

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2138

2007 SENATE JUDICIARY

SB 2138

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1282

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to sexual offense medical testing to repeal section relating to individuals living arrangements.

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

Testimony In Support of Bill:

Sen. Tracy Potter, Dist. #35, Introduced bill (meter 0:30) Gave Testimony Att. #1

Sen. Fiebigler asked how many cases have the Attorney General's office prosecuted? The last one was in 1938.

Sen. Nelson, Dist. #21 (meter 7:18) Gave Testimony – Att. #2

Rep. Delmore, Dist. #43 (meter 13:20) Sited that this bill has been "miss addressed". This is not about the stigma surrounding the "sin" of the living arrangements rather in some areas it is about safety.

Testimony in Opposition of the Bill:

Tom Freier, ND Family Alliance (meter 14:34) Gave Testimony – Att #3a, discussed hand outs – Att. 3b 3c & 3d.

Sen. Nething sited how impressive the statistics are.

Sen. Nelson questioned the age of the people in the study? (meter 22:46) Probably 40 and younger-discussion.

Sen. Nothing stated the deception part of the bill is already in Century Code (meter 25:28)
Perhaps we should transfer this to the section under Fraud. Discussion of this.

Sen. Nelson discussed the (meter 27:10) this offence should not be criminal.

Mr. Freier stated (meter 28:00) as a state, is this the image we want to give the nation.

Testimony Neutral to the Bill:

None

Senator David Nothing, Chairman closed the hearing.

Sen. Nothing asked the intern, Brad Wiederholt, to research what other states have done with this type of legislation.

Senator David Nothing, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3046

Committee Clerk Signature

Mona Solley

Minutes: Relating to sexual offense medical testing to repeal section relating to individuals living arrangements.

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

Sen. Nething introduced an amendment – Att. #1 Reviewed (meter :43) amendment with the committee. Sen. Nething stated that at one time a discussion of a provision to cover apartment owner who did not want to rent to an unwed couple, but this is already in law. This amendment gets the law out of the sexual offence section and places it in the Fraud section. Discussion of the above and fraud by deception not being covered in current law under this context and this amendment would make it clearly. Committee spoke of who would consider it “fraud”, a nosey neighbor? Discussion of grandma living with another elderly person and a situation of collage age kids. **Sen. Fiebinger** stated that no one has prosecuted for this since 1938. **Sen. Lyson** stated that that was not so. He has prosecuted three individuals on this law but it did not go to the supreme court. Discussion of discretion of the prosecuting attorney and the law being worded that it was not a mandate.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass Amendment #1 dated 2/7 and **Sen. Olafson** seconded the motion. All members were in favor, except for **Sen Fiebiger** and **Sen. Nelson** the motion still passes.

Sen. Lyson made the motion to Do Pass as Amended SB 2138 and **Sen. Olafson** seconded the motion. All members were in favor, except for **Sen. Fiebiger** and **Sen. Marcellais** motion passes.

Carrier: **Sen. Nething**

Senator David Nething, Chairman closed the hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2138

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status; and"

Page 1, after line 5, insert:

"SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

False representation of marital status. An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other."

Renumber accordingly

Roll Call Vote # /

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2138

Senate	Judiciary	Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amend #1

Motion Made By Sen. Lyson Seconded By Sen. Olafson

[illegible]

Total Yes 4 No 2

Absent

Floor Assignment

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

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2138

Senate	Judiciary	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Lyson Seconded By Sen. Olafson

[illegible]

Total Yes 4 No 2

Absent

Floor Assignment Sen. Nothing

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

REPORT OF STANDING COMMITTEE

SB 2138: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2138 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status;"

Page 1, line 2, remove "and"

Page 1, line 3, after "arrangements" insert "; and to provide a penalty"

Page 1, after line 5, insert:

"SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

False representation of marital status. An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2138

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3960

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2138.

