

1999 SENATE JUDICIARY
SB 2040

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2040

Senate Judiciary Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
1	x		2070 - 6172
2		x	00 - 1850
2-10-99 2	x		236 - 550
Committee Clerk Signature <i>Jackie Tollman</i>			

Minutes:

SB2040 relates to the rights and duties of parents in child custody and visitation proceedings.

SENATOR STENEHJEM opened the hearing on SB2040 at 10:30 A.M.

All were present except Senator Bercier.

REPRESENTATIVE GLASSHEIM, Chairman of the Interim Committee, testified in support of SB2040. The idea was to redress the balance between the custodial parent and non-custodial parent who has a continuing interest in the child be afforded information to the child. So that non-custodial parents can get information and records of the child and to know if the child is having any problems.

SENATOR NELSON asked where it is defined if the parent has no interest.

REPRESENTATIVE GLASSHEIM stated this just gives them the right if they request it, if they aren't interested they won't request it.

SENATOR NELSON asked about the duty to inform refers only to custodial parent.

SENATOR STENEHJEM stated that both parents have a duty to inform.

REPRESENTATIVE DEVLIN testified in support of SB2040. My remarks are a brief echo of Representative Glassheim.

JENNIFER CLARK, Committee Counsel for the Interim Child Support Committee, explained SB2040. This bill creates a new section which lays out the rights and duties of parents of the child. The Judge is required to include these rights and duties in the Order unless the Judge makes a specific finding saying there is a reason in support excluding or modifying these rights. This bill is intended to put the school and church on notice that a parent has a right to this information. The second provision is the right of the parents to attend school conferences. The next provision provides for reasonable access. It also has a provision on the duty to inform the other parent on medical situations, to inform the other parent on change of telephone number or address and to inform the other parent where the child will be attending school.

SENATOR LYSON asked if the school conference may become a place for confrontation.

JENNIFER CLARK stated that the Court could accommodate that in the Order.

SENATOR STENEHJEM stated that the school could schedule two conferences. Should this section be put into every Custody Decree?

JENNIFER CLARK stated that the Court shall include this. Section 2 of the Bill draft amends existing law that talks about enforcing visitation. In enforcing visitation, the parties have the same judicial remedies available to someone enforcing a child support order assuming that remedy is appropriate to visitation.

DANIEL BIESHUEVEL, R-KYDS, testified in support of SB2040.

SHERRY MILLS MOORE, State Bar Association of North Dakota, testified in support of SB2040. Testimony attached.

BEV NIELSON, North Dakota School Boards Association, testified that she was neutral on SB2040. This Bill clarifies to the schools access to the records. There may a problem arising when the parents don't agree on the action to be taken. The schools need to know which parent is the decision maker.

NANCY SAND, NDEA, testified in support of SB2040.

LINDA ISAAKSON, Child Advocate for Children's Caucus, testified in support of SB2040. Testimony attached.

BONNIE PALACEK, North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota, testified in support of SB2040. Testimony attached.

SENATOR STENEHJEM CLOSED the hearing on SB2040.

February 10, 1999 Tape 2, Side A

SANDI TABOR proposed some amendments.

Discussion.

Bonnie Polacek is in agreement with these amendments.

SENATOR WATNE made a motion on the Amendments, SENATOR BERCIER seconded.

Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR NELSON seconded. Motion carried. 6 - 0 - 0

SENATOR NELSON will carry this bill.

Date: 2-10-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2040

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Watne Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date: 2-10-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2040

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Watne Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

REPORT OF STANDING COMMITTEE

SB 2040: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2040 was placed on the Sixth order on the calendar.

Page 2, line 4, after the underscored period insert "The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section."

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2040

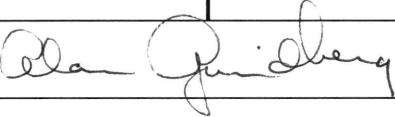
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2040

House Judiciary Committee

Conference Committee

Hearing Date : March 9, 1999

Tape Number	Side A	Side B	Meter #
1		X	24
Committee Clerk Signature 			

Minutes:

REP. GLASSHEIM I was Chairman of the Interim Committee that developed this bill. We are trying to deal with two complaints that were brought to our attention: first, the non-custodial often gets left out of his or her children's life, and, secondly, the cost of going to court to enforce visitation orders. This bill is trying to achieve some balance between the parents. The bill is modeled on a Minnesota law that they tell us works well.

