specific testimony as pertains to HB 1313 and Ken Sorenson, AG's office, will address some of the issues that are contained in HB 1061 (see written testimony). I do have some information for a question that Representative Koppelman raised, "Do sex offenders begin with more innocent type crimes and go on to more serious ones". We don't know or can't say that every sex offender that commits a hands-off offense, like window peeping or flashing, is going to commit a more serious one. But researchers did a study several years ago, indicating that when you take a look at the group of serious sexual offenders, 60% of those began with a hands off offense like window peeping or flashing.

Representative Onstad: Do all states give the same assessment tests in rating. If a sexual offender comes in from Kentucky to ND, does a number come with that person, if not, do we test that person.

Jonathan Byers, AG's office: There are a number of states that have adopted the MN Sex offender screening tool, which is the one we use. There are other states that use tools called the

Razar, Static 99, there are about three that are well recognized across the country. We developed some guidelines for sexual offenders that provides that if they already have a score that we can make sense of from another state, we'll adopt that; but if they haven't, then they are reassessed once they move to ND and we'll assign our own risk level too.

Chairman DeKrey: Thank you. Further support of HB 1313.

Warren Emmer, Director, Dept. Of Corrections And Rehab: Support (see written testimony). The way the system is set up now, is the sex offender will announce where they are going to live, and then law enforcement doesn't hear from them again. This requires that the individual would be checking in much more frequently. I think that's helpful. Rep. Delmore and Koppelman also spoke about sex offenders under correctional supervision crossing state lines.

The new interstate compact that came law of September 1, 2004 is a much more stringent interstate compact, than we had for example when that tragedy occurred in Grand Forks. I think that mechanism is going to be much more helpful. It's not perfect. Our sister state, MN, has come into compliance in ways we've never seen before. We have some influence on the national level, as I am the chair of the National Compliance Committee for the Interstate Compact. I think that we can do a better job and we will be doing a better job.

Representative Maragos: What is the composition of the Risk Management Treatment Team.

Warren Emmer: That's going to be the treatment clinicians, and the case manager. But it's all the people who are officially involved with that case, would be part of the Risk Management Team.

Dr. Etherington: It would be a trained clinician, a case manager, the sex offender specialist, and then all those others that are deemed appropriate; most often a family member, or multiple family members, community members, members of the church, it is really a community project.

Warren Emmer: We started that same system for the high risk parole applicants in Fargo, Bismarck, and soon to be Williston, called the re-entry project. It's very similar to what the doctor described.

Representative Meyer: Last fall there was a special on TV, they showed where the sex offender gave the police department a bogus address, and when they went there they weren't there. Which of these three bills would address that issue.

Warren Emmer: I think actually all three of them would to some extent. If in fact a person is on a community civil commitment, it would be the case manager or sex offender specialist. That may be an interchangeable term, depending on how things work out. That would be ensuring that the people are living where they should be. HB 1061, dealing with registration, is also part of it, because that's the part where law enforcement gets more actively involved. If we developed this kiosk system, that address will be established monthly. As a result of the Governor's Task Force, we are looking at these addresses, and they are physically going out and making it a point to check each of them; particularly the high risk people. On HB 1313, that's the sentencing bill, the mandatory piece that requires supervision on the back end, would also then kick in the work of the sex offender specialist and also working with the law enforcement community as well. Out of tragedy, sometimes a lot of good things can come. First of all, the Governor taking the initiative to put this group of people together in a task force was helpful, but it clearly also allowed my staff and other local law enforcement folks to work together in a way

we haven't ever done before. It was through those discussions in fact, that the kiosk system idea came into play.

Chairman DeKrey: Thank you. Further testimony in support of HB 1057.

Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator for the ND

Council on Abused Women's Services/Coalition against Sexual Assault in ND: We support all three bills, HB 1057, 1061 and 1313 (see written testimony).

Representative Koppelman: I certainly appreciate your amendments. Just to clarify, you do understand that the intent of the legislation is not to allow more sex offenders into the community, but rather to make sure that those who go back to the community, receive the kind of supervision that they need or that society thinks they need.

Jessica McSparron-Bien: Yes, we understand that.

Chairman DeKrey: Thank you. Further testimony in support of HB 1313.

Representative Koppelman: The amendments for HB 1313 came out of discussion with the Governor's office regarding the penalty for violating probation, which is less than a year. These new provisions that we are putting in law, if these bills are successful, have to do with supervising these offenders after they are released, or in some cases if they would not get a jail sentence, just probation it would apply. What happens if a offender violates probation.

Typically in law, they go back and serve the rest of their sentence. So if they've got 3 or 6 months left of probation and they re-offend, all we can do is put them in jail for the remainder of their sentence. So it wasn't much of a penalty. What we suggested here, is that violation of the parole, if less than a year, be a Class A misdemeanor, which I believe is a year in jail and a \$2,000 fine, or both. The reason for that is that 1) there would be some teeth in the law that if

they violate probation there are consequences; 2) we discussed if we should go to a felony status or stay at a misdemeanor, because if they decide to leave the state, they typically won't extradite for a felony. As we said that, maybe this goes with the DeKrey Doctrine, and let's let them leave ND and not worry about them coming back. This would put a penalty in place for a violation of probation.

Representative Meyer: With this amendment, would that be the answer to the question I asked earlier, if they give a fictitious address, that would be a violation of parole and then be a class A misdemeanor.

Representative Koppelman: If that's a provision of the parole, and they violate it, absolutely.

Duane Houdek: This amendment addresses an issue that we knew was out there when we concluded the task force, and I think it wisely adds a penalty for those cases in which a year or less is left of a suspended sentence and provides them a way to enforce it. We would support that.

Chairman DeKrey: Thank you. Further testimony in support of HB 1313.

Jonathan Byers, AG's Office: I wanted to address a question that Rep. Meyer's brought up a couple of times, regarding those offenders who give fictitious addresses. Right now, under current law, if they give a fictitious address, it's a class A misdemeanor for a first offense and a Class C felony for a second offense for violating the registration provisions, one of which is giving an appropriate address. There are significant penalties there. We have had offenders in the past who have committed a sexual offense in SD, and he committed another one in ND and I prosecuted him here, and he served his prison sentence. He got out and when he went to register,

he gave an address in Mandan, that was supposedly an apartment building and the local police, being a small enough town to know most of the addresses, started to think that they didn't think there was a building there. They went and took a look, and it was still just studs there. He had given a fictitious address and he went back to prison for that violation.

Chairman DeKrey: Thank you.

Warren Emmer: One of the things that the kiosk system can do, is actually overlay known addresses from the community to where the sex offender claims he's living. So the software is out there to check this. It will actually cross-check that for the system.

Representative Delmore: Realistically how soon can that type of technology be implemented and placed in our state. It has potential.

Warren Emmer: I think we could have it within a year. We're going to have to put our heads together and figure out how to fund it.

Chairman DeKrey: Thank you. Any testimony in opposition to HB 1313. We will close the hearing.

(Reopened in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1313.

Representative Koppelman: I move the Koppelman amendments.

Representative Maragos: Second.

Chairman DeKrey: Motion carried.

Representative Delmore: I move a Do Pass as amended.

Representative Meyer: Second.

14 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Delmore

FISCAL NOTE
Requested by Legislative Council
03/25/2005

Amendment to: Engrossed
HB 1313

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

It is the opinion of the DOCR that the Senate amendments to HB1313 would not affect this fiscal note. However, it is important to note that the DOCR currently does not maintain data in a such a manner that would readily allow for the analysis of sentencing information by victim age.