Sen. Tracy Potter: Sponsor, explained the bill (see attached testimony).

Rep. Koppelman: You made a comment about the 2001 legislature and how it allowed discrimination in housing. Is that statement opinion or fact and are you implying that it is inappropriate that that is the case. We discriminate against people who have bad financial history, can't pay their rent.

Sen. Tracy Potter: I'm not sure that I meant to imply anything by it, other than a straightforward definition. I think we would find the definition accurate. Of course, you're correct, your implication of discrimination has charged language. The fact is that we do allow landlords to choose not to rent to unmarried couples if they choose.

Rep. Koppelman: Are you aware of the history behind that bill.

Sen. Tracy Potter: I didn't follow it precisely what it was, but I looked at the 2001 Supreme Court case of Fair Housing Council vs. Peterson and that's what leads us to know what the Supreme Court says the current statute means, it means living together in a personal relationship, opposite sex couples. That is what they are saying is the crime, not the business of pretending to be married. Because in that case, the Petersons, the landlord refused to rent

to an unmarried couple, who had said that they were unmarried. At that time, NDCC had the human rights act specifically forbid discrimination against marital status in housing. Because of that hearing the repeal of the law, the legislature moved that.

Rep. Koppelman: Let me challenge one statement and ask a question. I don't believe that the Fair Housing Law prohibited discrimination prior to that based upon marital status. I believe it was the term familial status. Part of the court's finding was that to have a consistent interpretation of the law, familial status could not mean marital status because ND had a separate statute on the books outlawing cohabitation. Therefore, our Century Code would be inconsistent if familial status meant marital status and at the same time the legislature then said that cohabitation was against the law. I believe the common interpretation of that was, and has evolved to be that familial status means that you can't have a single room in an apartment building, you can't prohibit children, those kinds of things. It really doesn't deal with marital status, to reconcile those two provisions in the law. So that was the court's finding. It seems to me if we remove this, as this bill proposes to do, basically it would remove that underpinning from that legal opinion. I understand your point, because I was here in 2001 and that provision was added to the Fair Housing statute. The reason it was added, was to clarify and codify what the court already said. Yes, the court's interpretation of the law is what the legislature intended and to clarify that, we are going to add this language to the statute on Fair Housing. The question is, if we repeal this provision of the law, that court would may no longer have any standing in the law, if someone looks at this over a broader period of time, in another legislative session might say, that's pretty good argument for a session or two from now, coming back and saying that now that we've repealed, the underpinning of that court case, was the language clarifying and codifying what the court says; therefore, let's get rid of that too. That's a slippery slope.

Sen. Tracy Potter: Thank you for the history on that. I actually happen to have in my folder the Supreme Court decision on that. What they were ruling on specifically, they are citing NDCC on page 3 of their 27 page opinion, and what they are saying is, that NDCC, this is a discriminatory practice, that it is illegal to discriminate against a person in terms, conditions or privileges, because of race, color, religion, sex, national origin, age, physical or mental disability or status with respect to marriage for public assistance. It lists specific to marriage that they are talking about. The point you raise, is an excellent one, and I've wondered about it myself and that is if we remove this from the law, because what the Supreme Court was ruling was precisely that, they were saying that the Petersons did not have to rent to these people because they were lawbreakers, not because they were unmarried, but because they were breaking the law by being unmarried and living together. That's what the court case was. So the question is, will ND's current law allowing the Petersons to rent to anybody they want, or not to rent to people they don't want to based on marital status, would that still be constitutional. Would it stand the test. I contend that our cohabitation statute doesn't stand a chance of standing the test of constitutionality anyway. If the one is found unconstitutional, if the current law allowing people to choose not to rent, if that's unconstitutional, certainly the cohabitation statute is, I'm not saying because of one then the other. I'm saying that our statute is unconstitutional based on the TX case of a couple of years ago. Since then, NC's cohabitation statute has been found unconstitutional. Clearly, there are two ways to get rid of this law. We can have a state's attorney who wants to, prosecute somebody who is willing, and the law be thrown out just like that. This is an unconstitutional act, or the state legislature can take it upon themselves to recognize this and put this thing to rest.