JENNIFER CLARK (LC) Section one of the bill covers the first concern by allowing the non-custodial parent the right to certain information about the child, and the second section addresses the problem of the high cost of going to court to enforce a visitation order by requiring the party refusing visitation to pay the costs if they are found to be in the wrong.

SANDI TABOR (SBAND) Presented written testimony, a copy of which is attached.

Page 2

House Judiciary Committee

Bill/Resolution Number : 2040

Hearing Date March 9, 1999

DOMINIC VOLESKY I am a mediator and I mediate many divorce settlements. Having this law will solve some of the problems we now have getting custodial parent to agree to such things as are contained here.

SUSAN BEEHLER (R-KIDS) We are for this bill. It will clear up some very real hassles. It will also help by clearing up the standing of the non-custodial parent when he or she has to go to the school or hospital while having visitation.

DANIEL BIESHEUVEL (R-KIDS) Presented written testimony, a copy of which is attached.

COMMITTEE ACTION: March 10, 1999

REP. DISRUD moved that the committee recommend that the bill DO PASS. Rep. Delmore seconded and the motion carried on a roll call vote of 13 ayes, 0 nays and 2 absent. Rep.

Hawken was assigned to carry the bill on the floor.

Date: 3/10/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2040

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Disrud Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Hawken

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

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 7:27 a.m.

Module No: HR-44-4500
Carrier: Hawken
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2040, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2040 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2040

STATE BAR ASSOCIATION OF NORTH DAKOTA

Testimony on SB 2040

Sherry Mills Moore

Good Morning. I am Sherry Mills Moore, an attorney in private practice in Bismarck, and the Chair of the Family Law Task Force. We come to you to ask for passage of **SB 2040**.

SB 2040 comes from the Interim Child Support Committee with the encouragement of the Family Law Task Force. As we wound up our work, the Task Force felt that certain parental rights and duties should be given for parents who are not raising children in the same home. As with much law this bill sets out rights and responsibilities which make the most sense for the greatest number of people but leaves the flexibility with the court to make exceptions in those instances when it is not for the best. Currently, without this law, the noncustodial parent is not sure whether these rights are extended to him or her. To assure the rights, they need be included in the judgment, and, from time-to-time rights of participation become negotiation points. In truth, most custodial parents welcome these and frankly think they already exist. When embodied in the law, however, our state recognizes the importance of the continuing rights and duties for the noncustodial parent. Additionally, those who deal with the noncustodial parent have more clarity. The medical providers can discuss the health condition of the child with either parent; the educators can include both parents in conferences and can give either parent copies of records, report cards, test results. For those unfortunate situations where participation and information given to the noncustodial parent would not benefit the child, the court can ban the same.

I am sure that the Legislature, like the courts, appreciate brevity, but I am here to answer any questions you might have concerning this bill. We ask for your support of **SB 2040**.



Children's Caucus

Senate Bill 2040

January 11, 1999

Senate Judiciary Committee:

Mr. Chairman and members of the committee, my name is Linda Isakson. I am the executive director of the Children's Caucus. The Children's Caucus will support the concept of mutual custody in Senate Bill 2040 with some reservations. As we discussed this bill in our caucus many members were saddened by the need for such a piece of legislation. It is our hope that parents for the sake of their children understand what the duties and rights of that job are.

We are concerned about delineating the rights of parents but neglecting to state what the rights of these children are. We have many stories from children about the turmoil forced visitation causes in their lives. They must deal with missed concerts, missed extracurricular activities and just spending time with friends and relatives that keep them connected to their peers. Where in Century Code do we codify the need to listen to the feelings and needs of children?

We also question how these rights and duties of parents will be enforced when a history of family violence is present. With the present language no exceptions are made for the restriction of contact between parents.

If we are to codify the rights and duties of parents in custody and visitation we should then insist that parents understand the impact that divorce has on children. They should be aware that continued conflict and tension leaves children feeling guilty and afraid.

The Caucus would like to suggest the following changes to SB 2040:

1. Children who are the subject of custody and visitation orders have the right to expect that both parents have access to their educational, medical, dental, religious and insurance records.

