

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3008

2007 HOUSE JUDICIARY

HCR 3008

2007 HOUSE STANDING COMMITTEE MINUTES

Resolution No. HCR 3008

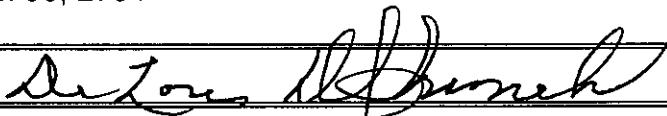
House Judiciary Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2750, 2751

Committee Clerk Signature



Minutes:

Chairman DeKrey : Opened the hearing on HCR 3008.

Rep. Lawrence Klemin: Introduced HCR 3008 at the request of the State Bar Association.

Bill Neumann: See attached testimony

Rep. Delmore: I understand your concern with putting all three of these elements in, but they are necessary for child support. It ties into I pay that money for my kid and my husband is not letting me see that child so those three wrap around the issue and with some time I think we can find that many of our continuance had concerns about at the last election.

Bill Neumann: I agree with you completely. My only concern is that the project be a manageable project for the committees. Having dealt with child support since before there were guidelines, which are now mandatory requirements. I think an interim committee will get very frustrated trying to understand the requirements. All the obvious direct solutions turn out to be things that can't be done because of the federal

requirements.

Rep. Delmore: Maybe a taskforce could help?

Bill Neumann: We would be honored to try and help. We also think that task force should listen to every body; not such people who think a certain way.

Bonnie Palachek ND Council on Abused Women's Services: (See attached testimony.)

Each year over 4300 children are child witness's to domestic violence and over 400 victims of sexual assault who seek services from our center. Over eight years ago in response to the safety needs of victim's of battering most often mothers, we began to create centers where there could be supervised visits in a safe environment. We developed standards for visitation in ND which were revised in 2004. Six centers currently meet those standards and they have been adopted by both the committees so in order to receive funding they must meet those safety standards. Our office continues to provide technical assistance to new centers. Two centers in Belcourt and Minot and hoping to be established. In addition to these activities last year we began administrating a federal visitation and excess grant for the states child support enforcement division. All money for ND based on population is \$100,000 is passed directly to seven community based centers. The excess centers are designated for foster care families which are maintaining contact with the biological parent. In addition we administer a federal safe haven's grant, which is a discretionary grant from the federal government, which helps support local centers. I share all this information to give you a sense of the scope of this issue in ND and also to let you know we do have a

vehicle for gathering information and we will be very happy to stand to ready to be a part of this study. We believe our justice system in ND of sound and fair. We would be glad to participate fully in the study should one be directed.

Janell Olmsted: ND Children's Caucus. We want to help you with the study in any way we can.

Opposition: None

Hearing Closing.

Chairman DeKrey: Reopened the hearing on HCR 3008.

Do Pass Motion Made By Rep. Chris Griffin Seconded By Rep. Delmore

Vote: 12 Yes 0 No @ Absent Carrier: Rep. Delmore

Date: 2-5-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3008

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Griffin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	---				
Rep. Kingsbury	✓				
Rep. Koppelman	---				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Delmore

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

REPORT OF STANDING COMMITTEE

HCR 3008: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3008 was placed on the Tenth order on the calendar.

2007 SENATE JUDICIARY

HCR 3008

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3008

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4596

Committee Clerk Signature

Moria L. Solby

Minutes: Relating to study the issue of fairness, equity and best interests of children as they relate to issues of child custody and visitation.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present except for Sen. Olafson. The hearing opened with the following committee work:

Senator David Nething, Chairman closed the hearing.

Bill Neumann, State Bar Association, introduced the bill, giving his testimony – Att. #1

Sen. Fiebiger asked if this bill or HCR 3004 was more important in the eyes of the State Bar Association. He replied that he thought both should pass and legislative council could combine the two and then separate out the sections.

Rep. Lawrence Klemin, Dist. #47 (meter 4:31) spoke of the debate in the last election.

Sen. Nething asked when this was last looked at. Mr. Neumann thought it was 1997, possible 10 years ago. 43% of the people voted on this. Sen. Nelson agreed with the date.

Bonnie Palecek, ND Council on Abused Women's Services (meter 6:19) – gave her testimony Att. #2.

Jamie Zins, ND resident spoke in favor of the previous testimony.

Testimony in Opposition to the Bill: None

Testimony Neutral to the Bill: None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3008

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4894 (meter 1:15)

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to study the issue of fairness, equity and best interests of children as they relate to issues of child custody and visitation.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Nething reviewed the study for the committee.