Rep. Koppelman: Would the court not have had that opportunity, by the way my reference to the way you described it, was about I believe about a district court level case. Would the court

not have had that opportunity then, if they had before them the question at hand, and specifically referred to and commented on and if they wanted to find this unconstitutional, it seems to me that was a golden opportunity.

Sen. Tracy Potter: If they wanted to, they certainly could have. They certainly had that opportunity in front of them, but they also had that easy way out, saying that's not really the issue at hand here, it's against the law, that's what they chose to do.

Rep. Griffin: Do you see this law being enforced in any situations, can you give an example of a situation where it would be violated, how somebody could falsely represent that they were married.

Sen. Tracy Potter: If this passes, can I see this being enforced? Boy, I think the number of lawbreakers drops from 23,000 to 0. No, I don't see this being enforced, unless in fact, there is fraud being perpetrated. Unless someone is gaining some advantage by pretending to be married. Then yes, that's a crime and should be prosecuted. I don't see a lot of people out there who are breaking the law, as we will have changed it, should you adopt the work of the Senate Judiciary committee.

Rep. Koppelman: Part of your answer to Rep. Griffin's question, intrigued me, because on one hand you said we should repeal this law if it's not enforced, you shouldn't have a law on the books just because, etc. Then you said this new law, which you said was an improvement to your bill, would be wonderful, would never be enforced, why not.

Sen. Tracy Potter: I'm not saying it won't be enforced, because law enforcement choose not to enforce it. I'm saying it won't be enforced because nobody is violating it.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Mary Ekstrom: Support, co-sponsor. I am here to merely support this bill. I have used many arguments over the years with regard to whether this law is needed. We did try this as a

fraud statute once before and it failed in the House. This time it has a better chance. In response to a question, will this ever be enforced? Well, it could be. If someone went into a hospital and said they are husband and wife, because I want to get into that hospital room when my husband dying, they could in fact represent themselves as being married. Take it one step further, the individual dies. Of course, the hospital comes back after the spouse for payment and they aren't married. That's fraud. That should be prosecuted. There's a very good reason for putting this on for a fraud statute, not as a sex crime (cited example of older couple who weren't married and couldn't get the condo due to condo association rules).

Rep. Koppelman: In the example you gave, you talked about the couple denied the option to rent...

Rep. Mary Ekstrom: Not rent, buy.

Rep. Koppelman: So, we had the discussion about the idea that folks could still refuse to rent to people who are cohabitating because of the provision in the law a few years ago that this bill passed. Would it prohibit the kind of thing you are talking about though. Would that be illegal.

Rep. Mary Ekstrom: I think the condominium covenant was trying to cover all the bases. I think what they said was that is the law of ND, and therefore we are going to incorporate it into our rules. I think that would go away.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Kathy Hawken: Support. I am not a sponsor. One, our more senior constituents, those people care deeply that they are not following the law. It matters to them, and yet they aren't doing anything wrong. It's companionship for the most part, it may be because of some of our other laws so that they don't lose SS, or veteran benefits; because they need those monies to live. Yet we have put them in a place where they are law breakers. They know that and it

makes them uncomfortable. The second is a safety issue, having a young man living in the house/apartment with girls for safety. Third, just personal. I think that things like this make us a joke around the country.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Delmore: I am a sponsor. I have two quick points. I don't see a reason to keep a law on the books because it makes us feel good and we're more moral than other people.

Second, it's about economics. A lot of the people in this state that choose to live together, and many of them have no relationship beyond companionship fall into two categories, senior citizens, people who can't afford those facilities by themselves and college students. It's a matter of economics. I understand the reality of what an apartment costs and how students can't do it by themselves. I like the comment about security, because in ND there could be a young man living with some young women that could end up saving lives. We've got some people here who aren't the best of critters either.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Tom Freier, ND Family Alliance: (see attached testimony).

