

2011 HOUSE JUDICIARY

HB 1204

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1204
January 18, 2011
13021

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1204.

Rep. Delmore: Sponsor, support, explained the bill. January is stalking awareness month; 3.4 million people over the age of 18 are stalked each year in the United States. Three in four stalking victims know their offender in some capacity. Intimate partner stalking is the most common type and the most dangerous. HB 1204 amends subsection 6 of section 12.1-17-07.1 which currently describes the offenses that would increase the penalty for a conviction of stalking from a class A misdemeanor to a class C felony. The amendment would allow for convictions in other courts in the US, such as municipal courts, to be included as an offense that would increase the penalty for stalking to a class C felony. Currently, subsection 6 of the stalking statute, does not include convictions for offenses in municipal courts to be considered as a violation of this section. This bill allows for the increase in the penalty from a class A misdemeanor to a Class C felony. During the 2009 trial of an alleged stalker in one district court in ND, evidence indicated that the offender had committed and pled guilty to as many as 9 similar offenses in a municipal court. Due to the way the statute is currently written, the state's attorney wasn't able to use the prior convictions to increase the penalty. The offender was convicted of stalking, a class A misdemeanor, and sentenced to one year in jail. Most of the sentence was suspended. Upon release the offender was arrested two more times over the course of a two week period for similar behavior. By including convictions in municipal courts in subsection 6, offenders such as this one would receive tougher penalties and the court system would begin to acknowledge stalking for the serious crime that it is. I would ask for a Do Pass on this bill.

Rep. Koppelman: Is it common for us to do this, to include offenses in other states as a prior, when it comes to sentencing.

Rep. Delmore: I think we have someone here that could answer that.

Chairman DeKrey: Thank you. Further testimony in support.

Janelle Moos, Executive Director, ND Council on Abused Women's Services: Support (attached 1).

Rep. Klemin: I've got a question on the scope of other convictions and where it had been entered. In your testimony, you referred to US territories. Although US territories aren't specifically mentioned the amendment, it says similar offense from another court in the US and I guess I'm not entirely sure that a US territory or a US possession is considered to be in the US. I'm just wondering if you had a comment on whether we should say US territories in here or not, just to make it clear.

Janelle Moos: We took from a different section, chapter 12, when we looked at what other sections within century code provided provisions for other courts. We hadn't talked about US territories specifically, but I know we have been doing a lot of work and there are coalitions across the country in the US territories. That might be something to consider amending the bill to include the US territories.

Rep. Klemin: My second question, in reference to a court of another country. I'm a little uncertain about that and how that would be implemented, for instance if somebody was convicted of stalking in Uganda. It is kind of a lawless area right now, but if there was a conviction in Uganda, how would you prove it here so that it could be used to elevate this crime to a class C felony.

Janelle Moos: That might be a question that the state's attorney behind me might be able to answer. Violence against women is being brought to the national and international level of attention and I think it's important that we acknowledge that crimes, such as stalking, do impact victims all across the country and whether or not we include that language in this specific bill, again we worked with the AG's office to look at what would be the important pieces to add to this and we took from century code, and other places which included that. The cases that we want to include are municipal courts. Obviously, what's in century code are already convictions in other states. I think it's important that we acknowledge that victims, that this does happen in other states and victims often come into our state specifically, and when other cases can be specifically highlighted to increase that penalty, I think it would be important.

Rep. Klemin: I'm a little concerned about elevating a crime from a misdemeanor to a class C felony based on convictions in other countries, which may have completely different systems of justice than we do. Without the person being able to contest it, there's nothing in here that I see about that.

Rep. Onstad: I agree with adding the tribal courts to that list, but typically how would you get access to that material if there is a conviction in a tribal court, or if not, do they have open records or if they are reporting back to the state on their convictions.

Janelle Moos: Currently, specifically under protection orders under chapter 14.07, there is a jurisdictional issue and if protection orders are provided under tribal court, those do stand in state court. We could look specifically at, we have a tribal domestic violence coalition and we could work with them in terms of the administrative piece of how we would make sure that the district courts would be able to have the tribal court orders and convictions in tribal courts be included under this.

Rep. Onstad: If there is a conviction in tribal court, and a similar case is brought up with an individual elsewhere, I don't know if we have access to those kinds of records from a states attorney in Cass County to get access to tribal court records in Mountrail County. Is there a mechanism that allows that or a compact.

Janelle Moos: We would have to look at which specific reservations have their own tribal courts. The Trent Indian Service area uses district court. So that might be a little bit easier because they do use district court. For the other ones, we'd have to work administratively to determine what would be the best way for states attorneys to receive those records from tribal courts.

Rep. Brabandt: What is the difference between the penalty for a class A misdemeanor and the class C felony?

Janelle Moos: I'd have to defer to my state's attorney. I know that under the class A misdemeanor, the case that we are specifically referencing, he did receive a sentence of one year, but it was suspended to time served.

Chairman DeKrey: Thank you. Further testimony in support.

Pam Nesvig, Burleigh County State Attorney's Office: Support. I am here on the Burleigh County State Attorney's behalf. I am an Assistant State Attorney with Burleigh County. I did have a case where I reviewed a particular defendant's circumstances to see whether or not I should charge a stalking offense. I felt that the facts did indeed support a stalking offense. When I looked at the particular defendant's criminal history, I did find a litany of prior convictions involving that same victim of the current stalking offense. The convictions were for a number of harassment charges and disorderly conduct charges, those convictions came from the Bismarck Municipal Court. When I looked at the statute for stalking I found that the way the statute is currently written, it did not allow me to elevate the offense to a class B felony, which I felt was appropriate, especially based upon the circumstances; that was because those convictions came out of a municipal court rather than the district court. So even though they are technically the same level of offense, just charged out in a different court, I could not use those convictions and appropriately charge this individual. In looking at what a municipal court does, essentially here in Bismarck is, it charges out all of the infractions or class B misdemeanors that occur within the city limits of Bismarck. Had the particular defendant in this case engaged in his behavior outside the city of Bismarck, in the

county, then it would not have been an issue. Essentially, the state is looking at this as somewhat of a loophole in the statute that doesn't allow for that elevation. In this particular instance this individual was very persistent in his behavior against this victim, he did end up getting charged twice by the state's attorney's office for additional behavior that he had engaged in against this victim. He basically wasn't getting the picture from municipal court and treated it as a joke. I know that across the state there are other cities that have municipal court systems that handle cases the same way as the city of Bismarck does, so essentially, this bill would then allow other jurisdictions as well to address this issue and appropriately charge individuals who have offended. I would answer the question regarding the level of offenses but I believe you had that information. As far as the questions that have to do with the tribal courts and how we get that information. We're not getting that information. We end up learning whether or not someone has a conviction from tribal court is from word of mouth from the actual victim in the case. We're not able to get that on our typical records search. Unless we hear of it from someone, we're not going to find out that there is conviction for stalking, harassment, simple assault, and some of the other offenses that are listed there specifically in the statute in itself.

Rep. Klemin: The question I had asked earlier about other countries. This would probably apply to the tribal court, too, that I see you have a proof situation; I don't know how you prove a conviction in another country or tribal court by word of mouth. How do you do that.

Pam Nesvig: That is another situation that is similar to a tribal court, we wouldn't know that the particular offender/defendant has a conviction from another country unless the victim were to tell us. It would be a situation where we would have to take a look at the circumstances of that particular conviction, find out what it's actually called, see whether the elements of the offense are similar, and I think it would also be important to see what kind of judicial system that is available. Is that something that's likely to happen, probably not.

Rep. Klemin: Why are we putting that in here. I just don't see a person coming to you, by the way, I was convicted of stalking in Uganda or on the reservation somewhere.

