

Sean M. Johnson
6405 Preston Loop
Bismarck, ND 58504
701-391-5326

North Dakota Senate Judiciary Committee
State Capital
600 East Boulevard Avenue
Bismarck, ND 58505

Testimony in Support of HB 1364

Honorable Members of the Senate Judiciary Committee:

BOTTOM LINE UP FRONT:

HB 1364 simply seeks to extend the current NDCC protections our citizens enjoy on public roads from habitually dangerous dogs to their own private property. No different than the current law, a judge would review the merits of each complaint made under this part of the code to determine if a dog truly is a nuisance, if it is a public safety concern, and if all options have been exhausted with an owner before ordering a dog euthanized humanely.

This is a straightforward bill which creates no new law, but rather closes a significant gap in current law through making it applicable to private property in addition to a public road. It also enables a judge better latitude than currently exists to weigh the facts of each complaint and determine if a nuisance exists in the first place. This provision best assures due process for all involved. This is a law that works, and ultimately prevents more harm to people and destruction of animals in the long run through the involvement of a judge objectively reviewing the facts of each circumstance, initiating a process that starts with a warning letter, and in turn deterring many situations from getting worse for both the people and animals involved while offering certain relief to victims when the deterrence does not work. This is something local ordinances could not replicate as effectively and consistently. Extending a current law that is working to private property, and the protections thereof to those people who have a legal right to be on that property, is the right thing to do in all respects.

BACKGROUND:

My name is Sean Johnson, and I reside in the Prairiewood Estates Second Subdivision of Apple Creek Township in Burleigh County. I am offering this testimony in support of HB 1364 relating to dogs as a public nuisance.

I presented the idea for this bill to Representative SuAnn Olson, who represents our subdivision in District 8, after a long and unfortunate chain of events which spanned the course of nearly two years related to a dangerous rottweiler dog. During this time, the rottweiler was allowed to run loose by the owner and subsequently proceeded to assault and terrorize residents and visitors to this area on several occasions.

I do not intend to dwell on the specifics of each instance or the severity of them because the facts that they occurred over the course of those two years is irrefutable. A neighbor, Susan Murphy, has also submitted testimony which spells out in great detail the serious circumstances and fear encountered because of this dog. The fact that people also have a reasonable expectation not to live in fear or experience an actual attack by a canine while on property they own or have a reason to be present on is

also irrefutable. If such things do occur, people also have a reasonable expectation of effective intervention by and resolution from law enforcement and the courts.

It is this last point why this bill is before you today. All reasonable attempts were made to work with the owner to control and contain his dog. For reasons only he will fully know, he chose not to be a responsible pet owner in this regard. We then resorted to contacting law enforcement and were informed such matters were a civil matter versus a criminal one.

We do not dispute civil action is the correct outlet to seek redress through. North Dakota Century Code Chapter 42-03-01 does provide provisions for the court to act on the matter of nuisance dogs, but unfortunately these provisions **only apply when people are traveling peaceably on a public road or street**. This same part of the code is silent on the matter of nuisance dogs harassing people on their own property. Our situation drug on for an unreasonable amount of time because the harassment from the canine in question occurred primarily on private property he wandered on to.

This bill seeks to remedy that gap. Summarized, the bill if passed into law will allow a judge to take the same actions they can today to address nuisance dogs on public roads and streets, and **extends them to provide an outlet for redress to people on private property they have a right to be on, especially their own homes**. It also provides permissive language to the court to allow them to evaluate each situation based on its specific facts and circumstances, versus the prescriptive language that exists today.

I feel this change will provide the necessary civil relief that will prevent another neighborhood in North Dakota from having to go through what we did in Prairiewood over such an extended amount of time, better avoid unfortunate and dangerous attacks by canines with a track record that meets nuisance criteria, but also allow a judge the latitude they need to apply the provisions of this law appropriately and when truly warranted.

MISINFORMATION AND CLARIFICATION:

This bill has elicited an emotional response from some that would be understandable if it truly did what they fear, but it does not. Unfortunately, such reactions can often lead to misunderstandings and the subsequent spread of misinformation. That has occurred here, and it is unfortunate. I would like to take an opportunity at the end of this testimony to try and correct the misunderstandings and misinformation.

Of note, the current law and this proposed amendment **do not call for the indiscriminate elimination of dogs** found out wandering around, hunting, working (such as seeing eye dogs) or otherwise just being dogs. To imply otherwise is simply misleading.

A review of the current law and the proposed amendment should make it very clear that this is not what is being proposed, nor would this happen. As mentioned, this is a civil action requiring the involvement of a judge who will determine if there is a track record of clearly dangerous harassment. Judges are well trained to look at all facts bearing on a case before making a ruling (The amendment gives them even better latitude to do just that as well). They are also experienced and learned in the law enough to know what habitual harassment is in a specific circumstance, **and what it is NOT** (This is a positive aspect in this bill difficult to replicate with a local ordinance as well).

Reasonable people would agree barking may be annoying, but is not harassment. Dogs wandering into other yards and making a "deposit" is frustrating, but isn't harassment. Even an isolated case of a dog nipping at someone because they got lost and are scared is not harassment. **If reasonable people can see this, a Judge will definitely see this, and more.**

It is also key to reiterate that **this law already exists and is being successfully and fairly applied today**. With that we have a track record for how judges have carried out their responsibilities as they relate to this law. Orders to euthanize are not common, and when issued it is because all reasonable avenues to work with owners have been exhausted, and **that animal is a demonstrated danger to people**. While it is unfortunate a dog has to pay for an irresponsible owner, **it is completely unacceptable for people to have to live in fear of and face the dangers incumbent with a habitually dangerous dog that that owner refuses to take responsibility for**.

Last, it is unfortunate some have sensationalized the actual act of euthanasia by erroneously claiming the animal is shot. What really happens is they are put down humanely by a veterinarian, and as an absolute last resort.

In short, **had all the horrible things some profess this bill would do have even a scintilla of validity, they would be evident already because this law already exists and is in use**. They are not evident because the law is effectively and appropriately applied now and will still be with this straightforward change. It simply eliminates a "safe harbor" from the spirit of the law currently existing on private property, and ensures that spirit applies wherever you may be including your own back yard.

I genuinely appreciate the opportunity to present a case for passage of this bill today and look forward to answering any questions you may have. We do not want to hear of another development or neighborhood experiencing what we did for two summers. Our experiences motivated the proposal for this bill in the hopes we can save other North Dakotans the fear, angst, and danger we experienced.



Sean M. Johnson