

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3013

2007 HOUSE JUDICIARY

HCR 3013

2007 HOUSE STANDING COMMITTEE MINUTES

Resolution No. HCR 3013

House Judiciary Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2752, 2756

Committee Clerk Signature



Minutes:

Chairman DeKrey: Opened the hearing on HCR 3013.

Mary Muehlen Maring: (see attached testimony)

Rep. Delmore: Do you believe protection orders we have in place currently are saving lives?

Mary Muehlen Maring: Absolutely. There is no question in my mind that is true.

Rep. Delmore: Can you show us some abuses and how it does save lives?

Mary Maring: Certainly, I can try to be more specific here. I think what we hear when we went around the state is that first of all, respondents to the petition are coming that they are coming in at a disadvantage. Especially in cases where they feel they want to also apply for a protection order. In other words they are asking for a dual protection order. So the petitioner has already gotten to the advocate or to the local domestic violence agency and they have a conflict for providing an advocate for the responder. They can also be saying there has been domestic violence committed against me. The second part of that is really procedure. My court has interrupted that statute as requiring a summary proceeding. A summary proceeding is a notice to show cause at the time of the hearing. We have interrupted that it can be held up merely on an affidavit, which

means that the petitioner comes in with a certified petition. The affidavit has been taken through by the court under motion proceedings. If you have not done the affidavit through this procedure you can not testify. These are some of the complaints we have hear around the state.

Bonnie Polachek: Neutral : (see attached testimony)

Opposition:: None

Hearing closed.

Chairman DeKrey: Reopened the hearing on HCR 3013.

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

Discussion:

Rep. Meyer: I know this is just a study, but are we going to erode what we have in place now?

Chairman DeKrey: I doubt that.

Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Meyer.

Put on Consent Calendar.

Hearing closed.

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

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3013

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken As Passed

Motion Made By Rep. Griffin Seconded By Rep. Wolf

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) 13 No 0

Absent 1

Floor Assignment Rep. Meyer

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

REPORT OF STANDING COMMITTEE

HCR 3013: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3013 was placed on the Tenth order on the calendar.

2007 SENATE JUDICIARY

HCR 3013

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3013

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4590

Committee Clerk Signature

Maria LaSalle

Minutes: Relating to a study to domestic violence protection order process.

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

Testimony in Favor of the Bill:

Jim Gangi, Staff Attorney for the Office of State Court Administrator, Introduced and explained the bill. He handed out the synopsis and background assessment for the Gender Fairness in ND Courts committee. – Att. #1

Testimony Against the bill: None

Testimony Neutral to the bill:

Bonnie Palecek, ND Council on Abused Women Services (meter 6:00) spoke in concern that the process works for everyone.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3013

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4895

Committee Clerk Signature

Mona L. Solberg

Minutes: Relating to a study to domestic violence protection order process.

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 bill for the committee. Sen. Lyson stated how many times do we have to study this. We have studied it every time I have been here. The statement was made that it has been 15 years since the stud of appeals, 1994, has been done. Sen. Lyson spoke of a protection order and referred to the personalities on the benches.

Sen. Nelson made the motion to Do Pass HCR 3013 and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

Date: 3-12-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3013

Senate _____ Judiciary _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Nelson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Nelson

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

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 1:59 p.m.

Module No: SR-46-5003
Carrier: Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3013: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3013 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HCR 3013

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

411 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
Testimony on HCR3013
February 5, 2007

*Same
given to
Senate*

Chair DeKrey and Members of the Committee:

I am Bonnie Palecek speaking on behalf of the North Dakota Council on Abused Women's Services in a neutral position on HCR3013.

My board has directed me to present neutral testimony to communicate our willingness to participate fully in any Legislative Council study of the protection order process, while also expressing our concern over the all-encompassing scope of the study and possible unintended consequences which could undermine the carefully crafted legal processes begun in 1979.

I was here in 1979 when several pioneering legislators, including then Senator Wayne Stenejehm, introduced the first domestic violence legislation in the state. It created a hybrid civil/criminal process by which the court could do some quite astounding things: intervene in an on-going marriage, restrain a person from his own home if there was probable cause a threat of violence existed, and name a behavior that had long gone unnamed. It was called "spouse abuse" at that time because only married partners could seek protection under the statute.

Since then, to say the statutes have "evolved" is an understatement. Attached to my testimony is a history of the evolution of those statutes. We use this document to train advocates who assist in the pro se protection order process under Supreme Court Rule 34. The Rule was adopted in 1992 to protect advocates from charges of unauthorized practice of law. I am told this is a unique niche not shared with any other group of laypeople.

In 1979, there was not only no legal process through which to seek redress from personal violence at the hands of a spouse, there were also no resources. The efforts were mostly volunteer, with modest assistance from federal work training programs (CETA), VISTA (Volunteers in Service to America), and agencies like Community Action and the Mental Health Association, which at that time were engaged in social change work. It was before Legal Services of North Dakota, and so volunteer attorneys assisted with the emerging civil process.