Chairman DeKrey: Doesn't this violate our oath, when we take office we have to take an oath and raise our right hand, to say that we will protect the constitution and here we have a law that nobody has argued for the last three times we've heard the repealer, that it's constitutional. If we are to uphold the constitution, doesn't that also mean when we disagree with it.

Tom Freier: I believe we need to retrospectively look at what is the greater good and in essence, we need to determine what that is. I don't believe that the constitution has been violated. I don't believe that if someone who had felt strongly in that regard, why it has not

been brought forward to be reviewed, so that the courts can make a decision on this. I am pretty comfortable with where we are.

Rep. Dahl: I don't disagree with you that's in the best interest of the state to encourage the institution of marriage. I'm not sure how much we are really encouraging marriage with a statute that's not enforced and police has no interest in enforcing that statute. I think, we passed a tax break for married people a few weeks ago, which encourages marriage. I understand the statistics. I'm not sure that this encourages marriage.

Tom Freier: That's a basic question and one that all of us need to take into consideration including ourselves. I come back to what is the greater good. When you, as a legislature, pass bills on a daily basis, you influence our society. You influence what the people in our state are going to do. You influence them by the messages you send. I believe that by repealing this, or by changing the language to the point that it may deteriorate that intent even further, we will be sending the message to the people of ND. I don't believe that is the correct message. I don't know that it concerns me a great deal for someone to look at ND as being a joke. I don't see that. I think when we stand up for our principles and standards, I think that's something to be admired as opposed to being ridiculed. I don't think that the folks that would ridicule us are doing so in a manner that they don't respect us. I think they are saying that you aren't being progressive. I receive 25-30 emails from out of state folks the last time this was heard on the Senate side, and that was the nature of those emails. It was ridicule but it didn't really take into account that we were trying to uphold our beliefs.

Rep. Meyer: When you look at the statistics of how fast our population is aging and just how many of us are over the age of 65, and I have to weigh in with Rep. Hawken and Rep.

Delmore's question about the economic factor. The one segment of our society that this law bothers terribly is our elderly. I don't believe our young college kids are bothered by this. I do

believe the elderly feel this terribly and yet at the same time, you are trying to promote families and strong alliances, when or if they would marry, and it cost them their benefits, when they are living on a fixed income and we have many elderly that barely get by on fixed incomes. How do you reconcile that with your family values.

Tom Freier: I don't debate that there are certain situations and folks that have a financial or economic problem. I would say that we need to address those problems, those issues. I think we need to specifically deal with those and that is the legislation that should be brought forward as opposed to saying this removal of this or moving it to another section, would actually create other opportunities to pass bills into laws that would eventually help those folks.

Rep. Meyer: So you're saying that you are fine with the provisions of this law, where you can enforce it at whim. It is being moved to a section where if you are perpetrating a fraud that's fine. But that's a whole problem, your last statement, you really can't have a law on the books where you can enforce it in one segment and not in another.

Tom Freier: No, I didn't intend to say that it should be enforced one time and not another. I think we're in a public place and on the record, and I know it's very difficult for us to say that we have something that is in statute right now, but is not enforced. But that is the situation. As I mentioned, by reversing ourselves, by removing it, or even putting it in another section, which the more I look at it, the more doubts I have as to what that might lead to and how that could affect other laws that we already have on the books and even federal. I think that the issue we have before us, is how people are being affected today in a negative way. You mentioned some of the incidents. That is what we need to zero in on and take care of those folks as opposed to affecting the entire population. I was amazed when I did the research and found what I did about the overall statistics. I think everyday in this body, we are very cognizant of the plight of women and abused children, and these statistics really do lend themselves to

saying that's where the abuse is greatest. That's where the problems are the greatest. So how can we overlook something that's taken place there, just to maybe feel good about it, that we don't have a law on the books that isn't being enforced. That's a difficult question.