Pam Nesvig: It's probably not going to be something that we're going to see a whole lot of.

Rep. Klemin: I'm not sure that you're going to be seeing any of it actually. You also talked about municipal courts, what's the standard for a trial in a municipal court on a stalking case, do you get a trial by jury.

Pam Nesvig: You can ask for a jury trial in a municipal court. Stalking isn't an offense that can be charged by a municipal court; harassment, simple assault, those would be some of the statutes that are referenced in the actual language of the bill itself. There is a process; initially it's almost like a cattle call in municipal court. You

come in, go in front of the judge, you can enter your plea, you can ask for the standard bench trial in front of the Judge Severin, the municipal court judge. If you want to have a jury trial, you can actually have a jury trial in district court with a district court judge.

Rep. Klemin: So when you were talking about not being able to use a conviction from a municipal court to elevate the sentence, you kind of lost me here because if a person has a conviction and wants a jury trial it's got to go to district court, they can't convict somebody of a class B misdemeanor, did I misunderstand you on stalking, it's not going to be that way in municipal court.

Pam Nesvig: Basically, the problem is, the way that municipal courts charge out offenses, they charge under their city ordinance. So if you look at the statute as it is now written, it indicates specific century code sections that you have to have a prior conviction under those specific century code sections. When municipal court charges out a simple assault or harassment offense, those are charged out using city ordinances. So no matter if it's a bench trial in front of Judge Severin or a jury trial in the district court, it goes back to the question of how it's actually charged out and we still couldn't use that then.

Rep. Klemin: So you're asking us to allow an elevation to a class C felony if someone is convicted of harassment in a municipal court for violating a municipal ordinance.

Pam Nesvig: Yes.

Rep. Koppelman: You've got two areas here in the proposed amendment to the statute, you've got the term "or a similar offense", is there a definition for that in law, or what is considered in your decision as a prosecuting attorney or the court determine what is a similar offense.

Pam Nesvig: You look at the specific elements of the offense. You need to look at whether it is a crime involving a victim, as in this particular case; whether it's a crime of repeated behavior, more than one instance, two or more instances, of harassment against an individual, it's typically what we look at for a stalking case. If we have a statute in another state for example that's not called stalking but essentially asks for the same elements, that would be something that I feel would fit.

Rep. Koppelman: In other words you look at the description of the offense and if it were similar like harassment, but not a crime like theft that might involve a victim but wouldn't necessarily be "similar".

Pam Nesvig: That's correct. The same would go for DUI offenses. In the state of ND we are allowed to elevate the offense level for a DUI, we can look to other states such as MN, they may call it DWI, it's called something else, but you look at the elements and make sure they fit.

Rep. Koppelman: In your example, you talked about the municipal case not being able to elevate, and as I'm looking at the statute as it currently stands, you would be able to elevate a similar offense from another state. So if we remove tribal courts and other countries from the discussion, when you're talking about another court in the US you are really talking about adding municipal courts or other levels of court, is that correct.

Pam Nesvig: Yes.

Rep. Hogan: Regarding the tribal court issue, if a victim came in and reported to you that they had been victimized and tried in a tribal court, can you contact the tribal court and would they release the records to you.

Pam Nesvig: That would be my intent, if a victim came in and indicated that.

Rep. Hogan: So you would be able to get access to those tribal court records typically.

Pam Nesvig: Hopefully.

Rep. Kretschmar: Is there a system in place where we can check court records in other states all over the other 49 states.

Pam Nesvig: Yes there is a system, it's not readily available at my desk but I can obtain that information from our sheriff's department.

Rep. Kretschmar: So for example, if someone has an offense like this, in some little county in SC, would there be a record of it somewhere that you could access.

Pam Nesvig: Yes.

Rep. Koppelman: With regard to this issue of casting the net wider in terms of what constitutes a prior offense, is this common in ND criminal practice, I mean if you have statutes that you are charging, not this type of crime, but a different kind of crime, and we have a statute that says if you're a repeat offender, the penalty ratchets up, is it common for you to go to other states, or is it pretty much that you tend to look at our court system.

Pam Nesvig: It is very common. I was actually when I looked at the statute, I was ready to charge with the elevated offense, and was very surprised that this didn't allow for it because where we have other crimes that are allowed to be elevated, that language is already there. So I looked at this as a loophole type situation.

Rep. Koppelman: I wasn't asking about the elevation from municipal court, I was asking whether it's common for other state convictions to be used. For example, if

you charge for a theft, and it's the 3rd time, you're now guilty of X instead of Y. Is it common for those repeat convictions to be included in convictions in other states, or are we usually looking at convictions in ND.

Pam Nesvig: It is very common to look to other states for convictions to elevate the charge. The example I gave previously with the DUI and I was just looking at the simple assault offense and know that can be elevated for a prior offense when it is a domestic violence incident. There are other examples out there as well.

Rep. Delmore: At this time, we already allow similar offenses in another state to be included, do we not.

Pam Nesvig: For other types of crimes, yes.

Chairman DeKrey: Thank you. Further testimony in support.

Jonathan Byers, AG's Office: First of all, with regards to the tribal and other country convictions, this is kind of one of those no harm, no foul type of deals, where if you do have the record, if you're able to get the record; it can be used to elevate it. For those cases where you aren't able to get any record, there's no harm, it just won't be used to elevate anything. It's not going to hurt to have that language in here for those instances where you are able to come up with the conviction record from another tribe or country. With regards to the similar offense language, we use similar language in the offender registration statute, when we're looking at using another state's sex offense conviction to make somebody register. I can't recall whether we used similar offense or equivalent offense, but the same type of thing is used for that.

Rep. Klemin: I have a concern about elevating the crime when someone is convicted of violating a municipal ordinance for harassment without a jury trial. Going along the line that Rep. Kretschmar asked, if the state's attorney has a record that somebody violated a municipal ordinance in some small town in Georgia, for harassment or a similar offense, and we can use that to send the person to prison for 5 years.

Jonathan Byers: First of all, unless the elements were nearly identical, you wouldn't be able to use harassment, it would have to be a stalking conviction. Secondly, if there is no record that a person had a jury trial, or attorney, I think we have ample case law in ND, from other crimes, to indicate that wouldn't and couldn't be used to elevate the crime, because it would be unconstitutional for somebody to have that elevated without a right to a jury trial in a case.

Rep. Klemin: I think the reason we got this bill is because an assistant state's attorney told us she couldn't use a conviction of a municipal ordinance for harassment in Bismarck to elevate the conviction. You're telling us now that even amending this bill, she's still not going to be able to do that.

Jonathan Byers: It depends on the elements of the harassment crime are. If they are very similar to the elements for stalking in ND, under ND century code, it could be. It will all relate to whether the elements are similar to these or not.

Rep. Klemin: What about the US territories issue, I'm a little concerned about the language; it's not from another court in the United States, let's say Puerto Rico or US Virgin Islands.

Jonathan Byers: I'm not sure whether the language, court in United States, whether that would cover the territories. Maybe we would have to add language if you wanted to encompass that.

Rep. Klemin: I'm not sure exactly what they do there, it seems like some of these cases might have to go to a federal court for the US territories, would they not.

Jonathan Byers: That could very well be.

Rep. Koppelman: I'm confused on one answer you gave Rep. Klemin. You said that the main question would be the similarity or elements of the crime in terms of whether it could be elevated from municipal court, I thought I heard you say earlier, that it was a constitutional question if it wasn't a jury trial. What am I missing here.

