2009 HOUSE JUDICIARY

HB 1272

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1272

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/20/09

Recorder Job Number: 7326

Committee Clerk Signature JPenrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1272.

Rep. Chris Griffin: Sponsor, explained the bill (read Meredith Larson's letter).

Rep. Koppelman: I support what you're trying to accomplish. The definition of coercion seems to have tied the hands of the ASA. Is the definition of coercion going to help solve the problem.

Rep. Griffin: I believe the amendment tightens it up.

Chairman DeKrey: Thank you. Further testimony in support.

Aaron Birst, ND Association of Counties, State's Attorneys: We reviewed this bill and we had some significant questions on the first draft. We met with Rep. Griffin and worked through some of those questions. I'm not prepared to give comments on the amendments. We certainly support the concept of creating a mid-level offense that can be charged.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1272

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8035

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will take a look at HB 1272.

Rep. Griffin: Explained his amendment 90380.0101.

Rep. Klemin: We're still going to have the sexual imposition or not.

Rep. Griffin: Sexual imposition is already in statute and we'll still have that. We're going to just make some changes to that section to allow coercion to be a part of it under subsection 1a.

Rep. Klemin: Lines 15-18 are coming out on page 2.

Rep. Griffin: The new language takes that out and put in under subsection 1a.

Rep. Koppelman: Is the penalty still the same as the original bill, a class C felony, or did you remove that on page 2, is that new language.

Rep. Griffin: It would be a class B felony. That new language is gone and under subsection 1a, it would read as in the amendment.

Rep. Klemin: I'm wondering about the form of the amendment now, as opposed to the content. We've got section 1 as the definition; section 2 is in two different sections of the statute.

Rep. Griffin: I move the amendment 90380.0101, with the addition of section 12.1-20-04 will become Section 3.

Rep. Koppelman: Second the motion.

Chairman DeKrey: Discussion, voice vote. Motion carried. We now have the bill before as amended.

Rep. Wolf: I move a Do Pass as amended.

Rep. Boehning: Second.

12 YES 0 NO 1 ABSENT **DO PASS AS AMENDED** **CARRIER: Rep. Griffin**

Prepared by the Legislative Council staff for
Representative Griffin
January 28, 2009

VK 1/28/09 1of2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1272

Page 1, line 1, after "12.1-20-02" insert ", 12.1-20-03,"

Page 1, line 7, replace "the use by the actor of words or circumstances that cause the" with "to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance."

Page 1, remove lines 8 through 10

Page 2, after line 2, insert:

"**SECTION 2. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-03. Gross sexual imposition - Penalty.

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. That person 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. That person knows or has reasonable cause to believe 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. That person 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.

2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

   a. The victim is less than fifteen years old;

   b. That person 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; or

   c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.

3. 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 at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.

   b. Otherwise the offense is a class A felony.

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed."

Page 2, line 6, remove "1."

Page 2, line 9, remove the overstrike over "~~1.~~", remove "a.", and after "threat" insert "or coercion"

Page 2, line 10, overstrike "of reasonable firmness" and insert immediately thereafter "reasonably"

Page 2, line 11, remove the overstrike over "~~2.~~" and remove "b."

Page 2, remove lines 15 through 18

Renumber accordingly

Date: 1/28/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1272

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ DP ☐ DNP ☑ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Wolf Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE

HB 1272: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1272 was placed on the Sixth order on the calendar.

Page 1, line 1, after "12.1-20-02" insert ", 12.1-20-03,"

Page 1, line 7, replace "the use by the actor of words or circumstances that cause the" with "to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance."

Page 1, remove lines 8 through 10

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b. Otherwise the offense is a class A felony.

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed."

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Page 2, line 10, overstrike "of reasonable firmness" and insert immediately thereafter "reasonably"

Page 2, line 11, remove the overstrike over "~~2.~~" and remove "b."

Page 2, remove lines 15 through 18

Renumber accordingly

2009 SENATE JUDICIARY

HB 1272

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1272

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/25/09

Recorder Job Number: 9716

Committee Clerk Signature

Minutes: **Senator Nething, Chairman**

Relating to a sexual act or conduct through coercion

Representative Chris Griffin – District 19 - Relates the written testimony of Meredith Larson, Assistant State's Attorney for Grand Forks County. See written testimony.

Relates a crime of rape, State v. Vantreece, the majority opinion in that case ruled that "force" requires more than the physical action of the sexual act.

Senator Nething – Asks, does the question of consent become still a defense. Is it as strong a defense if we were to adopt coercion?

Rep. Griffin – Replies, this would not negate the consent as a defense. This broadens a small line of cases where there has not been explicit force used in a sexual offense, but definitely has been some sort of intimidation or coercion.