Effect on Prisons Division:

Inmates are sent to the DOCR under current statutes are seldom given the maximum available sentence. For calendar year 2003 DOCR admissions for GSI with force were sentenced to an average 6.5 years (a low of 3 years and a high of 12 years). Other GSI cases received a range from 6 months to 12 years with only one sentence of 20 years (maximum) to prison. The average was 4.6 years. Other crimes in this section were very limited and all received a sentence less than the maximum. It is not anticipated that there will be any incarceration impact until the 2009-11 biennium unless sentencing practices change.

Effect on Field Services Division:

Case loads for probation officers will be impacted significantly after the 2007-09 biennium. Specialized sex offender probation officers were hired in the second half of the 2003-05 biennium and it is anticipated those officers will be able to effectively manage sex offender probation cases during the fiscal note period. It will be necessary to evaluate the willingness of the courts to impose additional (discretionary) period of probation before a reasonable estimate can be made. However, it is the opinion of the DOCR that major effects will not be felt until after the 2007-09 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Dave Krabbenhoft
Phone Number: 328-6135

Agency: DOCR
Date Prepared: 03/28/2005

FISCAL NOTE
Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1313

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

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Inmates are sent to the DOCR under current statutes are seldom given the maximum available sentence. For calendar year 2003 DOCR admissions for GSI with force were sentenced to an average 6.5 years (a low of 3 years and a high of 12 years). Other GSI cases received a range from 6 months to 12 years with only one sentence of 20 years (maximum) to prison. The average was 4.6 years. Other crimes in this section were very limited and all received a sentence less than the maximum. It is not anticipated that there will be any incarceration impact until the 2009-11 biennium unless sentencing practices change.

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3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: dave krabbenhoft
Phone Number: 328-6135

Agency: docr
Date Prepared: 01/14/2005

VR
1/25/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1313 JUD 1-25-05

Page 3, line 6, after "conditions" insert "- Penalty"

Page 3, line 30, after the period insert "If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor."

Renumber accordingly

Date: 1/25/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1313

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Delmore* Seconded By *Rep. Meyer*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Representative Delmore	/	
Representative Maragos	/		Representative Meyer	/	
Representative Bernstein	/		Representative Onstad	/	
Representative Boehning	/		Representative Zaiser	/	
Representative Charging	/				
Representative Galvin	/				
Representative Kingsbury	/				
Representative Klemin	/				
Representative Koppelman	/				
Representative Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment *Rep. Delmore*

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

REPORT OF STANDING COMMITTEE

HB 1313: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1313 was placed on the Sixth order on the calendar.

Page 3, line 6, after "conditions" insert "- Penalty"

Page 3, line 30, after the period insert "If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor."

Renumber accordingly

2005 SENATE JUDICIARY

HB 1313

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1313

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1	X		2741 - 3080
		Y	0.6 - 800

Committee Clerk Signature

Maria L Solberg

Minutes: Relating to sentencing of sexual offenders; penalty.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Koppelman, District #13 - Introduced the Bill (meter .07) Att. #A

Duane Houdek - Legal Counsel for Governor Hoeven's office. Att. #1

Jonathan Byers - Attorney Generals office (meter 5440) Gave Testimony - Att. #2

Sen. Nelson asked the three month time frame? This address a specific crime that goes on for a long time

Sen. Trenbeath sited the class AA penalty where a class A felony was and how it would effect the rural areas that the "dating pool" is smaller. You have the eighteen year-old Senior and the Freshman girlfriend who is fourteen. He is guilty of a Class AA felony and they can not defer the impositioning of sentence on him under this bill. **Mr. Byers** responded that the language was

conflicting. On one hand you can suspend part of the sentence and on the other not. **Sen.**

Trenbeath responded that this is not where he has the issue it is the transferring of the A penalty to the AA penalty which is the most heinous level of crime you can have. This equates with the same penalty as if you had killed somebody. Do you see the equity there? Discussed existing language and prosecutors responsibility. **Sen. Trenbeath** sited that on this portion of the law we are relying on the wisdom of the judge and the ability to do a plea agreement. **Mr. Byers** responded, "and the discretion of the states attorney that decides what crime to term."

Mr. Warren Emmer, Director of Dept. of Corrections and Rehabilitation, (meter 5037) Gave Testimony - Att. #3

Jessica Mc. Sparron-Bien, Sexual Assault Program and Policy Coordinator of ND (meter 6012) Gave Testimony - Att. # 4.

David Boek, Protection and Advocacy Project. (meter 721) Sited his support in this legislation.

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1313

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
1	X		2400 - 2680

Committee Clerk Signature

Minutes: Relating to sentencing of sexual offenders; penalty.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

Senator Triplett discussed having an amendment made up for the discrepancy of High

Schoolers and dating. They will be getting the amendment to the committee.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1313

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		4147 - 5000

Committee Clerk Signature

Maria L. Halber

Minutes: Relating to sentencing of sexual offenders; penalty

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Jonathan Byers, Attorney Generals Office, submitted amendment "similarity in age provision" that the committee requested. The committee further debated the High School dating pool issue.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1313

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 16, 2005

Tape Number	Side A	Side B	Meter #
2	X		820 - 2250

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to sentencing of sexual offenders; penalty.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following work :

Jon Byers, Attorney Generals Office (meter 860) gave the committee an amendment to not make it a crime at all if the high school couple were with in a three year age difference as done in other states. This amendment - Att. #1 would be compatible to the amendment we already passed and current statute. This does not interfere if someone is with in these age groups but has used force in the commission of the offense or developmentally disabled or to intoxicated to be aware.

Sen. Nelson discussed with the committee of a parent getting involved after the fact to prosecute the boy the girl is dating.

Mr. Byers stated that most state attorneys do not get involve in the cases that are close in age or dating. Sometime upon pressure from the girls parents to enforce the law, they want the charges

filed. This will give the states attorney the option to quote the law to them. Discussion of this issue. **Mr. Byers** sited the why he put three years and why.

Sen. Trenbeath made the motion to Do Pass Mr. Byers amendment - Att. #1 and **Senator Triplett** seconded the motion. All members were in favor and the motion passes. **Senator Hacker** made the motion to change three years to four years **Senator Triplett** seconded the motion. After the committee discussion they decided to hold the motion.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1313

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1		x	5729 - end
2	x		0 - 2010

Committee Clerk Signature

Minutes:

Chairman Traynor opened the discussion on HB 1313.

Senator Traynor said Jonathon was down here and left some information.

Senator Trenbeath said there was apparently an article out the Virginia Journal of Social Policy and Law having to do with meaningful consent and a summary comparing Minnesota, North Dakota and Washington.

Senator Traynor said we have adopted an amendment. We asked Jonathan for a range of penalties.

Senator Trenbeath said he has not read the article but there are copies of the comparison for everyone.

Senator Nelson said there would be some advantage to being similar to Minnesota law because of the number of young people who live along the border. (meter 333, tape 2, side A)

Senator Traynor said Minnesota seems to use 13 years old.

Senator Hacker asked what grade that would be.

Senator Nelson said 8th grade.

Senator Trenbeath said the more he looks at it, the more he likes the amendments we have in front of us.

Senator Trenbeath said we have adopted AA if under 15 and the other party at least 20. Did we amend it to 4 years.

Senator Traynor said no, it was moved but we did not vote on it.

Senator Trenbeath said if he were to make a motion that encompassed the amendment that speaks in terms of non criminality, the three or four year spread, section 4, and would include section 3 and the 12.120.03.1, that is all on one sheet that divides the possibilities into C felonies, A felonies and AA felonies, is that all consistent.

Senator Traynor said he thought we already adopted those amendments.

Senator Nelson said we did 12.120 with the first section 3 that does not have an a,b,c. Do we need to reconsider the amendment.

Senator Trenbeath said we could adopt the section 4 and the second set of section 3 amendments and be consistent. The latter of the two sets has a section 3 a,b,c and that is the one he is speaking about.