Jonathan Byers: I know that we've had case law for other kinds of crimes and I think, if I remember correctly, they mostly related to DUI's. If this was not a case where they had their array of constitutional rights afforded to people like a jury trial and right to counsel, my recollection is that those are not able to be used to elevate the level of their offense. Now, if in municipal court they waive the right to a jury trial, and waive the right to an attorney, then it can be used. If they demand the right to a jury trial, then it would get transferred to district court. So they've been afforded that right, it's just a matter of whether they exercised it or not.

Rep. Koppelman: So it's really a question of whether they were offered a jury trial and specifically waived it.

Jonathan Byers: Yes, when they didn't make that demand to have it transferred to district court for a jury trial.

Rep. Koppelman: If we were to look at what this bill attempts to do, and even if we were to pass it with just the reference to another court in the United States, and maybe including tribal courts, we might be changing something in current law based on what it says here about similar offenses in another state. The court in another country question, I think I understood your answer when you talked about no harm no foul. Are we treading into a different area of public policy here, when we sort of give recognition and statute to, if you're convicted anywhere in the world, but not

knowing what the system of justice is in a lot of places in the world, what is your thought on that.

Jonathan Byers: I think in this area we probably are going into different territory. It's not unknown territory though because like I said, offender registration, we did add of another country convictions for making someone register as a sexual offender. I guess it depends upon looking at the need for it versus the unknown of knowing what their court system's like. The unfortunate thing here is if you have a case where you know that somebody followed their ex-wife or paramour from the Middle East and had a number of convictions over there for stalking conduct, came to the United States and even though we know, and everybody knows that the person has been doing this has been convicted for a number of times, you have to start with the basic misdemeanor offense.

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

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1204
January 24, 2011
13287

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1204.

Rep. Koppelman: I would move an amendment to HB 1204 that is on lines 9 and 10, we remove the language "a court of another country". I was handed something this morning by the majority leader to do some research on Sherea law and how some are now trying to apply that in different places around the world. I just think if we, as a blanket statement, as Rep. Klemin talked about during the discussion on this during the hearing, not knowing the system of justice in another country, and just say we're going to include an offense in consideration of ours.

Chairman DeKrey: The Koppelman amendment, to strike the words "a court" on line 9, and "of another country" on line 10.

Rep. Boehning: Seconded the motion.

Voice vote – motion carried.

Chairman DeKrey: We now have the bill before us as amended.

Rep. Klemin: I would like to move another amendment, the problem that I have in this bill is that one of the things that was being asked was that we allow the crime to be elevated to a class C felony from essentially a conviction in a municipal court where they deal with infractions and class B misdemeanors, which is also not a court of record. That's a pretty big step up to me to go from a municipal court conviction to a class C felony based on nothing but a conviction or somebody pleads guilty to harassment, which is not exactly the same as stalking. In a municipal court, there is no record and so I think that's going just a little too far on this and so I would like to move the amendment that says, on line 9, after the word court where it first appears, put in "another court of record in the United States". I don't think it's good public policy for us to be elevating class C felonies because somebody might have been convicted of harassment in a municipal court in some little town in Georgia, where they don't have a public record or keep a record of the proceedings. There is no

testimony that's kept. I don't have a problem with looking at prior convictions to elevate it to a class C felony as long as it's from a court of record.

Rep. Koppelman: Seconded the motion.

Chairman DeKrey: After the first word court in that sentence add "of record".

Rep. Delmore: If we do that, and all the groups from law enforcement to the court and everybody were in on writing this bill, they were in on the ground floor, they all were in agreement, if we take that out, it means then if someone has been in municipal court numerous times, there is still nothing we can do about that person. I just don't think the court is going to take it lightly. Both sides will have a lawyer, but if there have been similar offenses, they are multiple offenses, and there is a dangerous situation that puts somebody's life at stake, then I think we need to look at all the records.

Rep. Klemin: If there was a record to look at, that would be one thing; but there isn't. The mere fact that there might have been, and I'm not too sure that harassment is a similar offense even, but we're not talking about that you can't do anything with a person like this. We're talking about elevating the penalty to a class C felony, which is not doing nothing, it's increasing the penalty and so I think we shouldn't be passing out class C felonies quite so easily. This is a major concern which felonies have a lot of difference on a person's entire life ahead than a misdemeanor does.

Rep. Delmore: I don't disagree with that at all, but if someone has been stalking you and the farthest you've been able to take it is municipal court, the way you're rewriting this there won't be an option for that person to take it to district court and bring up the things that have happened before that in order to have something besides a slap on a wrist for a man or woman who we know is in a situation where they've been doing this time and time again.

Rep. Klemin: I would think that the victim would be able to testify about the history of the stalking by a particular person in a criminal action in district court without bringing in the records of the municipal court to support it. Certainly that testimony goes to the stalking issue and that stalking issue is not the issue here, the issue is should we be able to automatically raise this to a class C felony. There is nothing that says this person can't be charged in the district court to start with, if you go to the state's attorney, and if they don't want to do it, and you end up with a city attorney in municipal court, that is kind of our prosecutorial discretion. The real issue is, should it be elevated to a class C felony. You can bring that stalking charge in the district court to start with.

Rep. Delmore: If it is going to a district court, they're going to have something more than a harassment charge if they're going up to the class C felony. It's not going to stick unless it's something directly related to the punishment it should be for the individual's that are getting around this by doing multiple municipal court

appearances and getting no punishment for it. Some of them coming back and being lethal after that.

Rep. Klemin: Not to belay this too much, but if there is such a recurring situation here, I don't know what they're doing in a municipal court to start with. They ought to be in the district court. Also, I need to emphasize this statute we're talking about has nothing to do with guilt or innocence, or how much this person has been doing something, but it has to do with is automatically elevating the penalty to a felony from what probably would have been an infraction or class B misdemeanor in the municipal court.

Rep. Delmore: That's why they wanted it to be this, because it would come out of municipal. It's not going to change that part of it at all, because they can't give a felony charge in a municipal court, it still has to go to district court, correct.

Rep. Klemin: You can't do a felony in municipal court, the purpose of this is, you're already in district court and now the prosecutor wants to look back to what may have happened sometime in the past in a municipal court, which is not a court of record, and use that conviction history to elevate the penalty for stalking in the district court. I think we're going to be getting into some due process issues, maybe some constitutional problems about a person being charged with a higher crime based on some notation in a journal in a municipal court no matter where in the United States that this person had been convicted of something other than stalking. We're not talking about stalking, we're talking about a similar offense, and I don't know if harassment is a similar offense, I'm not sure what other kinds of similar offenses that might come from all over the country on this. I think we're opening ourselves up for issues that the court will make us look at this again.

Rep. Delmore: We just did the same thing with police records; those that were told to be destroyed, we have a bill before us that says they don't have to destroy them. What right do I have to look at those records that were supposed to be destroyed and use it to build a case even indirectly against somebody. I just see a real contradiction here.

Rep. Koppelman: It seems to me as I listen to the debate and testimony on this bill during the hearing, the real issue that they were trying to get at here was people that move around. It's not so much that they committed a lower offense, which would be the municipal court example that Rep. Klemin is talking about. It was more the issue of, because if they are committing the offense repeatedly, it ought to be charged as a stalking offense. It's not so much that it was a lesser offense in municipal court and now we want to hold it against them, even though that could be the unintended consequence if we don't adopt this amendment. I think what they're getting at is somebody did this in MN, then they did it in IA, and now they're in ND and there was nothing in our law saying that you could charge them as a repeat offender. I think if we amend the bill and pass it as amended, it would clearly get at that, which I thought was the intent, but maybe I missed something.

Rep. Klemin: That certainly is one thing, you would then be looking at a court of record from MN or IA court. I don't have a problem with that, it's when we start taking these things from courts that are not courts of record, that it causes a problem.