Rep. Meyer: Is it your position that you want this law to start being enforced.

Tom Freier: It's my position that you should not remove this section from the code because it will do greater harm than the fact that it is not being enforced right now.

Rep. Meyer: Do you want this law enforced.

Tom Freier: I would like this law to be enforced in the situations that will carry out the intent of it. Right now I don't think that it's being enforced and we are having the best of both worlds. We are having the fact that it's there and it's sending a message, and it's not being enforced all the time and we are continuing to send that message.

Rep. Delmore: I work a lot with statistics, and it's interesting when we talk about this issue, we bring in AZ, we bring in all other kinds of states. Some of them are interesting, I would like to see some of the sources for that. But we're the only state that has a statute but we don't have any statistics for ND that I have ever seen on what difference it makes as far as relationships. I firmly believe in marriage, been married for 30+ years. However, I want to go back to the question that we asked earlier, and that's the idea that there is an assumption in this state, that all of these people who are living together have a sexual relationship. I think in a majority of cases in this state, people are living together for economic reasons, they live together for many other reasons other than the fact that they want to pretend like they are a married couple and try out marriage. I don't think it's fair for us to look at this statute only in that regard. Would you agree.

Tom Freier: I can't bring myself to say that in very limited specific cases that we should try to address those by passing the bill that removes the overall language. Because it may approach

dealing with those folks, but what we do is affect everyone. I don't know if the legislature does that all the time, that is to specifically deal with an issue here by passing something that is overreaching and affects everyone.

Rep. Delmore: The laws we pass should affect everyone who breaks it. The highway patrol does not give me a free card when I am driving down the highway because I have dark hair and somebody else is blond. Our laws have to be enforced for everybody. That's the reason that they are passed. Do you have the whole AZ study where these statistics were reached and can you tell me, who actually did the study and if they went to every couple that happened to live together or if they were selective in deciding, how long did they follow them after the cohabitation.

Tom Freier: The main study I want to share is the Rutger's study, but there were two or three other studies that I went to and I found the same sort of information and that's why I stopped. I will find the specific AZ study and will give you that information. As an aside, you mentioned the highway patrol, the highway patrol does not stop everybody who breaks the law.

Rep. Delmore: Do you have any statistics at all for ND, have you ever tried to get statistics on people who were cohabitating since we are the only state that has the statute.

Tom Freier: No, I do not.

Rep. Koppelman: As a former representative, you know that we have laws on the books that we don't enforce. We also have selected enforcement going on in the way cases are prosecuted. Prosecutors, in some jurisdictions, have trouble with them not prosecuting bad check writers. I can think of one statute that, in fact, we had an opportunity to repeal this as well, as we declined. We had a statute in ND that said you can't campaign on election day.

To say that we have an election and you can't run a radio ad and can't campaign, I know there are people in other states where they can hardly get to the polls because there are so many

signs and campaign workers and candidates themselves glad handing as they are walking to the polling place. In ND, made a policy decision to say it may be overturned, if there is a challenge, but we declined as a legislature to repeal it, we know it is unenforceable and perhaps it could attempt to be enforced and probably would be overturned if challenged in court, but we felt it was a good standard and everybody who is honorable has observed it. It's not a bad thing to have on the books. I see this as something fairly similar.

Tom Freier: I know that none of us would like to think that we have laws on the books that aren't enforced, or are selectively enforced. You're right, I know of some too, in a former life in the DOT, I know there are certain ones that were not. One that comes to mind, when you purchase a vehicle, you put down you paid for the vehicle. There are a lot of folks that can't remember how much they paid for some reason and it gets to the point where not everyone of those can be prosecuted, even though it's probably pretty obvious a situation. I'm just saying that the greater good is served by having this continue.