Sen. Fiebiger made the motion to Do Pass HCR 3008 and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

Date: 3-12-07
Roll Call Vote # 10 of 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3008

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Fiebigler Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething			Sen. Fiebigler		
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebigler

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

REPORT OF STANDING COMMITTEE

HCR 3008: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3008 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HCR 3008

February 5, 2007

Sixtieth Legislative Assembly
House Judiciary Committee

Same given to Senate

HCR 3008—STUDY CUSTODY AND VISITATION

CHAIRMAN DeKREY AND COMMITTEE MEMBERS:

My name is Bill Neumann. I am appearing on behalf of the State Bar Association of North Dakota.

The State Bar Association of North Dakota supports HCR 3008, a resolution calling for the study of laws relating to child custody and visitation. Our support for this resolution grows out of concerns raised by many of the supporters of Initiated Measure #3, which was defeated at the polls. We opposed Measure #3, not because the concerns of its supporters were invalid, but because the measure itself was a poorly constructed way to address those concerns.

Because we believe there are some valid concerns regarding current custody and visitation law, we support this resolution. We also support it because the goal of achieving fairness and justice for all parties involved with custody and visitation, including the children, cannot be achieved with a simple panacea like measure #3. The problem of achieving fairness and justice among divorcing parents and their children is fraught with great complexity and complication. On the other hand, we cannot let the complexity and complication of the problem tie our hands, and leave us with nothing more than frustration and inaction. It is a problem that requires careful study and consideration.

To that end, if this resolution is passed and selected for study—and we strongly urge that it should be—the State Bar Association stands ready to appoint a task force of knowledgeable and concerned persons to assist an interim committee in the study of this subject. We will do everything we can to help see that an interim study results in concrete recommendations for specific changes to our laws that will address custody and visitation concerns in a fair and balanced way, changes that will seek to improve our custody and visitation laws for the benefit of all involved.

I should note that the Legislature also has before it another, very similar study resolution, HCR 3004. We also support that resolution. I believe the only difference between the two resolutions is that HCR 3004 includes the study of child support in addition to issues of custody and visitation. The Bar Association acknowledges that child support is another problem area for many divorced parents, and is a subject that should also be studied. Our only concern is that child support is a very complex and unwieldy subject for study because of the complicating impact of federal regulations and requirements tied to the availability of funds for needy children. While we support HCR 3004, we strongly recommend that the study of child support be separated from the study of custody and visitation issues, in order to keep the entire study subject from overwhelming the interim committee or committees charged with these studies.

If there are any questions, I would be happy to try to answer them. Thank you for your time, and your attention to this matter.

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

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

Representative Duane DeKrey
Chair, House Judiciary Committee
Re: Testimony on HCR3008
February 5, 2007

Same given to Senate

Representative DeKrey and Members of the Committee:

I am Bonnie Palecek speaking on behalf of the North Dakota Council on Abused Women's Services in support of HCR3008.

Our coalition of 20 community based agencies across the state has a deeply vested interest in the welfare of children who are experiencing disruption as the result of separation, divorce, or, compounding these challenging environments, domestic violence or child sexual abuse. As I have previously stated to this committee, each year over 4,300 children in our state are child witnesses to domestic violence, and over 400 victims of sexual assault who seek services from our centers are children at the time of the assault.

Over eight years ago, in response to the safety needs of victims of battering, most often mothers, we began to explore how to create neutral, child-centered places in which parents could exchange or participate in supervised visitation in a nurturing environment. Seven years ago, we facilitated the development of voluntary standards for visitation centers in N.D. They were revised in 2004. Six centers currently meet those standards, which have been adopted by both the VOCA (Victims of Crime Act) and STOP grant review committees. In other words, centers must meet these standards before they can become eligible for funding.

Our office continues to provide free technical assistance to new centers wishing to come into compliance. Two new centers are hoping to become operational in 2007 (Belcourt and Minot).

Last year, we began administering the federal Visitation and Access grants for the state's Child Support Enforcement Division. All money (\$100,000) is passed directly to seven community based centers. The Access grant dollars are identified primarily for foster care families which are maintaining contact with the biological parents.

In addition, we administer a federal Safe Havens Grant, a discretionary grant which helps support local centers. In the last six months, 148 families received services through the six sites in the Safe Visitation Network. During that time, staff in the centers supervised 208 visitations and 1,485 safe exchanges with these grant funds. The total number of visits and exchanges is somewhat higher (5-10%) because in some communities other funds are used as well.

I share all of this information to give you a sense of the scope of this issue in North Dakota and to let you know that we have at least one vehicle for gathering good information about how visitation is working for North Dakota families. We also have a huge interest in defining reality in regard to custody determinations. We realize there is a perception by some that these determinations are unfair or gender biased. We welcome the opportunity to be part of revealing what is actually the truth.