Chairman DeKrey: We will take a roll call vote on the amendment. The Klemin amendment passes 11 yes 3 no, 0 absent. We now have the bill before us as amended. What are the committee's wishes.

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

Rep. Koppelman: Second.

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

Date: 1/24/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1284

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number On line 9:10 remove "a court of another country"

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey			Rep. Delmore		
Rep. Klemin			Rep. Guggisberg		
Rep. Beadle			Rep. Hogan		
Rep. Boehning			Rep. Onstad		
Rep. Brabandt					
Rep. Kingsbury					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Steiner					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Motion Carried

Date: 1/24/11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1204

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Page 1, line 9
Klemin Amendment - add "court of record"

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan		✓
Rep. Boehning	✓		Rep. Onstad		✓
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment

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

Motion Passed - Klemin's Amendment

January 24, 2011

Y/K
1/24/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1204

Page 1, line 9, after the first "court" insert "of record"

Page 1, line 9, replace the first underscored comma with "or"

Page 1, line 9, remove "a court"

Page 1, line 10, remove "of another country."

Renumber accordingly

Date: 1/24/11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1204

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0475.01001 .02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1204: 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 1204 was placed on the Sixth order on the calendar.

Page 1, line 9, after the first "court" insert "of record"

Page 1, line 9, replace the first underscored comma with "or"

Page 1, line 9, remove "a court"

Page 1, line 10, remove "of another country."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1204

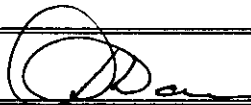
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1204
3/7/11
Job #14999

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to stalking and previous convictions

Minutes:

There is attached written testimony

Senator Nething – Chairman

Representative Lois Delmore – Introduces the bill and explains the changes. She says there were 3.4 million people over the age of 18 are stalked each year in the U.S. Three out four people know their offender in some capacity and intimate partner stalking is the most common type of stalking and the most dangerous. She explains the changes would make for tougher penalties. This bill will change the increase of penalty from a Class A misdemeanor to a Class C felony. Repeat offenders would face tougher penalties. She offers an amendment.

Senator Nelson – Asks why court of another country deleted.

Rep. Delmore – Replies there were concerns that they were not courts of record.

Janelle Moos – Executive Director of the ND Council on Abused Women's Services – See written testimony.

Pamela Nesvig - Assistant State's Attorney with Burleigh County – See written testimony.

Senator Nething – Says you want to take out "of record" on line 9.

Senator Olafson – Asks why district courts aren't courts of record.

Senator Lyson – States line 10 doesn't need to be there.

Nesvig – Offers language for the amendment.

Senator Sitte – Asks what some of the courts are.

Nesvig – Responds, that the process they have to go through as prosecutors to ensure that they are using a conviction that they would be allowed to elevate an offense has to be a conviction legally obtained following the laws, ensuring the constitutional rights of the defendant have been met, like they would have had to be met here if they were convicted of the same offense.

Jonathan Byers –Attorney General's Office – in support of this bill. He explains that courts of record refer to a court that is either taking transcription of the case by a stenographer or electronically recording it. It is not necessary it be a court of record to use the offense for enhancement, it is simply necessary that something is there to show that the person knew they had certain constitutional rights and they waived that. He says that is both under ND case law and Federal case law.

Senator Nething – States our intention is to make sure any past record of a stalker is available for the process.

Byers – Responds, any past record they have that we are able to show that the defendant waived their constitutional rights.

Opposition – 0

Close the hearing on 1204

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1204
3/9/11
Job #15178

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to stalking and previous convictions

Minutes:

Senator Nething – Chairman

Senator Olafson moves the adoption of the amendment
Senator Lyson seconds

Verbal vote – all yes

Senator Olafson moves for a do pass as amended
Senator Sorvaag seconds

Roll call vote – 6 yes, 0 no
Motion passes

Senator Sitte will carry

Date: 3-9
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1204

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes.

Date: 9/29
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sitte

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

REPORT OF STANDING COMMITTEE

HB 1204, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1204 was placed on the Sixth order on the calendar.

Page 1, line 8, remove the overstrike over "er"

Page 1, line 9, remove "of record"

Page 1, line 10, remove ". or a similar offense in another state"

Renumber accordingly

2011 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1204

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1204
April 8, 2011
16441

☒ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Koppelman: We will call the conference committee on HB 1204 to order. We will start with the Senate explaining their amendment.

Sen. Sitte: According to my notes, a court of record means a court where everything is recorded electronically or with a court reporter. We want to make sure that any past record of a stalker is available for a future sentencing. Some of these other courts might not be courts of record; courts of other countries are not courts of record, some of the municipal courts. That's why we are just saying "or a similar offense from another court in the United States or Tribal Court".

Rep. Koppelman: Thank you for the explanation. As I recall, I was looking at the other amendment where it takes out another state, obviously that makes sense because if it's in the United States, it's another state, unless it would be a municipal court. I think that's where the term "of record" came from during the House debate. I believe Rep. Klemin mentioned that a court of record being an issue because his concern was if it's a municipal court, and it could be a crime that would be something related to stalking and there would be no record. I'm not sure if it's an issue or not.

Rep. Delmore: I think one concern was the idea that rights weren't established in these lower courts. That really is not true and I can pass this around (see attached 1). I believe the Senators already have a copy of it. That is what is signed off on. It isn't like someone who is accused of another offense, has been given no legal protection. Many of the other offenses as we look at this group of criminal stalkers are places that they start. Those tragedies have been real within the last couple of months since we've met in the Legislature; both in MN and ND. I just think that it's important that we firm this up a little bit and give our legal system the ability to take care of some of these problems. I think this bill does that without going over the top with what the Senators have put on it.

Sen. Sitte: I remember that Sen. Triplett made that point. She said, so often in municipal court, people don't think that it's that big of a deal, they don't even have

legal counsel. Her concern was that people might not be realizing the seriousness of the nature of the offense by pleading guilty in a municipal court.

Rep. Koppelman: I think that is the only point that I have a question about are the words "of record", whether it ought to be deleted or not. As I said, I have no problem with the deletion of the "or a similar offense in another state" language. I think I would feel more comfortable conferring with members of the full committee who actually brought this up and they probably should have been on the conference committee or we should have conferred with them earlier. I didn't see that point until I was just looking at the detail here as you were describing it.

Sen. Nething: I recognize the argument about the court of record vs. another court. But I also think we have to look at the offense we're talking about, which is stalking and of course, previous convictions. To me, stalking is, for the victim, extremely disturbing; maybe not physically but certainly mentally to have to worry about that and be concerned about all the threats that are implied in stalking. When someone is convicted and has built a record, whether it's a court of record or not, I think it's important for that judge to have it in front of him and I want to relate that to the crime itself or the offense if you want to call it that.

Rep. Koppelman: I appreciate that concern and I share it. I carried the bill on the House side, so I trust that all of us on the committee have a deep concern for this and to ensure that this matter goes forward, I think the question is that we're dealing with a Class C felony here. That's a pretty serious charge. I have watched some municipal courts in action and without denigrating anything about what they do, they are different. I suspect that in some municipal courts, some of the adjudicators, whether they are judges or justice of the peace, their legal credentials or familiarity with some of the fine points of the law may not be as good as a district court judge in the state of ND; nor as Sen. Sitte mentioned, would a defendant coming in understand all the ins and outs, maybe not have legal counsel. Of course, it can be argued that they have the right to a lawyer and if they don't have one, it's their fault. I think when we're looking at Class C felony, that's the only sticking point for me. I would like to ask our intern to do some research to find out if there are municipal offenses which could be captured in this description relating to stalking or whether this is strictly in the criminal code something that would be charged in a court of record, in a district court. Maybe we could get that information before the Committee. I will confer with the representative that brought this bill to us in the House and get his feel and get together later for additional discussion.