We have a lot at stake in the processes which have evolved over the last 30 years. Ironically, in 1976 we were responding to "imbalances in institutional and other resources" available to victims of domestic violence; "battered women" we were so bold as to say then. Since then, we have worked to build a system which strove to "fulfill the intended purpose" of equalizing a power imbalance which had historically left women and their children in life-threatening situations. It was a civil rights issue which grew out of the civil rights movement. For some of us, it has been a life's work. And so, as I said, we have a lot at stake.

We are very aware of the Gender Fairness Ten Year Assessment, and that the study asserts that there are "serious concerns about the basic integrity of the (protection order) process." Furthermore, "the process does not serve the parties equally," and is "subject to misuse and abuse to achieve advantage in other legal proceedings." Also, the study finds that the "expedited hearing process" may "result in proceedings in which issues cannot be fully considered." These are all extremely serious charges. It is difficult for us not to take them personally as advocates, not because we have worked hard to create a system with a lopsided advantage for one side, but because we labored to build a legal infrastructure in which those without power had a chance to access a system previously closed to them.

Part of that system continues to be providing assistance in the pro se protection order process. In 2006, that entailed 734 emergency protection orders. At 4 hours per order at \$85 an hour (I was told that is the current payment for an indigent defense lawyer), the cost in legal fees for emergency orders alone would be \$249,560 a year. We currently provide these services free of charge.

Frankly, there are those who would rather we stopped doing this work, and they have found many ways to challenge us and drain our resources. And so although we embrace scrutiny from our friends, among which we count this body as a whole, the sponsors of this resolution in particular, and the N.D. Supreme Court, we are concerned about eroding the progress we feel we have made since 1979.

We do, however, agree that "the laudable objectives and intentions of domestic violence protection statutes risk being undermined and the substantial interests of those to be protected by the statutes frustrated if the process cannot work effectively." And so it must be our hope that any study would seek to advance the effectiveness of the processes currently in place. Thank you.

HOUSE JUDICIARY
TESTIMONY OF MARY MUEHLEN MARING
February 5, 2007
House Concurrent Resolution No. 3013

My name is Mary Muehlen Maring. I am a Justice on the North Dakota Supreme Court, and I have Chaired the Gender Fairness Implementation Committee of the Court since 1997. The principle mission of this Committee under Administrative Order 7 is to “oversee the development of a detailed course of action to implement recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts” and to “monitor the progress of the Judicial Branch toward eradicating gender bias in the courts.”

Over the course of the nearly ten years since its establishment, the Gender Fairness Implementation Committee has pursued a variety of efforts to realize the goals of fairness and equity in our judicial system with regard to gender. These efforts have included several rule and policy changes; bias related education programs for judges, attorneys, and judicial system employees; and contacts and discussions with numerous entities.

After completing all of the recommendations of the original Commission, the remaining challenge for our Committee was to assess the nature and extent of perceptible change in attitudes and behavior with respect to gender bias. Therefore, with the impending 10-year anniversary of the Commission’s Final Report approaching in 2006, the Implementation Committee conducted an assessment by utilizing a series of focus group discussions and questionnaires and surveys. The Committee conducted six regional focus group discussions with lawyers, child support enforcement personnel,

domestic violence advocates, and victim/witness assistants. In the early summer of 2006, surveys were distributed to all judges and judicial referees.

The Implementation Committee solicited information concerning four central areas addressed in the original Commission's Final Report. One of those four areas was domestic violence.

Progress on bias issues is difficult to define and often more difficult to recognize. Whether progress is substantive or only a matter of degree or perception remains the difficult question.

The responses our Committee received concerning the domestic violence protection order process suggest the serious need for a review of the process. Education and awareness efforts are perceived as having positively affected how these cases are handled and professional conduct in the proceedings appears to have improved. There are, nevertheless, serious concerns about whether the process fairly serves both sides. There appears to be a general agreement, particularly among judicial officers, that the process does not serve the parties equally, or at least with some sense of balance. A significant number of responses alarmingly drew attention to issues concerning unequal resources, particularly the availability of advocates to the petitioner and the inability of the respondent to obtain assistance. This dissatisfaction with the process was expressed not only with the responses to the questionnaires, but in the focus group discussions.

As a result, our Committee recommended that the processes, procedures, and statutes governing the adjudication and disposition of domestic violence cases, including

criminal cases for alleged violation of protection orders, and the issuance of domestic violence protection orders should be thoroughly reviewed to ensure an equitable resolution of cases and to ensure the interests of all parties are considered in a fair and reasonable manner. We recommended this review be undertaken by a task force, an interim legislative study group, or both.

I, therefore, urge your support of this study resolution. Thank you.