We believe that our justice system in N.D. is fundamentally sound and fair. However, in order to preserve not only the reality, but the perception of fairness, it is often important to examine what we are doing, determining whom it helps and whom it hurts. When a significant number of people feel they have been hurt, ignoring their pain serves only to subvert it.

We urge your support of HCR3008, and commit to participating fully in any study, should one be directed.

Thank you.

The Evolution of Domestic Violence Statutes in North Dakota

1979 First Domestic Violence statute passed in North Dakota

- for the first time allowed the court to intervene in an on-going marriage
- created the Order of Protection process, which was a civil procedure with a criminal penalty if the Order was violated.
- allowed an alleged perpetrator to be removed from the home, based on the premise that the safety of household members outweighed the right to property.

1981 The scope of the Protection Order was enhanced.

- ex-spouses could also request Orders of Protection
- counseling could be **required**, not just recommended
- judges could award temporary custody as well as support and visitation
- specifically included **children** in restraining order protections

The Domestic Violence Prevention Fund was created with a \$19 surcharge on marriage licenses, initiated with a General Fund appropriation of \$45,000 per year.

1983 A "**warrantless arrest provision**" to the Domestic Violence statute allowed police officers to make an arrest based on probable cause of physical injury to a spouse or other household member, **even if the officer did not witness the misdemeanor assault**. The officer had four hours in which to make the arrest.

The so-called "marital rape exemption" was eliminated. This meant that the spousal relationship of the parties could not be used as a consideration for deciding how to charge out a sexual assault. The charge must be based on the nature of the assault not the nature of the relationship.

1985 A new **Class A Misdemeanor Assault** category was added to increase chances of more severe penalties (most "domestics" were being charged as simple assaults, a Class B misdemeanor).

Adult abuse program records were declared confidential.

The "Warrantless Arrest" provision was clarified.

The Protection Order coverage was expanded to include:

- persons residing together
- persons with a child in common.
- added language covering "an other person" the court determines has a relationship "sufficient to warrant the issuance of an adult abuse protection order."

County commissions were given the statutory authority to give financial assistance to "spouse abuse programs."

1985 Divorce actions could be commenced immediately and final decrees granted within six months for non residents.

1987 A package of twenty-one bills was passed enhancing the rights of all victims of crime (Governor's Commission on Victims and Witnesses of Crime). Bills relating to domestic violence included:

- **providing for a guardian as litem for children in Protection Order proceedings**
- **removing "voluntary companion" language which was similar to the marital rape exemption eliminated in 1983.**
- **clarifying language in the "warrantless arrest" statute**

1989 Enabling legislation allowed city and county courts to levy fees up to \$25, proceeds to go to victim assistance programs.

All domestic violence statutes consolidated in one section of the Code.

More clarification of warrantless arrest and definitions enhanced to include dating relationships.

\$10 added to marriage license surcharge for Domestic Violence Prevention Fund.

Battering was added to the list of factors judges must consider in determining custody/visitation. Created a rebuttable presumption.

Reciprocal agreements were established between tribal and state courts (Three Affiliated Tribes) in domestic relations orders.

Requirement that all law enforcement agencies develop a policy for response to domestic violence.

Confidentiality provisions were extended to sexual assault records.

1991 THE PROTECTION ORDER WAS CLARIFIED ONCE AGAIN INCLUDING:

-adding no contact language

-limiting mutual protection orders

-requiring officers to consider self-defense and comparative severity of injuries when arresting

A strengthened battering and custody statute was passed requiring judges to cite written findings of fact relating to domestic violence.

A statute was enacted requiring sex offenders to register with law enforcement.

- **Phone companies offering "Caller ID" in North Dakota were required to provide free per line blocking.**
- **\$300,000 General Fund appropriation was added to the Domestic Violence Prevention Fund**
- **"Good Time" was restricted in prison sentences**

1993 North Dakota's first anti-stalking law was enacted.

A "Disorderly Conduct Order" process was created to accompany the stalking law.

Persons accused of domestic violence were required to appear before a judge in person before bond could be set.

Battering and custody statute was strengthened by raising the level of proof for the rebuttable presumption to "Clear and Convincing."

Domestic Violence Statute amended to

1. clarify the definition of a domestic violence program
2. increase the penalty for violating a protection order to a Class C felony
3. clarify once again the language governing 4 hour warrantless arrest.

A "Son of Sam" bill prevented convicted felons from making a profit from selling the story of their crimes.

"Manner of Dress" was restricted as evidence in sexual assault trials.

The "Lap Law" allowed children to have support during court trials.

A Legislative Council Study resolution directed the Council to study the criminal justice system's method of gathering data on violent crime and sentencing of felonies.