Senator Traynor said he thinks the motion should be in lieu of.

Senator Trenbeath moved an amendment in lieu of the amendments previously adopted, to adopt the proposed amendment that defines a section 4, the proposed amendment that defines a section 3 a,b,c and the 12.120.03.1 sub 1 (attached)

Senator Nelson clarified it would leave 3 years on section 4.

Senator Trenbeath said yes.

Senator Triplett seconded the motion.

The motion passed on a voice vote.

Senator Nelson asked about the portion that says the court can not defer imposition of sentence, how does that work if they are going into treatment.

Senator Trenbeath said deferred imposition of sentence is a non sentence and that cannot be done in this case. If the judge wanted to be lenient he could impose supervised probation.

Senator Trenbeath moved a do pass as amended on HB 1313.

Senator Triplett seconded the motion.

Senator Hacker said he would feel better with 4 years.

Senator Trenbeath said he would not have a problem changing it to 4 years.

Senator Trenbeath withdrew his do pass motion.

Senator Triplett withdrew her second.

Senator Hacker moved an amendment to change 21.120.03.1, on third line from bottom from three years to four years as applies to class C felony.

Senator Hacker said the objective is to change from 3 years to 4 before it becomes a class C felony. It would need to be changed in section 4 and 3b also.

Senator Trenbeath seconded the motion.

Senator Triplett said this confuses her

Senator Trenbeath read over the amendments and said he thinks we are accomplishing what we mean to with the amendments.

Senator Hacker said it makes the pool smaller. Fewer people would be in the class C felony section.

Senator Trenbeath said the class AA section would remain the same.

Senator Syverson said he is uncomfortable, this is too broad a span. If a senior has relations with a freshman, do we want to open that up.

Senator Trenbeath said that is the question.

Senator Syverson said he is not inclined to accept this, he likes three years.

The motion passed on a roll call vote 5-1-0.

Senator Trenbeath moved a do pass as amended on HB 1313.

Senator Triplett seconded the motion.

The motion passed on a roll call vote 6-0-0.

Senator Hacker will carry the bill.

Date: *3/14/05*
Roll Call Vote #: *1*

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB *1313*

Senate **Judiciary**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amend. By Mr Byers*

Motion Made By Senator *Trenbeath* Seconded By Senator *Triplett*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 3/14/05
Roll Call Vote #: Z

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken No Pass As Amended

Language
Create a
Similarly
in Age
from.

Motion Made By Senator

Seconded By Senator

Senators
Sen. Traynor
Senator Syverson
Senator Hacker
Sen. Trenbeath

Yes No

Senators
Sen. Nelson
Senator Triplett

Yes No

Total (Yes)

6 No

0

Absent

0

Floor Assignment

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

Holding

Date: 3/16
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Move To Amend Att #1 Mr. Byers

Motion Made By Senator Trenbeath Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 3/16
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Move to change Amendment to 4yrs

Motion Made By Senator Hacker Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor			Sen. Nelson		
Senator Syverson			Senator Triplett		
Senator Hacker					
Sen. Trenbeath					

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Hold Motion

Date: 3/22/06
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *In lieu of all amendments previously adopted
adopt amendment below*

Motion Made By Senator *Trenbeath* Seconded By Senator *Triplett*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor			Sen. Nelson		
Senator Syverson			Senator Triplett		
Senator Hacker					
Sen. Trenbeath					

Total (Yes) 6 No 0

Absent *adopted by voice vote* 0

Floor Assignment

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

*Section 3 a bc. (attached.)
Continuous sexual abuse of a child (attached)
Section 4 - defines criminality*

Date: 3/22/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended

Motion Made By

Senator

Trenbeath

Seconded By

Senator

Triplett

Senators
Sen. Traynor
Senator Syverson
Senator Hacker
Sen. Trenbeath

Yes No

Senators
Sen. Nelson
Senator Triplett

Yes No

Withdrawn

Total (Yes)

6 No

0

Absent

0

Floor Assignment

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

Date: *3/22/05*
Roll Call Vote #: *3*

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB *1313*

Senate *Judiciary*

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Further amend*

Motion Made By Senator *Hacker* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	<i>✓</i>		Sen. Nelson	<i>✓</i>	
Senator Syverson		<i>✓</i>	Senator Triplett	<i>✓</i>	
Senator Hacker	<i>✓</i>				
Sen. Trenbeath	<i>✓</i>				

Total	(Yes)	<i>5</i>	6	No	<i>1</i>	0
Absent		<i>0</i>				0

Floor Assignment

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

*Change 3 years to 4 years in
3 places (attached)*

Date: 3/22/05
Roll Call Vote #: 4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1313

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended

Motion Made By

Senator

Trenbeath

Seconded By

Senator

Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 6 No 0 0

Absent 0 0

Floor Assignment

Sen. Hacker

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

REPORT OF STANDING COMMITTEE

HB 1313, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1313 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the age of a person engaging in sexual conduct with a minor;"

Page 1, after line 4, insert:

"SECTION 1. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, the actor is guilty of an offense only if the actor is at least four years older than the minor."

Page 1, line 7, after "Imposition" insert "- Penalty"

Page 2, line 4, after the period insert "a."

Page 2, line 5, overstrike "or" and insert immediately thereafter an underscored comma

Page 2, line 6, overstrike "or d", after "1" insert ", or if the actor's conduct violates subdivision d of subsection 1 and the actor was more than five years older than the victim at the time of the offense.

b. An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense", and after the period insert:

"c."

Page 2, line 14, overstrike "a class", remove "AA", and overstrike "felony" and insert immediately thereafter "an offense"

Page 2, line 16, after the period insert "The offense is a class AA felony if the actor was more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim at the time of the offense."

Renumber accordingly

2005 TESTIMONY

HB 1313



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary
Political Subdivisions
Constitutional Revision, Chairman

Representative Kim Koppelman
District 13
513 First Avenue NW
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kkoppelman@state.nd.us

Testimony on House Bills 1057, 1061, and 1313 before the House Judiciary Committee 1-25-05

Mr. Chairman and Members of the House Judiciary Committee, for the record, I am Rep. Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo.

In consideration of the committee's time, I appear before you this morning to introduce three bills: House Bills 1057, 1061 and 1313. As you'll note, the sponsorship of the bills is identical and includes our committee chairman.

These bills are the product of a task force convened by the Governor, which studied the problem violent sexual offenders and how best to deal with them, from the perspectives of treatment, incarceration and supervision. We are all too familiar with grizzly events, such as the Dru Sjodin case, to understand the need to pay attention to these offenders and our laws that deal with them.

The package of legislation before you seeks to do just that. While we have good laws on the books to deal with sex offenders now (we were one of the early states to implement civil commitment for sex offenders, for example) we need to do more.

We're proposing getting even tougher on violent sex offenders in sentencing. House Bill 1313 would impose a life sentence, without the possibility of parole, for perpetrators whose victims die, as a result of the offense.

House Bill 1061 deals with the collection and confirmation of DNA samples.

House Bill 1057 provides a critical piece of the puzzle, as it deals with supervision of offenders after they are released. We're told that, although treatment is offered to convicted sex offenders, many reject the opportunity for treatment and simply uncooperatively serve out their full sentence. That means that there is no supervision, once they go back into society, other than the registration and community notification requirements we have in law.

I believe that it's vitally important, for the safety of our citizens, that we supervise offenders, after they are released. This bill requires that and sets up a process to accomplish it.

Mr. chairman and members of the committee, House Bills 1057, 1061 and 1313 are an important step forward to deal with sexual offenders more firmly and more comprehensively and to make our state an even safer place and I'd encourage the committee's favorable consideration. I'd be glad to attempt to answer any questions.