2. Children who are the subject of custody and visitation orders have the right to have both parents present at educational conferences. In cases where contact between parents is restricted, reasonable accommodations shall be made to insure that both parents have access to information.
3. Children have the right to reasonable access to both parents by written, telephonic and electronic means.
4. Children have the right to have both parents aware of serious medical conditions or accident information.
5. Children have the right to notify the other parent of a change of residential telephone number and address, except in cases where such information may be harmful to the parent or child.
6. Children have to right to notify both parents as to the name and address of school they are attending.
7. Children have the right to have both parents understand the impact of divorce on children.

No matter how hard we try mutual custody will present its own problems. Someone must always have the ultimate responsibility. It is not good for children to have conflicting messages. This attempt to legislate civility is admirable but difficult at best. Until both parents understand the impact of their actions on their children and care about that impact, there will be problems enforcing custody agreements. We ask that parents of divorce be required to attend educational sessions that help parents understand the feelings and needs of children going through this life changing experience.

The Caucus encourages the mutual duty of parents to support their children, but are concerned about the current language of this bill.

Respectfully Submitted,

Linda Isakson, Executive Director
Children's Caucus

North Dakota Council on Abused Women's Services/
Coalition Against Sexual Assault in North Dakota

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Bismarck, ND 58501-4046

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Bismarck
Abused Adult Resource Center
222-8370

Bottineau
Family Crisis Center
228-2028

Devils Lake
Safe Alternatives for Abused Families
1-888-662-7378

Dickinson
Domestic Violence & Rape Crisis Ctr.
225-4506

Ellendale
Kedish House
349-4729

Fargo
Rape and Abuse Crisis Center
293-7273

Fort Berthold Reservation
Coalition Against Domestic Violence
627-4171

Fort Yates
Tender Heart Against DV
854-3402

Grand Forks
County Crisis Intervention, Inc.
742
Community Violence Intervention Ctr.
746-0405

Jamestown
S.A.F.E. Shelter
251-2300

McLean County
McLean Family Resource Center
462-8643

Mercer County
Women's Action and Resource Center
873-2274

Minot
Domestic Violence Crisis Center
852-2258

Ransom County
Abuse Resource Network
683-5061

Stanley
Domestic Violence Program, NW, ND
628-3233

Valley City
Abused Persons Outreach Center
845-0078

Wahpeton
Three Rivers Crisis Center
642-2115

Williston
Family Crisis Shelter
572-0757

Testimony SB2040
House Finance and Tax
January 11, 1999

Senator Stenehjem and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota.

We are in basic support of the concept of SB2040. Issues of fairness and the facilitation of communication between parents, when that can be done safely, must always be acknowledged as extremely important.

We are concerned, however, about those cases in which either domestic violence issues or child physical or sexual assault issues may be a part of the overall picture.

As we followed this bill through the Interim, we were encouraged by the committee's inclusion of language in lines 2-4 on page two of the bill which allows the court to "restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion."

However, we would ask the committee to consider more specific language identifying domestic violence or child physical or sexual abuse findings as reasons to restrict the rights which have been outlined, and imposing a duty on both parents to inform the court of any present or past actions on either parent's part which could alter the rights and duties. For example, please consider the following scenarios:

- 1) Attending teacher conferences is listed as a right, and the school is not required to hold separate conferences; however, if a protection order is in place, attending the conference together is certainly problematic, and may be unsafe. If the custodial parent happens to be a victim of domestic violence, must she or he anticipate joint conferences as a possible issue and ask the court specifically to exclude this necessity before the order is issued?
- 2) Similar issues of safety could be raised with the requirement of informing the "other parent" "immediately" of a change in phone number and address. What if the current address is a domestic violence shelter and the address and phone number are confidential? How would this information be brought before the court, especially if the move to the shelter happened after a visitation order was granted?
- 3) Thirdly, if there are issues of child abuse or child sexual abuse, clearly

“reasonable access to the child by written, telephone, and electronic means” is not “reasonable.” Whose responsibility is it to bring this information before the court, and when?