1995 Arrest was established as the **preferred** response to domestic violence assaults.

Arrest is the **mandatory** law enforcement response when a protection order is violated.

All fees relating to the filing and service of Protection Orders must be waived.
(Requirement of Federal Crime Bill) (Disorderly Conduct orders are not covered routinely under this law).

Law enforcement must remove specified dangerous weapons from a household if a threat of further violence exists.

"Forced sexual activity" was added as a behavior which can be covered by a Protection Order.

A State Registry of Protection Orders was established.

Juvenile treatment records kept by domestic violence/sexual assault centers are confidential under certain circumstances.

The definition of stalking was broadened to include family members.

1997 **Major changes to the "Battering and Custody" statute which include the following:**

- a pattern of violence within a "reasonable time proximate to the proceeding"
- one incident of domestic violence resulting in serious bodily injury.
- an incident involving use of a dangerous weapon.

The court was also given more discretion in that the existence of a protection order no longer in and of itself engages the presumption.

The following changes in the Protection Order process were made:

- Clarification that the court may order the surrendering of firearms in cases of domestic case of domestic violence.
- Harassing was added to the list of behaviors from which the respondent to a protection order may be restrained.
- Extension of the right to arrest without warrant if a no contact order is violated in a domestic violence situation.

1999 Full Faith and Credit Enabling Legislation

- Gives equal enforceability to all protection orders, regardless of initiating court
- Grants specific law enforcement immunity when acting in good faith

Interference with an Emergency Call

- Makes it a crime to interfere with an emergency call for help

Insurance Discrimination

- Prohibits property and casualty insurance discrimination on the basis of domestic violence.

Domestic Violence Prevention Fund

- Expanded the scope of the DVPF to include sexual assault services

Definition of Bodily Injury

- Moves bone fractures from "substantial bodily injury" to "serious bodily injury"

Warrantless Arrest

- Extends period allowed for warrantless arrests from 4-12 hours

False Allegations

- Awards court costs and attorney's fees to anyone who is falsely accused of domestic violence and has to defend her/himself

2001 **The following changes in the Protection Order process were made:**

- Clarification that a temporary protection order remains in effect until the permanent order is served
- Issuance of a Protection Order by a North Dakota court even if the abuse happened exclusively in another state

Family Violence Option

- "Universal notification" of the Family Violence Option is required; detailed requirements adopted for DHS implementation

DNA Testing Required

- DNA samples required from every person convicted of a felony after July 31, 2001

Domestic Violence as a Separate Crime

- Penalty for a second offense of simple assault against a family or household member raised to a class A misdemeanor. Court finding of dv required.

Judges must sentence those convicted of a domestic violence offense to an offender treatment program.

Mandated Medical Reporting

- Mandated reporters of injuries incurred as the result of a crime narrowed to physicians, physicians' assistants, and licensed nurses.
- Mandated reporters must provide information on victim services to all victims whose injuries are reported.
- Immunity granted for good faith reporting or failure to report

Notification of Child Abuse and Neglect Assessments

- DHS must send child abuse/neglect reports to **both** parents when services are required
- Domestic violence safety issues may be considered in assessments

- “adult or household member” added to the definition of those who could be charged with child abuse or neglect. Previous law included only parents, guardians, or custodians.

2003 Clarification that the enhanced penalty for a second or subsequent violation of Protection Order is triggered by **any** offense against any subsequent victim under any Order of Protection.

Clarification that a referral to a batterer’s treatment program is mandated for **all** assault crimes involving family or household members (not just for simple assault).

Statutory change allows waivers of the publication of name changes for domestic violence victims.

Previous law allowed people to settle out of court if both parties are satisfied the victim of the crime was “made whole.” It had been used inappropriately in personal violence cases. The use of this law in domestic violence and sexual assault cases is now prohibited.

The fee for background checks in-state was raised from \$20 to \$30.

ND’s Full Faith and Credit statute was repealed and replaced by the ND Commission on Uniform State Laws language. The most important positive change was the provision that allows custody provisions of protection orders to be enforced under full faith and credit.

2005 The confidentiality of victims’ statements in a parole and probation hearing process was specifically protected by statute.

The enhanced penalty for repeated assaults against a family or household member may be invoked for **any** level of assault. (a clarification)

Self-defense was included as a consideration for officers when determining whether to seek an arrest or pursue further investigation. The “likelihood of further harm” was added to the list of factors as well.

The “predominate aggressor” concept was added to the domestic violence statute. Language identifying this person is “the individual who perpetrated the most immediately significant aggression.”

An additional \$6 was added to each marriage license for the Domestic Violence/Sexual Assault Prevention Fund.

Compiled by: **Bonnie Palecek**
 ND Council on Abused Women’s Services
 Revised July, 2005