HOUSE JUDICIARY COMMITTEE
REP. DUANE DEKREY, CHAIRMAN
HB 1057, 1061, 1313

Testimony of Duane Houdek
Legal Counsel, Governor's Office
January 25, 2005

Chairman DeKrey, members of the House Judiciary Committee, my name is Duane Houdek. I am legal counsel for Governor Hoeven, and I staffed the task force the Governor convened last January to study our sex offender laws. The task force included professionals from all relevant disciplines and all parts of North Dakota. Over the course of six months, it met throughout the state, receiving public comment about the issues and refining its work. House bills 1057, 1061 and 1313 are a product of that task force.

Mr. Chairman, I would like to thank you and Representative Koppelman for your leadership during this study. With Senator Trenbeath, you provided the legislative expertise that proved invaluable to our deliberations. I would also like to thank Representative Delmore and Senators Traynor and Nelson for co-sponsoring this package of legislation.

When this task force convened last January, it became apparent that, although our sex offender laws and policies were generally very good, there were things we could do to provide even greater security for North Dakota citizens.

We studied all aspects of sex offender laws, including sentencing, probation and supervision, registration, treatment and civil commitment. In the end, we made some additions to each of these areas that significantly enhance the protections our laws provide to all North Dakotans.

I will provide a brief overview of each of these bills, with emphasis on the legal aspects of the community placement provisions of HB 1057. Joining me from the task force today to discuss these bills in greater detail are Jonathan Byers, from the Attorney General's office; Dr. Rosalie Etherington, Clinical Director at the State Hospital; and Warren Emmer,

Director of Field Services for the Department of Corrections. These people have stepped up and done a tremendous amount of work on these issues and, although they don't seek it, deserve recognition for all their efforts.

As a society, we deal with sex offenders in a number of ways. In the criminal system with incarceration and supervised probation, in the community with registration and public notice, and in the mental health area with inpatient civil commitment for those sexually dangerous offenders who have a mental disorder that requires treatment.

The task force looked first at our criminal system, particularly our sentencing and probation laws. We found that enhancing the criminal sentences for sexual offenses would not only provide a longer period of secure confinement, but also a greater likelihood that appropriate treatment could be provided in prison before release, further enhancing public safety. Therefore, you will see in HB 1313 a significant increase in sentencing maximums for sexual crimes that are violent or whose victims are children. In certain cases, the most heinous cases where a victim dies from a sexual attack, the task force recommends mandatory life without the possibility of parole.

The task force also found that approximately one-half of sexual offenders in the penitentiary are not sentenced to any supervised probation following their release from prison. Periods of mandatory supervised probation are recommended so that no sex offender leaves our prison without supervision.

By extending the actual period of incarceration and adding five years of supervision, we will closely follow offenders through a critical period of potential recidivism.

These changes are contained in HB 1313, which Jonathan Byers will explain.

The task force then turned its attention to our civil commitment laws. Current law provides for the civil commitment of sexually dangerous individuals. These are people who have engaged in sexually predatory conduct in the past, and who have been found to have a mental disorder or dysfunction that makes them likely to do so again.

The current law was passed in 1997, and since then 22 people have been committed to inpatient treatment at the State Hospital as sexually dangerous individuals.

It is important to recognize that this is not a criminal proceeding, and the commitment to inpatient treatment is not punishment for a crime. This is a civil proceeding, based upon a finding of a mental disorder, coupled with a proclivity to commit further acts of predatory conduct which present a danger to others.

All commitments are done by court order. The State's Attorney of a county petitions the court for an order of commitment on his or her own motion, or based on a referral from our corrections department or from the Attorney General's Sex Offender Risk Assessment Committee. In the past, we have referred the very highest risk offenders, those whose scores on a sex offender screening tool known as MnSOST-R are equivalent to 13 or above. By comparison, community wide notification is given of individuals if their risk is roughly equivalent to an 8 on the MnSOST-R test.

The task force found that there is a population of individuals in the state, approximately 45 people, who have been assessed between 8 and 12 on the MnSOST test and are subject only to registration as a sex offender. Some are on probation from criminal sentences, but some are not, and have no supervision at all. By scoring an 8 on this assessment tool, they indicate that over a period of three to six years, they have greater than a 50% chance of committing another sexually predatory act.

HB 1057 contains provisions that provide a new method of treating and supervising certain members of this population. They present enough risk to be evaluated and referred for commitment, but may not require the intensive in-patient treatment we have reserved for the very highest risk individuals.

Dr. Etherington will explain the risk assessment and treatment aspects of this bill, and Warren Emmer will discuss the supervision and monitoring this entails.

I would like to set the legal framework and explain why the task force chose this method of treatment.

Initially, please note that HB 1057 presents no change to either the standards for commitment of sexually dangerous individuals, nor to the procedure that is followed. Because the population we are seeking to evaluate have shown that it is likely they may commit another sexually predatory act, they already fit the requirement of our current law.

The risk assessment for community placement is done only after a court has decided there is enough evidence to commit. The initial decision by the court is whether to commit or not. There can be no direct placement in the community in the initial court order.

We did this for two reasons: First, it preserves the integrity of our current statute. Second, it avoids "plea bargaining", that is, having someone say I will agree to commitment only if it can be in the community.

Once a commitment is made, a risk assessment will be conducted and only then can the director of the department of human services petition the court for placement in the community.

Notice of the petition is given to the State's Attorney, and the court makes the final decision to place the individual in a community treatment program.

Please keep in mind that these individuals are now in our communities. We would be adding supervision, monitoring and treatment that may not now be present. The highest risk individuals will continue to be treated on an in-patient basis.

The court's order of placement must contain provisions for treatment and supervision and monitoring of the individual that will assure public safety and proper treatment of the committed individual.

One of these provisions is the requirement that the individual submit to electronic monitoring. GPS technology has advanced dramatically in recent years, and the cost of such monitoring has dropped substantially.

We are now able to track an individual's whereabouts minute by minute, establish safety zones that may not be entered, and treatment zones that must be entered at certain times. We can interface these tracks with police reports, so that we can tell in an instant if a monitored individual is at or near a crime scene at a given time.

We expect to use this tool extensively in the supervision and monitoring of community placed individuals.

Finally, HB 1057 provides that violation of a commitment order is a Class C felony. It was the conclusion of the task force that it is appropriate to have this sanction available to ensure compliance with the court's order, in addition to the contempt power inherent in the Court.

The type of out-patient treatment HB 1057 presents has been used extensively in some other states. In Texas, it is the exclusive method of commitment. Because it is a civil proceeding, it may be used when appropriate, for anyone who lives or works in a community, regardless of whether they are or have been part of our corrections population.

I understand that the Council on Abused Womens' Services will offer an amendment that would specifically provide that a committed individual have no contact with a victim outside of a supervised treatment plan. That amendment would certainly be consistent with the intent of this legislation.

The third bill, HB 1061, addresses two issues in the sex offender registration laws. It first requires a DNA sample as part of the registration process for anyone who has not previously provided one.

Secondly, it provides that the registration information must be updated in a manner and at an interval the attorney general requires. This is intended to allow our corrections department to continue to explore the concept of computerized kiosks, in which offenders provide updates of necessary information. This is favored by law enforcement, and perhaps Warren Emmer can further discuss this with you, should you want more information about it.

Mr. Chairman, you will note that the fiscal note for HB 1057 states that the cost of this legislation will depend upon the utilization of both the in-patient and out-patient methods of commitment. We have analyzed the cost of out-patient treatment and supervision, and I can tell you that it is substantially below the cost of in-patient treatment, which currently is approximately \$95,000 per year for each individual. Based on costs in other states, and our analysis of the treatment and supervision needed, we have calculated a cost of approximately \$12,000 per year, or even less, depending on the number of people receiving such treatment.