Rep. Delmore: We have someone from the Attorney General's office and I think he can enlighten us and answer some of our questions. He has years of experience working with stalking offenses and domestic violence. Perhaps he could share a little bit about of what he has to say as information on the other courts and what those offenses are.

Rep. Koppelman: We would allow that, we normally don't take formal testimony in a conference committee, but Mr. Byers is certainly knowledgeable about these issues.

Jonathan Byers, Attorney General's Office: I think I can address the concern that Rep. Klemin had because I was here when he raised that in the committee. His concern was making sure that the constitutional rights of someone charged with a Class C felony offense are protected in that there is some record that shows that they were made aware of their constitutional rights in the previous underlying offense and that they waived those rights. Now, the constitution is its gatekeeper. You don't need the words "court of record" in this bill in order for the constitution to make sure that when someone is walking into the court, asking for an enhanced offense, the constitution will require that you have a waiver of rights, like Rep. Delmore provided. If you don't have that, just like in the DUI enhancement offenses, where it doesn't say court of record, if you don't have something to show that there was a waiver of the right to an attorney, primarily, then you don't get to use the underlying DUI to enhance the offense. So I'm saying that when the constitution is acting as a gatekeeper to make sure your rights are protected, you won't have to walk into court with a transcript, but you will at least have to have a waiver of rights, showing the person knew that they had the right to an attorney and waived that during the underlying offense.

Sen. Sitte: Could you tell us, is it common practice in a municipal court for people to sign a waiver of rights.

Jonathan Byers: We did check with some of the municipal courts. I think that one may have come from Burleigh. For instance, the city of Minot uses the same kind of waiver form. I checked with a couple of other courts and found that they used the same kind of waiver. If it is a municipal court for one reason or another that's not using a waiver or not obtaining, then like I said the constitution will prohibit that offense from being used to enhance it, just like happens in DUI cases right now. If you're not able to show that they were advised of their rights and waived them, you simply can't use it to enhance. We don't need the words, "court of record" to do that.

Rep. Koppelman: So what specific constitutional rights did Rep. Klemin have a concern with; was it the right to a jury trial, is that what you're talking about.

Jonathan Byers: The two rights, that I was expecting to find when I did the research, were the right to a jury trial and the right to counsel. When I did the research, the courts were focused primarily on the right to an attorney; but I think that the waiver forms that are used by the municipal courts advise people of the rights to both of those and ask them to either exercise them or waive them. They have the right to ask for a jury trial and then it gets moved up to district court for them to exercise them.

Rep. Koppelman: In your experience or research, would a defendant in a municipal court, which would be for a relatively low level offense, understand that by waiving

the right to counsel, that they are not only dealing with that offense, but potentially something down the road that could put them in jeopardy of a felony conviction because of their repetitive offense issues that we're dealing with here, or would most people be looking strictly at, I was picked up for whatever and that could later be construed as stalking.

Jonathan Byers: I would have to say that the average citizen would be primarily concerned with the offense that they are in court for right at that time, and they would not be thinking about something down the road. However, putting the words "court of record" doesn't change that, because even if it is a court where they are taking a transcript, that could be a court of record and still no one might be telling that person you should be thinking about three years down the road if you get another one of these convictions. A court of record isn't going to help in that regard.

Rep. Koppelman: So you're saying that this could happen in a district court or some other kind of level where it would be considered a court of record.

Jonathan Byers: Yes, that's what I am saying. The constitutional requirement is just that they were made aware of their rights and either waived or exercised them. Even in a court of record, there isn't anything in the case law that I've seen that there be a discussion by the court with a defendant about the possible ramifications of a subsequent offense.

Rep. Delmore: It has to be a related type of conviction that would go with this. Just because I had a DUI, if I'm stalking somebody those charges have to be related to stalking, so it can't just be I'm going to bring up somebody's whole history.

Jonathan Byers: Correct. It specifically lists the offenses that will qualify, and then it says "or similar offense". When we have that language in the sex offender registration crimes when it says a "similar or equivalent offense", we then get the elements of the municipal case, for instance, and they might call it window peeping in municipal court, but if I lay those elements out and it's the same as what we call surreptitious intrusion in state law, and the elements are the same, then it's similar and we can use that.

Sen. Sitte: Does it make any difference if the person is stalking the same person, or different people. I think it would be more dangerous if the person is pursuing one individual repeatedly rather than more than one person. Is there a time limit on this, how does that work.

Jonathan Byers: I don't think there's any kind of a time limit on this. In subsection a1, that applies to any victim of a similar offense, but when you get down to subsection 2 where it is talking about violating a court order, that talks about protecting the victim of the stalking, so that is more victim specific under subsection 2. Subsection 1 would apply to any previous conviction, even if it's not that same victim.

Rep. Koppelman: What are the offenses named that could be classified as similar offenses in a court that is not a court of record. What kind of charges are we talking about?

Jonathan Byers: I don't know the specific provisions without seeing the chapter 12.1-17; harassment for instance might have similar elements to a stalking conviction. Perhaps disorderly conduct depending on how it was charged in the underlying court offense might have similar elements to it. The offenses that are covered in the criminal statutes that are set forth are simple assault, assault, aggravated assault, terrorizing, menacing and harassment.

Rep. Koppelman: Aren't those charges typically brought in a district court.

Jonathan Byers: The one offense that I can think of that would probably have a municipal court equivalent is a simple assault because that is a Class B misdemeanor and so there is likely an equivalent municipal court offense for that. The other charges are Class A misdemeanors, so it's unlikely that they would. There is a Class B misdemeanor harassment offense as well, which would probably be heard in municipal court.

Rep. Koppelman: I believe we just passed a bill, that puts some of these surreptitious intrusion language in the disorderly conduct statute as well as where it currently resides in the sex offender section. I believe that's a Class B misdemeanor penalty.

Jonathan Byers: I think that's correct.

Rep. Koppelman: So the question would be again, to get back to the question about a court of record or not, if those charges would be brought and if they are relevant, it would have to be proven that the elements of that specific charge were related to a stalking kind of offense.

Jonathan Byers: Correct. The court is going to make findings with regard to that, and the Constitution acts as a gatekeeper and the judge does to; because the judge might look at this and say that you are alleging that this is similar, but when I look at it, I don't see that the elements are the same as that old crime compared to this one, so the judge can be a gatekeeper on this too, again without the need for the words "court of record".

Sen. Sitte: Could you provide us with a definition of stalking.

Jonathan Byers: Stalk means to engage in an intentional course of conduct, directed at a specific person which frightens, intimidates, or harasses that person and that serves no legitimate purpose. The course of conduct may be directed

toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation or harassment.

Rep. Koppelman: Do you, as we have this ramped up charge for multiple convictions, do you see it as having to be directed at the same person then to kind of establish this stalking sort of pattern, or if someone was convicted of harassment or window-peeping, low level misdemeanor offenses in a municipal court and later was convicted of something more serious against a different victim, would that be used, or is it your sense of it, that it has to be directed against this individual, then you offended again against another individual, and offended again, that is a clear pattern of stalking, and therefore, we are ramping it up to a Class C felony.

Jonathan Byers: Now that I look at the language specifically of what is in subsection a1, at the very end of the sentence where it says "involving the victim of the stalking", and I believe I even asked a question about this subsequent to the other committee hearing, was that the intent to limit this to a conviction involving the victim of that stalking, and I think that would be interpretation that would be given to this; is that it would have to involve that victim.