Rep. Koppelman: Along those lines, the greater good issue, your testimony as I've listened and reread segments, you talked about the ripple effects, of the message that this sends. I can think of when this was being deliberated two years ago, one example that was brought up was that a particular woman called into a radio program and said I just got divorced, and I am extremely thankful that ND, has on its books, a law against cohabitation, because that's why my children live with me today. Because in my case, the judge was looking at the custody issue, and my attorney was able to successfully point out that my former husband was cohabitating and that was illegal in ND so that the court could not make a moral judgment but that it was illegal. He said you may be a more fit parent because you're not. We can argue all day long whether that was appropriate or inappropriate. But the point is that these kinds of things, even if they aren't being enforced on the face, you talked about the housing issue

before, and I think there are things that go on in the state that we don't always know about. Is that what you're trying to get at when you talk about the greater good.

Tom Freier: I think there are countless anecdotal situations where that is the case. That case brings to life the situation of the children and that's what came out very strong in this particular study by Rutgers. In those cases, especially where you have reoccurring cohabitations, those children will have such a greater propensity for being abused. Another issue was, what legal status does some of those children have in those situations, where if you have a situation of multiple fathers.

Rep. Wolf: You said that you would like to see it enforced. Who is going to make that decision, you, the state's attorney or who and who decides.

Tom Freier: In the instances, that if it comes to a legal status in litigation that occurred, then they can go to this law and use that as legal background for them to use in that case. I'm not going to when this might be enforced or when someone might use this law.

Rep. Wolf: Can you give me an example of when you think this should be enforced.

Tom Freier: I think Rep. Koppelman alluded to that in the situation of a custody situation. That might have an influence on the judge when that judge reaches a decision about the custody.

Rep. Wolf: Should that be charged as a criminal offense then too.

Tom Freier: I don't know if that particular person was charged or not. I think that really gave them background to utilize something that was in our century code.

Rep. Wolf: On the last page of your testimony, third paragraph from the bottom, "studies indicate that the longer couples cohabitate the more likely their commitment will be weak..." do you have a copy of that study.

Tom Freier: That is the copy I will leave with you.

Rep. Wolf: Does that have the statistics about the amount of abuse on children live in vs. other people. You keep referring to them as having a greater chance of being abused in a cohabitation situation vs. another. Do you have statistics for that.

Tom Freier: I'm not sure how it broke it out, but I think the main comparison was between married and the folks that were living together.

Rep. Wolf: Live in vs. not live in.

Tom Freier: I would have to look at the information again as well, to see if it's broken out that way.

Rep. Wolf: In the testimony, it talked about 39% of cohabitating couples had broken their relationship, 40% have married and 21% were still together. If you take 40% that have married and 21% that were still together, you're at 61%. I noticed that the one statistic that you are missing is the current divorce rate. Are you aware of what the current divorce rate is.

Tom Freier: I don't think that's in the testimony. In this particular study, but I think that would be with vital statistics and I think we can find that. Are you saying in ND or across the country.

Rep. Wolf: Are you preparing this in ND or ...

Tom Freier: This one was nationwide.

Rep. Wolf: The divorce rate is approximately 50% or a little greater, and only 39% of the cohabitating people have broken up. In essence, this demonstrates a lower split rate.

Tom Freier: I think if we go to the second bullet at the top of the page, this is an AZ study, but it talks about 46-90% higher likelihood, I'm almost certain that we're going to find that same thing in the study that I'm going to share with you. That the likelihood is much higher in those situations. This is just one part of the study that broke out one certain group in the 5-7 years, this is a smaller group out of the entire study. We have to be careful what we use here.

Rep. Klemin: It seems like we're talking about two different things in discussing this bill. The statute that is being repealed is unlawful cohabitation. Although the title of the statute is not actually part of the law, it does seem to imply that there is also lawful cohabitation vs. unlawful cohabitation. I think the difference is that if you are living together openly and notoriously as a married couple without being married to each other, that is the unlawful cohabitation. But if you are living together openly and notoriously with an individual of the opposite sex, not as a married couple, is that illegal under the statute.