Thank you for the opportunity to present this overview. I would be glad to try to answer any questions you may have.

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
JANUARY 25, 2005**

**WARREN R. EMMER, DIRECTOR
DEPARTMENT OF CORRECTIONS AND REHABILITATION
FIELD SERVICES DIVISION
PRESENTING TESTIMONY RE: HB 1313, 1057, and 1061**

Good Morning Mr. Chairman and members of the House Judiciary Committee, my name is Warren Emmer. I am the Director of the Department of Corrections and Rehabilitation, Field Services Division. House Bills 1313, 1057, & 1061 are products of the work done by the Governor's sex-offender task force. I was a member of that task force.

Several fellow task force members have already presented testimony this morning. I agree with what they have said and do not intend on duplicating that testimony. During my testimony, I will discuss examples of supervision strategies that may be used to protect both the public and reduce the future sex-offending risk of clients assigned to a community civil commitment program.

As we begin our discussion, it's imperative that we note that the authority for any community supervision for civilly committed sex offenders will remain with the court. The case manager assigned to the supervision of the civilly committed client will need to insure that all conditions set by the court are enforced. All client supervision strategies, utilized by the assigned case manager, will also need to be compatible with the individual client's risk management plan.

Examples of Client Supervision Strategies

- **Assessment of Client's Risk**

The case manager will continually assess client future risk while the client is assigned to community supervision.

- The case manager will utilize multiple assessment tools to assist them in assessing client risk.
- The case manager will utilize information provided to them by collateral sources such as law enforcement, treatment professionals, corrections, client-family members, and others, to assist them with risk assessment.

- Changes of client risk will be reported to the risk management treatment team and recorded in the client's risk management plan.
- **Compliance With Treatment Programming**

Treatment is a critical component of most sex offender risk reduction programs.

 - The case manager will monitor the client's compliance with all required treatment programming.
 - The case manager will participate as an active member of the risk management treatment team.
- **Client's Surveillance**

Client surveillance will be a critical component of a successful client risk management plan.

 - Utilization of polygraph assessments
 - Electronic surveillance
 - Structured client interviews
 - Client home inspections
 - Personal home computer inspections
 - Collateral communication with client-family members, law enforcement, employers, and others
 - Three to five (or more) face-to-face meetings with the client weekly

The enactment of House Bills 1313, 1057, and 1061 will enhance public safety. The Department of Corrections respectfully requests your support for each bill.

**HOUSE BILL 1313 TESTIMONY
HOUSE JUDICIARY COMMITTEE
January 25, 2005
PRAIRIE ROOM**

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1313.

Through the course of the governor's task force meetings that took place during the last year, there were several opinions that were nearly unanimously shared by the participants. First of all, nearly everyone agreed that the year or two immediately following a sex offender's release from confinement is a crucial period. Second, if the criminal justice system hopes to minimize the risk of re-offense for a sex offender during that crucial period, close supervision and restrictive conditions are necessary to achieve that goal. Finally, those sexual offenders who commit the most egregious offenses and resist all attempts to treat and rehabilitate them deserve nothing more than to spend the foreseeable future in prison.

House Bill 1313 addresses all three of those shared opinions. The language on page three of the bill draft creates a mandatory period of supervised probation to be served after incarceration for a felony sexual offense. Five years supervised probation is the minimum; up to five additional years may be imposed at the discretion of the court. To forge the hammer that will enforce good conduct during

the probation, maximum sentencing has been doubled for the two most serious sexual offenses, on page two of the bill.

In best case scenarios, the increased penalties will only be the threat that enforces good probationary conduct. In worst-case scenarios, the increased penalties (and potential civil commitment) will be the last line of defense between a dangerous predator and his prey—other North Dakota citizens.

The Attorney General asks for a do pass. I would be happy to answer any questions.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

18 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson DeKrey and Members of the House Judiciary Committee

RE: Testimony in support of HB 1313.

Date: Tuesday, January 25, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator at the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of increased sentencing for sex offenders and extended probation as set forth in HB 1313.

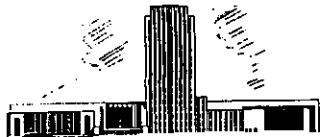
Homicide is the murder of a body and soul while sexual assault is the murder of the soul leaving the hollow shell of a body left to encase the shattered remains. The crime of sexual assault in its most heinous form involving serious bodily injury, kidnapping, imminent threat of death, sexual abuse against children and vulnerable adults, or drug facilitated sexual assault needs to be addressed by imposing heavier sanctions against offenders for two reasons:

First, the sentencing increases proposed in HB 1313 allow the justice process to work to the fullest extent possible. They allow the process of pre-sentence investigations, victim impact statements, and the factors involved in the crime to be evaluated by judges when passing sentences. They allow judges to determine sentences relevant to the crime without limiting their ability to incarcerate sex predators, eliminating or severely decreasing the likelihood of recidivism through limiting their access to society.

Next, increased sentences are consistent with research that shows rehabilitation with sex offenders is extremely limited and in the most heinous of criminal sexual assault not successful. Sex offenders have the highest rate of recidivism of any criminal activity.

The high rate of recidivism leads to the next change proposed in this bill: The addition of a mandatory 5 year supervised probation period, with the possibility of up to an additional 5 years in felony cases, and 2 years in misdemeanors, acts as another level to limit the likelihood of re-offending. These probationary periods allow monitoring of the behaviors of sex offenders. With this monitoring, we limit the ability to engage in criminal behavior.

Finally, the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota supports this legislation in hopes of reducing the number of victims of sexual assault. Our work focuses on working with victims through the aftermath of sexual assault. The success of our work is dependent on the criminal justice response to offenders and understanding the severity and heinous nature of sexual assault. Hopefully, this understanding of sexual assault results in justice. Please support a do pass on HB 1313.



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary
Political Subdivisions
Constitutional Revision, Chairman

Representative Kim Koppelman
District 13
513 First Avenue NW
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Testimony on House Bills 1057, 1061, and 1313 before the Senate Judiciary Committee 1-25-05

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The package of legislation before you seeks to do just that. While we have good laws on the books to deal with sex offenders now (we were one of the early states to implement civil commitment for sex offenders, for example) we need to do more.

We're proposing getting even tougher on violent sex offenders in sentencing. House Bill 1313 would impose a life sentence, without the possibility of parole, for perpetrators whose victims die, as a result of the offense.

House Bill 1061 deals with the collection and confirmation of DNA samples.

House Bill 1057 provides a critical piece of the puzzle, as it deals with supervision of offenders after they are released. We're told that, although treatment is offered to convicted sex offenders, many reject the opportunity for treatment and simply uncooperatively serve out their full sentence. That's means that there is no supervision, once they go back into society, other than the registration and community notification requirements we have in law.

I believe that it's vitally important, for the safety of our citizens, that we supervise offenders, after they are released. This bill requires that and sets up a process to accomplish it.

Mr. chairman and members of the committee, House Bills 1057, 1061 and 1313 are an important step forward to deal with sexual offenders more firmly and more comprehensively and to make our state an even safer place and I'd encourage the committee's favorable consideration. I'd be glad to attempt to answer any questions.

SENATE JUDICIARY COMMITTEE
SEN. JOHN TRAYNOR, CHAIRMAN
HB 1057, 1061, 1313

Testimony of Duane Houdek
Legal Counsel, Governor's Office
February 28, 2005

Chairman Traynor, members of the Senate Judiciary Committee, my name is Duane Houdek. I am legal counsel for Governor Hoeven, and I staffed the task force the Governor convened in January of 2004 to study our sex offender laws. The task force included professionals from all relevant disciplines and all parts of North Dakota. Over the course of six months, it met throughout the state, receiving public comment about the issues and refining its work. House bills 1057, 1061 and 1313 are a product of that task force.