Rep. Koppelman: I guess I would have less of a concern if that's the case, because that is the pattern that's being established, if it's someone who punched a person in the nose five years ago and it was a municipal misdemeanor and now they are stalking someone else, I have no problem with them being charged with the stalking crime, but should that be the chain of events that creates the ramp-up. If it is the same victim from both incidents, I think we are talking about a different standard.

Jonathan Byers: Right.

Rep. Koppelman: Thank you. Committee, what are your thoughts.

Rep. Delmore: I would like to move this forward. Jonathan Byers answered my questions and I hope he did for the rest of the committee, both in what it is and who it is directed against. I think it's an important piece of legislation. I would move that the House accede to the Senate amendments.

Rep. Brabandt: Second the motion.

Rep. Koppelman: Discussion on the motion.

Sen. Sitte: I appreciated the background that we received but I would like to talk to Sen. Triplett one more time about some of her concerns. I don't have the notes from the Floor debate on this bill. Could we come back later after I have a chance to look at it?

Rep. Koppelman: I don't think that we have disagreement over the substance of the issue, I think we're just dealing with the technical questions, so if you feel more

comfortable with that, there is a motion on the floor, but if the maker of the motion agrees to withdraw, we would certainly allow you more time.

Rep. Delmore: I withdraw my motion.

Rep. Brabandt: I withdraw my second.

Rep. Koppelman: We will come back and allow the committee time to do any research and revisit the issue. We are adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1204
April 11, 2011
16495

☒ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Koppelman: We will reopen the conference committee on HB 1204. Since we last met, as you recall, the question that we spent the most time on during our last committee meeting was the question "of record" verbiage that was stricken from the House language. I have a couple of thoughts on that, but another issue that we had been thinking about was whether we need the language "or tribal court" if we say court in the United States. The Senate took out "in another state", because we have the United States; tribal courts are also in the United States. So the question is whether that language needs to remain in the bill or not.

Sen. Nething: The tribal courts are separate because they are a sovereign nation.

Rep. Koppelman: So even though they are within the United States, the reference is still probably necessary. I did visit with Rep. Klemin, who was the one in the House that raised the issue of the "court of record" language and I believe that Ms. Moos has also visited with him and little bit. The background on this, apparently, as I understand it, is that there were some cases where there were offenses committed on a local level that were municipal court offenses that did establish a pattern, which had they caught it at the time, or had this law been in place, perhaps could have been used to elevate an offense and so on and this individual eventually became a convicted sex offender. So the thinking is, if you can catch it before it gets to that point, you can save a victim maybe from that fate. That was the intent of the bill as it originated. The question of "court of record" as we discussed last time, dealt with the issue of local courts and Rep. Klemin's concern, and as I visited with him I think he is comfortable that are courts in ND do a pretty good job as Rep. Delmore demonstrated last time by the sheet she gave us and from Mr. Byer's testimony to that effect as well, that they give people the information so they know what they are dealing with. Rep. Klemin suggested, his concern was that, some backwater court in some town in USA and some justice of the peace and there is a charge that leads to a conviction in that court, but it's not a court of record, the court here can't really review it or know what the substance of it was, but it's appearing on a report somewhere and he's worried about accepting that kind of thing. That's why he went with "court of record". In discussing it with him, he's comfortable that the courts in

ND, even at the municipal level do a good enough job here, so his suggestion was that we craft language that might say, "another court in ND or another court of record in the United States". In other words have inclusive language for our state, but then in other states, imply that it would need to be a court of record. In our discussions, I brought up the question of border communities, such as MN, and visiting with Rep. Delmore later, she brought up the same thing. I checked with the Attorney General's office and municipal courts in MN are courts of record. If we were to craft that kind of language, I think we would resolve some of the concerns that have been discussed by capturing all courts in North Dakota, in effect capturing courts in MN and then anywhere else in the country that might be courts of record. Discussion.

Sen. Sitte: I'm glad you're looking at "of record". When I spoke to Sen. Triplett, in depth, she gave me several examples; sometimes after a divorce people are so distraught on either side, and they might be sitting out in front to see who they are coming home with, etc. So if they get one conviction, and even in the municipal court, there is no one that's going to say to them, the next time you do this it's going to be a felony. So no one gives them that fair warning. She said there is something serious enough about when we say "court of record", meaning district court that people really get it. Okay, I better behave because next time it's going to be worse. When she was involved with family law, she saw many cases. What was person thinks means "to frighten" these guys might not be intending to frighten at all, but there is so much perception in this area that she was really hoping that we would keep "of record" the way it came from the House and leave it at that.

Rep. Delmore: I think this is language that you had in the Senate, that's really been drafted from the sex offender statute is. I put stalkers and sex offenders, really in almost the same purview because of the types of patterns that they can certainly create. As I look at this, I think a reasonable compromise is "another court in ND, a court of record in the United States or a tribal court", would be a reasonable settlement. I just think that once a pattern has been established, and I don't think they are going to take just one offense; if it's a serious enough matter in the second offense to go to district court, there has to be pattern in the history. Then I think, we've got a male or female, because I think you're right when a divorce takes place, sometimes there are a lot of emotions...but the second time in taking it to district court, tells me that it's more than a one-time event. I am amenable to the amendment. I move that the House accede to the Senate amendments and further amend as follows: page 1, line 10, "from another court in ND, a court of record in the United States, or a tribal court."

Sen. Sorvaag: I think I agree as well. The concern that was expressed in the Senate Committee and in hearing here, that they could put quite a trail together down in the municipals and you're not going to be able to look at it. We just dealt with another law that if they plead guilty they go back to the municipals. If they figure this out, you could hide quite a few incidents of trouble; in a court of record the whole purpose is to see if a pattern emerges and identify it early on. I think that amendment is a fair alternative.

Sen. Sitte: I know that it used be that municipal court judges don't even have to be lawyers, is that still true, they are just law trained or has that been changed.

Rep. Koppelman: Years ago it used to be the justices of peace that weren't, but I think they are all law trained if I'm not mistaken, in ND. You're right, there was a day when that wasn't the case. Somebody with good common sense could be the justice of the peace.

Rep. Delmore: I move that the House accede to the Senate amendments and adopt further amendments to say "from another court in ND, a court of record in the US, or a tribal court".

Sen. Nething: Second the motion.

5 YES 1 NO 0 ABSENT

HOUSE ACCEDE TO THE SENATE AMENDMENTS AND ADOPT FURTHER AMENDMENTS

April 12, 2011

VR
4/12/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1204

That the Senate recede from its amendments as printed on page 981 of the House Journal and pages 698 and 699 of the Senate Journal and that Engrossed House Bill No. 1204 be amended as follows:

Page 1, line 8, remove the overstrike over "or"

Page 1, remove line 9

Page 1, line 10, remove "court, or a"

Page 1, line 10, overstrike "in another state" and insert immediately thereafter "from another court in North Dakota, a court of record in the United States, or a tribal court"

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: JUDICIARY

Bill/Resolution No. 1204 as (re) engrossed

Date: 4/8/11

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☒ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 981 ..