Senator Fiebiger – Asks, was the Vantreece case properly charged? Is it worth changing the whole law because a prosecutor didn't charge it out right?

Rep.Griffin – Responds, it may not have been charged out correctly, but it did illustrate an issue that is in the law which shows trouble in charging these cases.

Senator Fiebiger – Asks if the language is too broad.

Rep. Griffin – States this definition came out of the Minnesota statute. This is much more limited than Minnesota has for their highest level sex offense.

Ladd Erickson – State Attorney for McClean County – He said if you look at the coercion law think in terms of date rape. Current law starts with a AA felony which needs to have force in the sex act, limiting factor on the AA is imminent threat of death, serious body injury or kidnapping. That is not always the case with date rape situations. Sexual assault is a B misdemeanor, offensive contact to a person. Sexual imposition was intended to address date rape situations but under the current law when there is just threat, often times an oral threat may not be there. He continues to describe what coercion means and explains amendments they would like to see.

Senator Nething – Says the intent here is to have a definition to enable coercion when we already have threat, is that the idea. Are we joining those two together?

Erickson – What is driving this is that sometimes these date rapes are charged in the AA area. There is more conduct than a B misdemeanor. There was no place to fit this area in the AA or the B.

Senator Nething – Asks, so any threat is not broad enough to cover coercion.

Erickson – Responds, any threat isn't necessarily broad enough to cover sexual imposition, because maybe you don't have a threat.

Janelle Moos – ND Council on Abused Women's Services – See written testimony. In ' support.

Senator Olafson – Asks if the definition of coercion in this bill will benefit women.

Moos – Replies, absolutely.

Close the hearing on HB1272

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1272

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/18/09

Recorder Job Number: 11192

Committee Clerk Signature Diane Davis

Minutes: **Senator Nething, Chairman**

Committee work

Senator Fiebiger relates a case that an attorney told him and the repercussions that may have had under this bill. Senator Schneider believes this bill may not be a perfect solution but it is something to use. Committee discusses the amendments brought in. Senator Lyson said ultimately the State's Attorney will charge it out. The committee thinks this is middle ground.

Senator Olafson moves do pass

Senator Lyson seconds

Vote – 6-0

Senator Schneider will carry

Date: 3/18
Roll Call Vote #: 1

1272

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Sen Olafson Seconded By Sen Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		**Sen. Tom Fiebiger**	X	
Sen. Curtis Olafson – V. Chair.	X		**Sen. Carolyn Nelson**	X	
Sen. Stanley W. Lyson	X		**Sen. Mac Schneider**	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen Schneider

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

REPORT OF STANDING COMMITTEE

HB 1272, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1272 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1272

Same given to Senate.

Mr. Chairman, members of the committee, my name is Meredith Larson and I am an Assistant State's Attorney in Grand Forks County. I am writing today to testify in support of House Bill 1272.

I currently prosecute all the sexual offenses and domestic violence cases in Grand Forks County. In August of 2007, a Supreme Court opinion was issued that affected the way many of us prosecute crimes of sexual violence. More importantly, that opinion affected the way that the justice system was able to assist victims of sexual crimes. Prior to that opinion, many prosecutors, including myself, would charge offenders with Gross Sexual Imposition under North Dakota Century Code 12.1-20-03(1)(a) or (2)(b) when they had unconsented sexual acts or sexual contact with a victim. Essentially, the offender would be charged with having compelled the victim to submit to a sexual act by force. Force, under N.D.C.C. 12.1-01-04 is defined as "physical action". The statute was interpreted in such a way that when the offender used the physical action of the sexual act it would satisfy the statute. Further, it was my opinion that an offender used sufficient "force" as defined in the statute when he engaged in a sexual act with a nonconsenting victim.

However, in August of 2007, the Supreme Court issued an opinion in State v. Vantreece, which disagreed with those interpretations. The majority opinion in that case ruled that "force" requires more than the physical action of the sexual act. In State v. Vantreece, the victim was an individual who has previously been sexually assaulted and had learned from prior experiences that it was safer not to resist a sexual assault. In that case, the victim pretended to be asleep while the Defendant attempted to sexually assault her. The Supreme Court determined in that case, that despite the fact that the Defendant cut a hole in her pajamas so he could engage in intercourse with her while he believed she was sleeping it was not sufficient "force" as defined by our statutes.