As currently written, SB2040 outlines three “rights” and three “duties” of parents. We would suggest two additional duties which would impact both parents equally, and propose:

“g” Duty of each parent to submit to the court a statement listing each civil or criminal action involving both parties. Findings of domestic violence or child physical or sexual abuse may nullify any of the rights or duties listed above.”

This language parallels that in the current protection order statute which has worked well to get this information before the court.

and

“h” Duty of both parents to act in the best interests of the child.

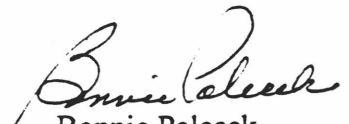
We would also suggest the following amendment to identify and clarify restrictive options for the court:

p. 2, line 4 after “exclusion,” add “including specific restrictions inherent in domestic violence protection orders, and /or findings of physical or sexual abuse against the child.”

We feel these changes would strengthen and enhance the possibility that both parents will focus their attention more intently on their child’s welfare while at the same time preserving the welfare and safety of all concerned.

We realize these amendments will not take care of all of the potential issues raised here. It is always difficult to enforce “right and duties,” perceived or otherwise. However, at least if the specific realities of violence and abuse are acknowledged, basic safety concerns may be alleviated.

Thank you,


Bonnie Palecek
NDCAWS

Amendment to SB 2040

Page 2, Line 4 - Insert the following sentence at the end of the existing language:

The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

With the amendment Paragraph 2 will read as follows:

2. The court shall include in an order establishing or modifying visitation the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.



State Bar Association of North Dakota

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Testimony on SB 2040

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Presented by Sandi Tabor
Executive Director

The State Bar Association of North Dakota supports SB 2040. The bill is one of the final products of the Joint Task Force on Family Law, a committee composed of judges and family law attorneys from across the state. SB 2040 clarifies the rights and duties of parents to ensure that each parent receives certain basic information about their children. The bill is direct at making sure the non-custodial parent has access to education, medical, dental, insurance and other records. It clarifies that non-custodial parents have a right to attend teacher conferences. The bill also establishes duties to inform the other parent of 1) a serious accident or serious illness; 2) a change in address or telephone number and 3) the name and address of the child's school. Paragraph 2 of the bill requires the court to include the rights and duties in an order establishing or modifying visitation, unless it specifically states why a particular right or duty should not be included.

The bill sets out rights and responsibilities that make the most sense for the greatest number of people, but leaves flexibility to the court to make exceptions in those instances when it does not. Currently, the non-custodial parent does not necessarily have any of these rights, unless a specific provision is included in the divorce judgment; and from time to time the rights of participation become negotiation points for settlement. The Task Force believes these should be removed from the negotiation table.

Most custodial parents welcome these, and frankly think they already exist. When embodied in law, however, our state recognizes the importance of the continuing rights and duties of the non-custodial parent in the life of his or her child. Additionally, the rights and duties provide more clarity to those who deal with non-custodial parents. The medical providers can discuss the health condition of the child with either parent; the educators can include both parents in conferences, and can give either parent copies of records, report cards, and test results. In those situations where participation and information given to the non-custodial parent would not benefit the child, the court can ban the same. For instance, in situations involving domestic violence, the court could

exclude from the order the requirement that the non-custodial parent be informed of a change in address and telephone number.

The Task Force believes this bill will end some of the needless bickering about "who gets to know what", and will clarify for third parties, like doctors and teachers, "who gets to know what." And for these reasons we urge a "do pass" vote from the committee.

56th Legislative Session
Senate Bill 2040
March 10, 1999 9:00 am
Prairie Room

Chairman DeKrey and members of the Judiciary Committee. My name is Daniel Biesheuvel, President and lobbyist for R-KIDS organization of North Dakota.

It is the basic desire of a good parent to know about and be part of their children's lives.

Access to records, attendance of educational conferences, and just being able to "talk" with your children is essential in being part of their lives. Knowing when your children are seriously injured in a timely fashion is just plain courtesy. Knowing where they live is necessary in having a meaningful visitational relationship.

To hold back affection, by holding back information is criminal. If a custodial parent becomes so manipulative, as to hide information or even the child from the noncustodial parent, proof of this warrants a penalty. If it is ongoing, custody should be immediately switched, and the penalty of contempt of court be put into place.

Thank you, and I will be happy to answer any questions.