Mr. Chairman, I would like to thank you, and Senators Trenbeath and Nelson, for co-sponsoring this package of legislation, and Senator Trenbeath for serving on this task force. With Representatives Koppelman and DeKrey, you provided the legislative expertise that proved invaluable to our deliberations. I would also like to thank Representative Delmore for co-sponsoring the legislation on the House side.

When this task force convened last January, it became apparent that, although our sex offender laws and policies were generally very good, there were things we could do to provide even greater security for North Dakota citizens.

We studied all aspects of sex offender laws, including sentencing, probation and supervision, registration, treatment and civil commitment. In the end, we made some additions to each of these areas that significantly enhance the protections our laws provide to all North Dakotans.

I will provide a brief overview of each of these bills, with emphasis on the legal aspects of the community placement provisions of HB 1057. Joining me from the task force today to discuss these bills in greater detail are Jonathan Byers, from the Attorney General's office; Dr. Rosalie

Etherington, Clinical Director at the State Hospital; and Warren Emmer, Director of Field Services for the Department of Corrections. These people have stepped up and done a tremendous amount of work on these issues and, although they don't seek it, deserve recognition for all their efforts.

As a society, we deal with sex offenders in a number of ways. In the criminal system with incarceration and supervised probation, in the community with registration and public notice, and in the mental health area with inpatient civil commitment for those sexually dangerous offenders who have a mental disorder that requires treatment.

The task force looked first at our criminal system, particularly our sentencing and probation laws. We found that enhancing the criminal sentences for sexual offenses would not only provide a longer period of secure confinement, but also a greater likelihood that appropriate treatment could be provided in prison before release, further enhancing public safety. Therefore, you will see in HB 1313 a significant increase in sentencing maximums for sexual crimes that are violent or whose victims are children. In certain cases, the most heinous cases where a victim dies from a sexual attack, the task force recommends mandatory life without the possibility of parole.

The task force also found that approximately one-half of sexual offenders in the penitentiary are not sentenced to any supervised probation following their release from prison. Periods of mandatory supervised probation are recommended so that no sex offender leaves our prison without supervision.

By extending the actual period of incarceration and adding five years of supervision, we will closely follow offenders through a critical period of potential recidivism.

These changes are contained in HB 1313, which Jonathan Byers will explain.

The task force then turned its attention to our civil commitment laws. Current law provides for the civil commitment of sexually dangerous individuals. These are people who have engaged in sexually

predatory conduct in the past, and who have been found to have a mental disorder or dysfunction that makes them likely to do so again.

The current law was passed in 1997, and since then 22 people have been committed to inpatient treatment at the State Hospital as sexually dangerous individuals.

It is important to recognize that this is not a criminal proceeding, and the commitment to inpatient treatment is not punishment for a crime. This is a civil proceeding, based upon a finding of a mental disorder, coupled with a proclivity to commit further acts of predatory conduct which present a danger to others.

All commitments are done by court order. The State's Attorney of a county petitions the court for an order of commitment on his or her own motion, or based on a referral from our corrections department or from the Attorney General's Sex Offender Risk Assessment Committee. In the past, we have referred the very highest risk offenders, those whose scores on a sex offender screening tool known as MnSOST-R are equivalent to 13 or above. By comparison, community wide notification is given of individuals if their risk is roughly equivalent to an 8 on the MnSOST-R test.

The task force found that there is a population of individuals in the state, approximately 45 people, who have been assessed between 8 and 12 on the MnSOST test and are subject only to registration as a sex offender. Some are on probation from criminal sentences, but some are not, and have no supervision at all. By scoring an 8 on this assessment tool, they indicate that over a period of three to six years, they have greater than a 50% chance of committing another sexually predatory act.

HB 1057 contains provisions that provide a new method of treating and supervising certain members of this population. They present enough risk to be evaluated and referred for commitment, but may not require the intensive in-patient treatment we have reserved for the very highest risk individuals.

Dr. Etherington will explain the risk assessment and treatment aspects of this bill, and Warren Emmer will discuss the supervision and monitoring this entails.

I would like to set the legal framework and explain why the task force chose this method of treatment.

Initially, please note that HB 1057 presents no change to either the standards for commitment of sexually dangerous individuals, nor to the procedure that is followed. Because the population we are seeking to evaluate have shown that it is likely they may commit another sexually predatory act, they already fit the requirement of our current law.

The risk assessment for community placement is done only after a court has decided there is enough evidence to commit. The initial decision by the court is whether to commit or not. There can be no direct placement in the community in the initial court order.

We did this for two reasons: First, it preserves the integrity of our current statute. Second, it avoids "plea bargaining", that is, having someone say I will agree to commitment only if it can be in the community.

Once a commitment is made, a risk assessment will be conducted and only then can the director of the department of human services petition the court for placement in the community.

Notice of the petition is given to the State's Attorney, and the court makes the final decision to place the individual in a community treatment program.

Please keep in mind that these individuals are now in our communities. We would be adding supervision, monitoring and treatment that may not now be present. The highest risk individuals will continue to be treated on an in-patient basis.

The court's order of placement must contain provisions for treatment and supervision and monitoring of the individual that will assure public safety and proper treatment of the committed individual.

One of these provisions is the requirement that the individual submit to electronic monitoring. GPS technology has advanced

dramatically in recent years, and the cost of such monitoring has dropped substantially.

We are now able to track an individual's whereabouts minute by minute, establish safety zones that may not be entered, and treatment zones that must be entered at certain times. We can interface these tracks with police reports, so that we can tell in an instant if a monitored individual is at or near a crime scene at a given time.

We expect to use this tool extensively in the supervision and monitoring of community placed individuals.

Finally, HB 1057 provides that violation of a commitment order is a Class C felony. It was the conclusion of the task force that it is appropriate to have this sanction available to ensure compliance with the court's order, in addition to the contempt power inherent in the Court.

The type of out-patient treatment HB 1057 presents has been used extensively in some other states. In Texas, it is the exclusive method of commitment. Because it is a civil proceeding, it may be used when appropriate, for anyone who lives or works in a community, regardless of whether they are or have been part of our corrections population.

The third bill, HB 1061, addresses two issues in the sex offender registration laws. It first requires a DNA sample as part of the registration process for anyone who has not previously provided one.

Secondly, it provides that the registration information must be updated in a manner and at an interval the attorney general requires. This is intended to allow our corrections department to continue to explore the concept of computerized kiosks, in which offenders provide updates of necessary information. This is favored by law enforcement, and perhaps Warren Emmer can further discuss this with you, should you want more information about it.

Mr. Chairman, you will note that the fiscal note for HB 1057 states that the cost of this legislation will depend upon the utilization of both the in-patient and out-patient methods of commitment. We have analyzed the cost of out-patient treatment and supervision, and I can tell

you that it is substantially below the cost of in-patient treatment, which currently is approximately \$95,000 per year for each individual. Based on costs in other states, and our analysis of the treatment and supervision needed, we have calculated a cost of approximately \$12,000 per year, or even less, depending on the number of people receiving such treatment.

Thank you for the opportunity to present this overview. I would be glad to try to answer any questions you may have.

HOUSE BILL 1313 TESTIMONY
SENATE JUDICIARY COMMITTEE
February 28, 2005
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1313.