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1204 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Delmore Seconded by: Rep. Nething

Representatives				Yes	No		Senators				Yes	No
Rep. Koppelman				✓			Sen. Nething				✓	
Rep. Brabandt				✓			Sen. Little					✓
Rep. Delmore				✓			Sen. Sorvaag				✓	

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier Rep. Koppelman Senate Carrier Rep. Sorvaag

LC Number 11.0475.02002.04000 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1204, as engrossed: Your conference committee (Sens. Nething, Sitte, Sorvaag and Reps. Koppelman, Brabandt, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 981, adopt amendments as follows, and place HB 1204 on the Seventh order:

That the Senate recede from its amendments as printed on page 981 of the House Journal and pages 698 and 699 of the Senate Journal and that Engrossed House Bill No. 1204 be amended as follows:

Page 1, line 8, remove the overstrike over "or"

Page 1, remove line 9

Page 1, line 10, remove "court, or a"

Page 1, line 10, overstrike "in another state" and insert immediately thereafter "from another court in North Dakota, a court of record in the United States, or a tribal court"

Renumber accordingly

Engrossed HB 1204 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1204

1

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

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

Testimony on HB 1204
House Judiciary Committee
January 18, 2011


Chair DeKrey and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf to provide you and overview of HB 1204 and urge your support of the bill.

Stalking is a crime that is pervasive, dangerous, and potentially lethal. Intimate partner stalking is the most common type of stalking and the most dangerous. Nearly 3.4 million people over the age of 18 are stalked each year and 3 in 4 of stalking victims are stalked by someone they know. Stalking is a crime in all 50 states, the District of Columbia, and the U.S. Territories. More than ½ of states classify stalking as a felony upon second or subsequent offenses or when the crime involves aggravating factors including a deadly weapon, violation of a court order, or stalking the same/multiple victims on separate occasions.



Chapter 12.1-17-07.1 outlines the crime of stalking in North Dakota. Individuals that are convicted of stalking are guilty of a class A misdemeanor. An individual is guilty of a class C felony if the crime involved aggravating factors such as: if the person has previously been convicted of violating the section, or a similar offense in another state, involving the victim of stalking; if stalking violates a court order issued under chapter 14-07.1 protecting the victim of stalking, if the person had notice of the court order; or if the person previously has been convicted of violating the section.

HB 1204 amends subsection 6 of section 12.1-17-07.1 to include convictions in other courts in the United States, a tribal court, or a court of another country. The convictions that are particularly relevant are those that occur in municipal or city courts. We were made aware of a number of cases in which the offender had been convicted multiple times for harassment or disorderly conduct in municipal court but the state's attorney wasn't able to elevate the offense to a class C felony because the convictions didn't qualify under the statute. The passage of HB 1204 would change that.



In closing it's important to note that stalkers often reoffend; recidivism rates are as high as 60%. By allowing previous convictions in other courts to be included under subsection 6 of the stalking statute, more crimes would be elevated to class C felonies; therefore, mandating stricter punishment on stalkers and increasing victim safety.

Thank you.



Stalking Resource Center

www.ncvc.org/src
Tel. (202) 267-8700
E-mail: src@ncvc.org

stalking fact sheet

THE NATIONAL CENTER FOR Victims of Crime

Crime victims can call:
1-800-FYI-CALL
M-F 8:30 AM - 8:30 PM

WHAT IS STALKING?

While legal definitions of stalking vary from one jurisdiction to another, a good working definition of stalking is a *course of conduct directed at a specific person that would cause a reasonable person to feel fear.*

STALKING VICTIMIZATION

- 3.4 million people over the age of 18 are stalked each year in the United States.
- 3 in 4 stalking victims are stalked by someone they know.
- 30% of stalking victims are stalked by a current or former intimate partner.
- 10% of stalking victims are stalked by a stranger.
- Persons aged 18-24 years experience the highest rate of stalking.
- 11% of stalking victims have been stalked for 5 years or more.
- 46% of stalking victims experience at least one unwanted contact per week.
- 1 in 4 victims report being stalked through the use of some form of technology (such as e-mail or instant messaging).
- 10% of victims report being monitored with global positioning systems (GPS), and 8% report being monitored through video or digital cameras, or listening devices.

[Katrina Baum et al., "Stalking Victimization in the United States," (Washington, DC: BJS, 2009).]

IMPACT OF STALKING ON VICTIMS

- 46% of stalking victims fear not knowing what will happen next. [Baum et al., (2009). "Stalking Victimization in the United States." BJS.]
- 29% of stalking victims fear the stalking will never stop. [Baum et al.]
- 1 in 8 employed stalking victims lose time from work as a result of their victimization and more than half lose 5 days of work or more. [Baum et al.]
- 1 in 7 stalking victims move as a result of their victimization. [Baum et al.]
- The prevalence of anxiety, insomnia, social dysfunction, and severe depression is much higher among stalking victims than the general population, especially if the stalking involves being followed or having one's property destroyed. [Eric Blauuw et al., "The Toll of Stalking," *Journal of Interpersonal Violence*, 17, no. 1 (2002):50-63.]

RECON STUDY OF STALKERS

- 2/3 of stalkers pursue their victims at least once per week, many daily, using more than one method.
- 78% of stalkers use more than one means of approach.
- Weapons are used to harm or threaten victims in 1 out of 5 cases.
- Almost 1/3 of stalkers have stalked before.
- Intimate partner stalkers frequently approach their targets, and their behaviors escalate quickly.

[Kris Mohandie et al., "The RECON Typology of Stalking: Reliability and Validity Based upon a Large Sample of North American Stalkers," *Journal of Forensic Sciences*, 51, no. 1 (2006).]

STALKING AND INTIMATE PARTNER FEMICIDE*

- 76% of intimate partner femicide victims have been stalked by their intimate partner.
- 67% had been physically abused by their intimate partner.
- 89% of femicide victims who had been physically assaulted had also been stalked in the 12 months before their murder.
- 79% of abused femicide victims reported being stalked during the same period that they were abused.
- 54% of femicide victims reported stalking to police before they were killed by their stalkers.

[Judith McFarlane et al., "Stalking and Intimate Partner Femicide," *Homicide Studies* 3, no. 4 (1999).]

STALKING LAWS

- Stalking is a crime under the laws of 50 states, the District of Columbia, the U.S. Territories, and the Federal government.
- Less than 1/3 of states classify stalking as a felony upon first offense.
- More than 1/2 of states classify stalking as a felony upon second or subsequent offense or when the crime involves aggravating factors.
- Aggravating factors may include: possession of a deadly weapon, violation of a court order or condition of probation/parole, victim under 16 years, or same victim as prior occasions.

For a compilation of state, tribal, and federal laws visit www.ncvc.org/src.

Last updated June 2009

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The Stalking Resource Center (SRC) works to raise national awareness of stalking and to encourage the development and implementation of multidisciplinary responses to stalking in local communities across the country. The SRC provides training, technical assistance, and resource materials for professionals working with and responding to stalking victims so that communities are more aware of and better equipped to respond to the crime of stalking.

Contact us at 202-467-8700 or src@ncvc.org.

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

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

Testimony on HB 1204
Senate Judiciary Committee
March 7, 2011

Chair Nething and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf to provide you and overview of HB 1204 and urge your support of the bill.

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Chapter 12.1-17-07.1 outlines the crime of stalking in North Dakota. Individuals that are convicted of stalking are guilty of a class A misdemeanor; punishable by up to one year in prison. An individual is guilty of a class C felony if the crime involved aggravating factors such as: if the person has previously been convicted of violating the section, or a similar offense in another state, involving the victim of stalking; if stalking violates a court order issued under chapter 14-07.1 protecting the victim of stalking, if the person had notice of the court order; or if the person previously has been convicted of violating the section; punishable by up to five years in prison.

The original version of HB 1204 amended subsection 6 of section 12.1-17-07.1 to include convictions in other courts in the United States, a tribal court, or a court of another country. As you can see from the engrossed version, courts in the United States and courts of another country were removed and replaced with another court of record in the United States or tribal courts (lines 9-10).