The opinion has a great affect on the way prosecutors can address cases of this nature. Many times we see cases where a victim pretends to be asleep because he or she is frozen with fear. In those cases, we now have no mechanism to prosecute those offenders. I have personally been confronted with a case of this nature, since the Vantreece opinion was issued. I had a victim who was at a house party socializing with friends. One of the individuals present was a person she had previously dated, but never had sexual intercourse with. On this particular night, early in the evening she kissed this man. Later in the evening, she went to bed at this residence in a friend's bedroom. She was trying to fall asleep when this man she had previously dated and had kissed that night, came into the room. He looked at her and appeared to be checking if she was sleeping. Because he was a large man and she was afraid of what was going to happen, the woman did not say anything when he sat down next to her. He proceeded to sexually assault her and she pretended to be asleep out of fear. He then covered her back up and left the room. I reviewed every statute I had available to me under Chapter 12.1-20. Because of the Vantreece opinion, I could no longer charge this offender with Gross Sexual Imposition under 12.1-20-03(1)(a). Because the victim did not resist the offender, he did not use "force" according to that opinion even though she clearly had not consented

to the sexual act and he used the physical action of sexual intercourse. Further, I could not charge the offender with 12.1-20-03(1)(c) which provides that it is a crime to engage in a sexual act when that person knows the victim is unaware that a sexual act is being committed upon him or her. In this case, the victim was not unaware that a sexual act was being committed upon him or her, although the offender may have thought she was asleep. The statute requires that the offender knows that the victim actually is unaware. Here, the victim was just pretending to be unaware. Finally, under 12.1-20-07(1)(a), it is a crime to knowingly have sexual contact with another person when that person knows or has reasonable cause to believe that the contact is offensive to the other person. This section is troubling for a couple reasons. First of all, this crime is only a Class B Misdemeanor. For a sexual assault victim of this nature, this charge would be inappropriate. A victim of a sexual assault has to have a lot of courage to navigate through the criminal justice system and in this case, the costs would outweigh the possible benefit, which would be a maximum of 30 days in jail. Additionally, although typically prior sexual contact with the offender may not be admissible, I have encountered under this particular charge, defense counsel arguing that it is admissible to establish that the defendant would not have reasonable cause to believe the contact was offensive. For example in this case, the defense attorney may be permitted to argue that because they previously dated and kissed, he would have no reason to believe that the contact was offensive to her.

What I was left with, in that case, is to tell the victim of this terrible crime, that I currently had no reasonable mechanism to charge the offender for this act. The message that is sent to victims of sexual assaults since this opinion is that if they don't actively resist an offender, they haven't been compelled to submit to a sexual act by force. This is extremely troubling. I am confident I am not the only prosecutor to have experienced this since the Vantreece opinion in August of 2007. That is why House Bill 1272 is extremely important to our State and to victims of sexual assaults. The proposed bill would allow the State to prosecute offenders for having coerced a victim into sexual acts or sexual contact, regardless of the specific acts or threat. Coercion, under this bill, is defined as the use of the actor of words or circumstances that cause the victim reasonably to fear that the actor will inflict bodily harm upon the victim or another, or the use by the actor of confinement or superior size or strength against the complainant to submit to a sexual act or contact against the victim's will. This would allow an offender to be prosecuted for coercing a victim under various circumstances where the offender either said something or created a circumstance in which a victim would reasonably fear bodily harm or based on the superior size or strength of the offender that causes a victim to submit to a sexual act or contact.

This bill would close some of the holes that have been created by the interpretation of "force" under our statutes, and would allow prosecutors to more adequately seek justice for victims of heinous sexual assaults who make a choice, for their safety, not to actively resist an offender. It would prevent these victims from being revictimized by the system. And it would send a message to sexual offenders that this type of behavior will not be tolerated in our State and that they will continue to be held accountable.

Attachment 3
1272

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

Testimony on HB 1272
Senate Judiciary Committee
February 25, 2009

Chairman Nething and Members of the Committee:

My name is Janelle Moos and I speaking this morning on behalf of the North Dakota Council on Abused Women's Services in support of HB 1272.

Rape and other forms of sexual victimization are considered among the most severe and underreported crimes in the United States. The occurrence of rape is a pervasive social problem with lasting effects for victims. New research conducted for the Family Violence Prevention Fund finds that nearly 1 in 5 women age 18 to 24 report having experienced forced sexual intercourse at least once in their lives. The most common types of force are verbal or physical pressure, and being physically held down. More than half the women forced to have sexual intercourse report experiencing each of these types of force. Last year in North Dakota, over 800 victims of sexual assault received services from crisis centers throughout the state. Forty one percent (41%) of those victims were under the age of 18 at the time of the assault.

Throughout the years, legal reform, education efforts, and increased public attention towards sexual violence have led to increase reporting and more effective police and prosecutorial response to these crimes. HB 1272 is another step in the right direction. We believe that by adding coercion to section 12.1-20-02 and 03 of the North Dakota Century Code it will provide prosecutors with an additional tool that will potentially lead to more sexual assault cases being prosecuted in our state.

We would like to thank Representative Griffin and the co-sponsors for initiating this important piece of legislation and urge your support of HB 1272.

Thank you.