Through the course of the governor's task force meetings that took place during the last year, there were several opinions that were nearly unanimously shared by the participants. First of all, nearly everyone agreed that the year or two immediately following a sex offender's release from confinement is a crucial period. Second, if the criminal justice system hopes to minimize the risk of re-offense for a sex offender during that crucial period, close supervision and restrictive conditions are necessary to achieve that goal. Finally, those sexual offenders who commit the most egregious offenses and resist all attempts to treat and rehabilitate them deserve nothing more than to spend the foreseeable future in prison.

House Bill 1313 addresses all three of those shared opinions. The language on page three of the bill draft creates a mandatory period of supervised probation to be served after incarceration for a felony sexual offense. Five years supervised probation is the minimum; up to five additional years may be imposed at the discretion of the court. To forge the hammer that will enforce good conduct during the probation, maximum sentencing has been doubled for the two most serious sexual offenses, on page two of the bill.

In best case scenarios, the increased penalties will only be the threat that enforces good probationary conduct. In worst-case scenarios, the increased penalties (and potential civil commitment) will be the last line of defense between a dangerous predator and his prey—other North Dakota citizens.

The Attorney General asks for a do pass. I would be happy to answer any questions.

SENATE JUDICIARY COMMITTEE
 Senator John T. Traynor, CHAIRMAN
 February 28, 2005

 WARREN R. EMMER, DIRECTOR
 DEPARTMENT OF CORRECTIONS AND REHABILITATION
 FIELD SERVICES DIVISION
 PRESENTING TESTIMONY RE: HB 1313, 1057, and 1061

Good Morning Mr. Chairman and members of the Senate Judiciary Committee, my name is Warren Emmer. I am the Director of the Department of Corrections and Rehabilitation, Field Services Division. House Bills 1313, 1057, & 1061 are products of the work done by the Governor's sex-offender task force. I was a member of that task force.

Several fellow task force members have already presented testimony this morning. I agree with what they have said and do not intend on duplicating that testimony. During my testimony, I will discuss examples of supervision strategies that may be used to protect both the public and reduce the future sex-offending risk of clients assigned to a community civil commitment program.

As we begin our discussion, it's imperative that we note that the authority for any community supervision for clients, that are civilly committed, will remain with the court. The case manager assigned to the supervision of the civilly committed client will need to insure that all conditions set by the court are enforced. All client supervision strategies, utilized by the assigned case manager, will also need to be compatible with the individual client's risk management plan.

Examples of Client Supervision Strategies

There are three "corner stones" that will be used as the case manager establishes client supervision strategies:

- **Assessment of Client's Risk**
 The case manager will continually assess client future risk while the client is assigned to community supervision.
 - The case manager will utilize multiple assessment tools to assist them in assessing client risk.
 - The case manager will utilize information provided to them by collateral sources such as law enforcement, treatment professionals, corrections, client-family members, and others, to assist them with risk assessment.

- Changes of client risk will be reported to the risk management treatment team and recorded in the client's risk management plan.
- **Compliance With Treatment Programming**

Treatment is a critical component of most sex offender risk reduction programs.

 - The case manager will monitor the client's compliance with all required treatment programming.
 - The case manager will participate as an active member of the risk management treatment team.
- **Client's Surveillance**

Client surveillance will be a critical component of a successful client risk management plan.

 - Utilization of polygraph assessments
 - Electronic surveillance
 - Structured client interviews
 - Client home inspections
 - Personal home computer inspections
 - Collateral communication with client-family members, law enforcement, employers, and others
 - Three to five (or more) face-to-face meetings with the client weekly

The enactment of House Bills 1313, 1057, and 1061 will enhance public safety. The Department of Corrections respectfully requests your support for each bill.

AH #29

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Chairperson Traynor and Members of the Senate Judiciary Committee

RE: Testimony is support of HB 1313.

Date: Monday, February 28, 2005

For the record I am Jessica McSparron-Bien, Sexual Assault Program and Policy Coordinator at the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota. I am here to provide testimony in support of increased sentencing for sex offenders and extended probation as set forth in HB 1313.

Homicide is the murder of a body and soul while sexual assault is the murder of the soul leaving the hollow shell of a body left to encase the shattered remains. The crime of sexual assault in its most heinous form involving serious bodily injury, kidnapping, imminent threat of death, sexual abuse against children and vulnerable adults, or drug facilitated sexual assault needs to be addressed by allowing heavier sanctions against offenders for two reasons:

First, the sentencing increases proposed in HB 1313 allow the justice process to work to the fullest extent possible. They allow the process of pre-sentence investigations, victim impact statements, and the factors involved in the crime to be evaluated by judges when passing sentences. They allow judges to determine sentences relevant to the crime without limiting their ability to incarcerate sex predators, eliminating or severely decreasing the likelihood of recidivism through limiting their access to society.

Next, increased sentences are consistent with research that shows rehabilitation with sex offenders is extremely limited and in the most heinous of criminal sexual assault not successful. Recidivism rates for child molesters is 13% for sex offenses and 37% for non-sex offenses, and rapist is 19% for sex offenses and 46% for non-sex offenses,

during a five year period following incarceration (Center for Sex Offender Management, 2000).

This rate of recidivism leads to the next change proposed in this bill: The addition of a mandatory 5 year supervised probation period, with the possibility of up to an additional 5 years in felony cases, and 2 years in misdemeanors, acts as another level to limit the likelihood of re-offending. These probationary periods allow monitoring of the behaviors of sex offenders. With this monitoring, we limit the ability to engage in criminal behavior.

Finally, the North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota supports this legislation in hopes of reducing the number of victims of sexual assault. Our work focuses on working with victims through the aftermath of sexual assault. The success of our work is dependent on the criminal justice response to offenders and understanding the severity and heinous nature of sexual assault. Hopefully, this understanding of sexual assault results in justice. Please support a do pass on HB 1313.

Respectfully.

1313

Syverson, John O.

From: John O Syverson [jsydi@compuserve.com]
Sent: Monday, February 28, 2005 8:57 PM
To: Syverson, John O.
Subject: Sex crime offender: We're not all alike

Sex crime offender: We're not all alike

By Amy Dalrymple, The Forum

Published Monday, February 28, 2005

· advertisement ·

Minnesota Gov. Tim Pawlenty this week is poised to release a 107-page plan for sex offender policy reform.

One man convicted of a sex crime more than a decade ago said not all sex offenders are alike, and he hopes Pawlenty's plan reflects that.

David Ramirez, 28, who pleaded guilty to criminal sexual conduct for a 1993 assault, said the public tends to lump all sex offenders into the same category.

"They automatically think you're the same person who was on the news recently," Ramirez said recently from the Clay County Jail, where he's being held on a failure-to-register charge.

Ramirez received a 74-month sentence in 1994 for forcing sexual contact with a 14-year-old girl and stabbing a man with a knife in Polk County, Minn.

For much of that sentence, Ramirez attended eight hours of sex offender or drug and alcohol treatment each day, he said.

Ramirez said lawmakers should consider that some offenders, like him, complete treatment and don't commit repeat offenses.

"People want to change their lives and be productive members of society," he said.

But more dangerous offenders who don't acknowledge they need to change should stay in prison longer, Ramirez said.

A governor-appointed commission recently recommended adding discretion into sentencing to keep the dangerous offenders in prison and release those who prove they've changed.

Commission member John Stuart, Minnesota's chief public defender, said the recommendation is an improvement over what he calls a "one-size-fits-all" system.

"We can't look at everybody as if they are the kidnapping, murdering, stranger type of sex offender," Stuart said.

The commission's proposal doubles the maximum prison sentence for sex offenses, while establishing a review board to evaluate when an offender is ready for release.

Under the recommendation, a person convicted of forcible rape would receive a sentence of 12 to 60 years.

With good behavior, that defendant would be able to go in front of the review board after serving eight years, or two-thirds of the lightest sentence.

The board would consider progress made during treatment and evaluate whether the offender is a risk to the community.