The intent of the original bill was to include convictions that occur in municipal or city courts because it was brought to our attention that a number of cases in which the offender had been convicted multiple times for harassment or disorderly conduct in municipal court and then charged with stalking in district court couldn't have those convictions considered under the statute as prior offenses. Therefore, the state's attorney wasn't able to elevate the offense to a class C felony because the convictions didn't qualify under the statute. The passage of HB 1204 in its original form would change that.

As Representative Delmore indicated the language in the engrossed version of HB 1204 is problematic because municipal or city courts are not courts of record; therefore we are offering the amendment to remove courts of record and replace it with another court in the United States as that would cover municipal and tribal courts.

A member of the House Judiciary Committee voiced concerns about the process in which defendants are notified of their rights in municipal court. Specifically, the concern was that defendants be notified of their right to a jury trial and right to legal counsel. Since the hearing in January, we've done research about the process and defendants are either handed the form outlining these two rights, in addition to many more, and are asked to sign off that they understand. If the defendant is appearing in front of a judge over video, the judge reads these rights to the defendant. I've included a copy of the form for you with my testimony.

The other concern brought to our attention was how prosecutors would be able to access information regarding prior offenses since municipal courts are not courts of record. Pamela Nesvig from Burleigh County is here today and will go into greater detail about the process for accessing information about prior convictions, but we've been told it's a procedural issue and that they information would be readily available.

In closing it's important to note that stalkers often reoffend; recidivism rates are as high as 60%. By allowing previous convictions in other courts to be included under subsection 6 of the stalking statute, more crimes would be elevated to class C felonies; therefore, mandating stricter punishment on stalkers and increasing victim safety.

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LINCOLN MUNICIPAL COURT
74 Santee Road, Lincoln, North Dakota

CRIMINAL PROCEEDINGS – NOTIFICATION OF RIGHTS AND ACKNOWLEDGMENT

City of Lincoln vs. _____ Complaint No(s). _____

YOU HAVE THE FOLLOWING RIGHTS:

1. To have a correct copy of the criminal complaint provided to you and to have it read and explained to you before entering a plea.
2. To be informed of the maximum punishment and the minimum possible punishment that may be imposed by the court if you are convicted or if you plead guilty to the offense.
3. Against self-incrimination, this means that you have the right to remain silent, and to know that any statement made by you may be used against you in a criminal prosecution. At trial, you may testify or not testify as you choose.
4. To the assistance of an attorney at all stages of these proceedings, and before making any statement or answering questions. To the extent that you are unable to pay for an attorney without undue financial hardship to yourself or your dependents, to have legal services provided to you at public expense. Should you be furnished legal services at public expense, you may be required to reimburse the cost of such legal services.
5. To be admitted to bail pending trial upon such conditions which will reasonably assure your appearance at all court proceedings.
6. To enter a plea of either guilty or not guilty and to persist in a plea of not guilty.
7. To be presumed innocent. You may be convicted only if the city proves beyond a reasonable doubt that you have committed each and every element of the offense.
8. To confront and cross-examine, in court, the witnesses against you. To present witnesses to testify on your behalf and to use this court's subpoena power to have witnesses appear at trial on your behalf.
9. To have a trial by jury in District Court if you make a written request for jury trial within 28 days following a plea of not guilty. If your case remains in municipal court and you are found guilty before a judge in municipal court you may appeal to District Court for a new trial before a judge. There is no cost to you and no greater penalty if you decide to have a jury decide the facts of this case.

If you plead guilty, there will be no trial of any kind. By pleading guilty, you give up your right to have trial, to confront witnesses against you, and your privilege against self-incrimination.

I STATE THAT I AM THE DEFENDANT IN A CRIMINAL ACTION, THAT I HAVE READ THIS NOTIFICATION, AND HAVE BEEN ORALLY INFORMED OF THESE RIGHTS BY THE COURT, AND THAT I UNDERSTAND EACH OF THEM.

DATE

DEFENDANT'S SIGNATURE

ENTRY OF PLEA

GUILTY PLEA; I plead guilty and waive all my rights listed and acknowledged by me on the Notification of Rights, and state that my plea is voluntary and is not the result of force or threats or promises apart from that contained in a plea agreement, if any. My willingness to plead either (check one) does _____, or does not _____ result from previous discussions between the prosecuting attorney and myself or my attorney.

(Check One)

_____ I am represented by attorney _____.

_____ I know of my right to an attorney at every stage of this case and that the judge will appoint an attorney for me if I cannot afford one without undue financial hardship to myself or my family, but I have decided that I do not need or want an attorney in this case.

Date

Defendant's signature

ACCEPTANCE OF GUILTY PLEA: Having thoroughly discussed the rights explained in the Notification of Rights with the defendant and being convinced that the defendant voluntarily wishes to plead guilty and waive those rights, and having established a factual basis for the guilty plea by (check one or more as applicable) _____ the defendant's statement, _____ the prosecution statement, _____ the investigating law enforcement officer's statement, _____ other (describe below) _____.

Date

Municipal Judge

NOT GUILTY PLEA

I plead not guilty, and state that:

ATTORNEY: (Check One)

- _____ 1. I do not wish to consult with an attorney, and waive the right to the assistance of an attorney; or
 _____ 2. I have consulted with an attorney and I have retained or will retain my own attorney; or
 _____ 3. I request a court-appointed attorney and will provide financial information to the court.

**YOU MUST REQUEST AN APPLICATION FROM THE CLERK OF COURT
AND SUBMIT IT TO THE COURT.**

Date

Defendant's signature

JURY TRIAL: (Check one)

- _____ 1. I understand that if I do not demand a jury trial in writing within 28 days, I waive my right to a jury trial.
 _____ 2. I waive my right to a jury trial.
 _____ 3. I demand a jury trial in District Court.

Date

Defendant's signature

Testimony on HB 1204
Senate Judiciary Committee
March 7, 2011

Chairman Nething, members of the Senate Judiciary Committee, my name is Pamela Nesvig. I am an Assistant State's Attorney with the Burleigh County State's Attorney's office. I stand before you in support of House Bill 1204 as amended, removing the "court of record" language.

The need for this amendment arose from the course of my duties in reviewing a stalking case in Burleigh County. A survey of the suspect's criminal history showed numerous municipal court convictions for harassment of the same victim. The City of Bismarck has a municipal court system like many other cities throughout our State. However, as the stalking statute is currently written and as written using the "court of record" language, municipal court convictions as well as convictions from tribal courts cannot be used to elevate the offense level for stalking. The defendant in this case had the benefit of being in the right place at the time of the offenses as if the crimes of harassment would have occurred outside of the city limits, they would have been prosecuted in district court rather than municipal court. Therefore his stalking offense would have been appropriately charged as a class C Felony for repeatedly harassing to the point of stalking the same victim, rather than a class A Misdemeanor.

The primary concern for utilizing a conviction from a non-court of record would be whether the defendant's constitutional rights had been violated in obtaining that conviction. This is a concern that we are already required to address when elevating other offenses such as Driving Under the Influence. When the offense is elevated based upon a prior conviction, the State is required to show the prior conviction(s) are reliable. This may include whether the defendant entered a voluntary plea of guilty, was represented by counsel, or had a right to a jury trial. These are issues the prosecutor in a case must be prepared to address when an offense has been elevated based upon prior convictions.

It is important to allow convictions from all courts within the United States to elevate the offense of stalking to a class C Felony, rather than excluding municipal court convictions or tribal convictions even though they may fit the specific offenses currently included in statute. To treat these convictions differently, even though the procedural safeguards have been met, leaves a loophole in the law where a defendant is benefitted by location at the time the crime was committed.

Proposed Amendment to HB 1204

Page 1, line 9, remove "of record"

Page 1, line 10, remove ", or a similar offense in another state,"