GENDER FAIRNESS IN NORTH DAKOTA'S COURTS
10 Year Assessment Process - Synopsis and Background for HCR No. 3013

Original Commission Study

In February 1994, Chief Justice Gerald VandeWalle appointed the Commission on Gender Fairness in the Courts to conduct a study and make recommendations concerning the status and experience of women and men in the judicial system and whether inequities based on gender existed within the system. The Commission conducted a two-year study of the state's judicial system and gathered data through the use of focus groups, surveys, public meetings, and informal research performed by law student volunteers. The Commission's study culminated in a report presented to the Supreme Court in October 1996 and published in the North Dakota Law Review: *A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts*, 72 N.D.L.Rev. 1113 (1996) (hereinafter "Perceptions"). The Commission made 33 recommendations in six categories: professional conduct, jury service, domestic law, domestic violence, criminal law, and judicial system as employer.

Implementation

After receiving and considering the Commission's Final Report, the Supreme Court adopted Administrative Order 7 establishing the Gender Fairness Implementation Committee. The Committee's principle Mission under Administrative Order 7 is to "oversee the development of a detailed course of action to implement recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts" and to "monitor the progress of the Judicial Branch toward eradicating gender bias in the courts". The Implementation Committee has additional responsibilities to recommend action beyond that identified by the Commission when considered necessary to achieve the goals of the Final Report and to review information and make recommendations on other bias-related matters not addressed in the Final Report but which may have an effect on the judicial system.

Since its establishment in 1997, the Implementation Committee has pursued a number of efforts to fulfil the recommendations set out in the Commission's Final Report. Some recommendations were referred to other judicial system committees or other entities for consideration. The Committee monitored progress on these referrals and pursued implementation efforts itself with respect to several recommendations. Draft rules in response to recommendations were prepared and forwarded to appropriate committees for review and were ultimately adopted. Numerous educational programs have been presented by the State Bar Association and the judiciary to judges, lawyers, and court personnel to enhance awareness of the presence, subtle and otherwise, of bias and its impact on lawyers, litigants, and participants in judicial proceedings and on the integrity of judicial proceedings.

With respect specifically to domestic violence issues, the Supreme Court, following a request from the Implementation Committee, sought and obtained STOP grant funding to develop a

domestic violence bench book. The bench book was completed and is a valuable tool in assisting judges and judicial referees in recognizing the dynamics of domestic violence, including the impact of gender bias in the adjudication of domestic violence cases.

After Implementation - The Assessment

Following over ten years of implementation efforts, the remaining challenge was to assess the nature and extent of perceptible change in attitudes and behavior with respect to gender bias. The Committee concluded a series of focus group discussions, assisted by the use of questionnaires and surveys, would be the most effective way of gauging progress in North Dakota. The Committee requested, and was granted, funds to undertake this process. Thereafter, the Implementation Committee conducted its assessment work in the fall of 2005 and early 2006.

The Committee first identified a representative sample of the state's lawyer population with the aim of soliciting opinions from lawyers who practiced in a variety of areas of law and who could provide a comparative assessment of how the system may have changed since the Commission's Final Report was issued.

The Committee conducted six regional focus group discussions with lawyers, child support enforcement personnel, domestic violence advocates and victim/witness assistants. Lawyers who participated in the assessment process included civil litigators, specialists in family law, prosecutors, criminal defense, child support enforcement, general practitioners, and government attorneys. Approximately 450 questionnaires and surveys were distributed. Approximately 40% of the questionnaires and surveys were completed and returned.

The Implementation Committee solicited information concerning four central areas addressed in the Commission's Final Report: professional conduct and courtroom environment, domestic violence, domestic law, and criminal law. The Committee sought to assemble information reflecting the broad assessments of those generally representative of participants in the judicial process over the past 10 years. Progress on bias issues is difficult to define and often more difficult to recognize, except when bias has manifested itself in an indisputable way and later ceases or becomes less apparent. Whether the progress is substantive or only a matter of degree and perception remains the difficult question.

House Concurrent Resolution No. 3013 - Looking at Domestic Violence Issues

House Concurrent Resolution No. 3013 recommends a Legislative Council study of the protection order process, including statutes and processes related to criminal cases for violations of protection orders, and institutional resources available in resolving domestic violence issues. The recommendation for a study flows from information received during the Implementation Committee's discussion group meetings and survey process.

Responses to surveys and discussion group comments concerning the domestic violence

protection order process suggested the serious need for a review of the process.

Education and awareness efforts were generally perceived as having positively affected how these cases are handled and professional conduct in the proceedings appears to have improved.

Nevertheless, there were concerns about the basic integrity of the process. There appeared to be general agreement, particularly among judicial officers, that the process does not serve the parties equally, or at least with some sense of balance. There was also concern that the process is subject to misuse and abuse to achieve advantage in other legal proceedings.

Additionally, the expedited hearing process may result in proceedings in which issues cannot be fully considered. The laudable objectives and intentions of domestic violence protection statutes risk being undermined and the substantial interests of those to be protected by the statutes frustrated if the process cannot work effectively.