Otter Tail County Sheriff Brian Schlueter, one of the commission's 12 members, said such a system would allow officials to keep high-risk offenders in prison longer.

"Some of these people are still dangerous when they get out," Schlueter said.

The public's fear of repeat sex offenders has been heightened since Alfonso Rodriguez Jr. was arrested in December 2003 for the death of 22-year-old Dru Sjodin.

The state saw a jump in the number of referrals for civil commitment in 2004.

Today all Level 3 sex offenders -- those considered most dangerous -- are automatically reviewed for commitment after they're released from prison.

The possible longer prison sentences under the commission's plan would reduce the number of cases referred to civil commitment, Schlueter said.

Because treatment is not required during civil commitment, Schlueter said, offenders are "basically being warehoused within the state hospital system."

A myth about sex offenders is that almost all of them commit repeat offenses, said Gerald Kaplan, executive director of Alpha Human Services in Minneapolis, Minnesota's only in-patient community-based sex offender treatment program.

"It just simply isn't true," said Kaplan, a psychologist.

In the early 1990s, a Department of Corrections study suggested that Level 3 sex offenders re-offend 50 percent to 60 percent of the time, the commission report said.

Another DOC study from March 2002 said offenders released from prison between 1997 and 1999 re-offended 8 percent of the time, the report said.

Of all people released from Minnesota prisons, 20 percent commit another offense, Kaplan said.

He attributes the recent lower re-offense rates for sex offenders to the supervision offenders receive after release and because the worst are committed to state hospitals.

Schlueter, however, questioned whether the threat from such offenders can be measured because, he said, it's difficult to catch and convict someone for a sex crime.

Many sex offenders have multiple offenses before they're caught, Schlueter said.

"It's a number that's really hard to hit the target on," he said of the recidivism rate.

Eric Lipman, state sex offender policy coordinator, said part of Pawlenty's proposal is to invest in treatment for offenders who are in prison or on probation.

The plan also calls for adding 18 probation agents specially trained to monitor sex offenders after they're released, Lipman said.

"The combination of aggressive supervision and treatment works," he said.

Sex offender treatment is offered in prison to high- or moderate-risk offenders, said Patricia Orud, director of behavioral health services for the Minnesota Department of Corrections.

The treatment is based on how risky the offender may be to public safety; needs of the offender, such as mental health issues or vocational deficits; and how responsive the offender is to treatment, Orud said.

The first step is for offenders to stop blaming the victim or other people and be accountable for their behaviors, she said.

"In order to have treatment work, people need to believe they need to change something," Orud said.

One aspect of treatment is for offenders to identify the pattern of thinking, behavior and emotion that led them to committing the sex offense, Orud said. They then develop a

Proposed amendments to HB 1313:

Rewrite to read:

3. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was more than five years older than the victim at the time of the offense. Otherwise, the offense is a class A felony.

12.1-20-03.1. Continuous sexual abuse of a child.

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor is more than five years older than the victim at the time of the offenses. Otherwise, the offense is a class A felony.

*Moved by Trembly
revised by Triplett
adapted*

STATE SIMILARITY IN AGE PROVISIONS

STATE	AGE SIMILARITY
Alaska	...with a person that is at least 3 years younger than the offender.
Colorado	...victim is < 15 and the actor is at least 4 years older than the victim. ...victim is 15-16 and the actor is at least 10 years older than the victim.
Maine	...the actor is at least 5 years older than the other person.
Maryland	...the person performing the act is at least 4 years older than the victim.
Minnesota	...complainant is < 13 and the actor is more than 36 months older than the complainant ...complainant is 13-15 and the actor is more than 24 months older than the complainant.
Montana	...the offender is 3 or more years older than the victim.
Texas	(<u>not</u> an offense if) ...the actor was not more than three years older than the victim
Washington	...victim is <14 the perpetrator is at least 36 months older than the victim. ...the victim is 14-15 and the perpetrator is at least 48 months older than the victim.
Wyoming	...the actor is at least 4 years older than the victim.

Color key:

3 or more years/ at least 3 years

At least 4 years

24 to 48 months depending on victim age

5 years or greater

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1313

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the similarity in age of a person engaging in sexual conduct with a minor; and"

Page 4, after line 16, insert:

"SECTION 4. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, a person is guilty of an offense only if the person is at least three years older than the minor."

Four.

Renumber accordingly

STATE SIMILARITY IN AGE PROVISIONS

	NORTH DAKOTA	Minnesota	Washington
PENALTY AA FELONY 1 ST DEGREE	Force Serious bodily injury Victim < 15, actor +5	<u>Sexual Acts</u> Force Bodily injury Victim incapacitated Victim < 13, actor +3 Victim 13-16, actor +4 and in a position of authority	Force Serious physical injury Use of weapon Combination with kidnapping Victim <12, actor +2
A FELONY 2 ND DEGREE	Victim incapacitated Victim incapable of consent Victim administered intoxic. Victim < 15 sexual <u>contact</u>	Sexual contacts Force Bodily injury Victim incapacitated Victim < 13, actor +3 Victim 13-16, actor +4 and in a position of authority	Victim incapable of consent Victim 12-14, actor +3
B FELONY 3 RD DEGREE	Sexual imposition	Sexual penetration Victim < 13, actor < 3 Victim 13-16, actor +2 Victim 13-16, actor +2-4 = Max penalty 5 yrs	Victim 14-16, actor +4
FELONY 4 TH DEGREE	Incest Sex. Exploit. by therapist Sexual abuse of a ward Luring by computer (Victim < 15, actor ≥ 22) Victim 15-17, actor ≥ 22 Victim < 15, actor +3	Sexual contact Victim < 13, actor < 3 Victim 13-16, actor +4 and in a position of authority Victim 16-18, actor + and In position of authority	Victim 16-17, actor +5 and in authority position
A MISDEMEANOR 5 TH DEGREE	Surreptitious Intrusion Indecent Exposure Victim 15-17	Masturbation or exposure, Victim < 16 Nonconsensual sexual contact	Victim 16-17, actor +5
B MISDEMEANOR	Offensive touching		
NOT A CRIME	Actor < 3 yrs older than victim	Actor within 2-4 years depending on age of victim	Actor within 2-3 years depending on age of victim

Color key:

Amendment 1

Amendment 3 (still considering)

Amendment 2

CHAPTER 12.1-20 SEX OFFENSES

12.1-20-01. General provisions. In sections 12.1-20-03 through 12.1-20-08:

1. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.

12.1-20-02. Definitions. In sections 12.1-20-03 through 12.1-20-12:

1. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
2. "Object" means anything used in commission of a sexual act other than the person of the actor.
3. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
4. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

12.1-20-03. Gross sexual imposition.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. He knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. He knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1313

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the similarity in age of a person engaging in sexual conduct with a minor; and"

Page 4, after line 16, insert:

"SECTION 4. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, a person is guilty of an offense only if the person is at least three years older than the minor."

Renumber accordingly

4

considered May. 16, 2005
moved by Turner, sec Trip.
adopted.

Further amend
Hacker & Trip
change 3 to 4
aye
no

3/22/05 Hacker, sec Turner
change 3 to 4
aye
no



March 22

In lieu of all

Proposed amendments to HB 1313:

Rewrite to read:

amendments previously
adopted, then revised
see by Trip.

3. **Penalties.**

a) An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was more than five years older than the victim at the time of the offense.

b) An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least three but not more than five years older than the victim at the time of the offense.

4

c) Otherwise, the offense is a class A felony.

12.1-20-03.1. Continuous sexual abuse of a child.

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least three but not more than five years older than the victim at the time of the offense. The court may not defer imposition of sentence.

4 Sec 4

adopted 3/22/05