Tom Freier: I don't know; but I can tell you this. From my point of view and that of Family Alliance, we would not be into making that distinction. I think our view would be that the state of ND should by an inference, support or condone something other than marriage.

Rep. Klemin: I'm not suggesting that we should do that or not. I think a clear reading of the statute, makes it very clear that the only way you are violating this statute now, is if you are living openly and notoriously as a married couple without being married. If you aren't living together as a married couple, let's say you openly and notoriously say we're living together, but we're not married, you're not violating this statute. My whole point to this is it's really a fraud situation because if you are living together openly and notoriously as a married couple without being married, that is the problem. I think that what the additional language adds on here, is actually a clarification on what the existing law really says. That you are falsely representing your past as being married. That's the unlawful part. It's not the cohabitating that's unlawful, it's the representation. That's the way it is under the existing law and I guess I see this section 1 of this bill is simply being a clarification of what the statute really says and not what we think it might say.

Tom Freier: As I said initially, when I read the language and I'm not an attorney, I felt that maybe it did clarify and then the more I thought about it, I said that I'm becoming very worried

about how it will affect other laws that we already have and the interpretation of that and how it affects us. I'm not sure how this will affect us.

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

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/27/08

Recorder Job Number: 4005

Committee Clerk Signature

APenrose

Minutes:

Chairman DeKrey: We will take a look at SB 2138.

Rep. Kingsbury: I move to amend the bill to strike on page 2, line 29-30 the section 4,
Repeal.

Rep. Koppelman: Second.

Rep. Delmore: We would only be leaving the unconstitutional part, you want to keep that in
the law.

Chairman DeKrey: Clerk will call the roll. Motion failed. What are the committee's wishes in
regard to SB 2138.

Rep. Charging: I move a Do Pass motion.

Rep. Wolf: Second.

10 YES 4 NO 0 ABSENT

DO PASS

CARRIER: Rep. Klemin

Date: 2/27/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2138

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment - Strike Pg 2, line 29-30

Motion Made By Rep Kingsbury Seconded By Rep. Koppelman

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) 4 No 10

Absent 0

Floor Assignment _____

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

Motion failed

Date: 2-27-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2138

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Charging 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) 10 No 4

Absent 0

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE (410)
February 27, 2007 3:16 p.m.

Module No: HR-37-4052
Carrier: Klemlin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2138, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2138 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2138

1-10-07
AH #1

Cohabitation Repeal - SB 2138

Mr. Chairman, members of the Senate Judiciary Committee:

SB 2138 is a simple measure - you might call it housekeeping ... but you probably won't.

This bill will repeal Section 21.1-20-10, the Unlawful Cohabitation Statute. I am unable to imagine what defense can be raised for allowing this measure to continue to stain our Century Code. In the first place, it is an unwarranted government intrusion into the personal lives of its citizens. This is the United States of America, this is North Dakota, where the constitution guarantees us freedom of association. Mark Twain expressed a view of people's personal relationships that government should adopt:

"I don't care what you do, as long as you don't scare the horses."

It's just none of our business, Mr. Chairman, who lives with whom.

Plus, I will suggest, we should take every opportunity to repeal a law when we have the chance. I'm sure you've heard it. I heard it repeatedly at my neighbors' doors - "we have enough laws." I'd laugh and agree and say that I was thinking of adopting a no-net-gain-of-laws philosophy. Pass one, you have to repeal one. I don't expect to live up to that promise, but at least this would be a start.

Now, based on previous arguments, you may hear that the law doesn't actually prevent unmarried men and women from living together. That it only prohibits pretending to be married to defraud someone. That is not true and I can prove it.

First: fraud by deception is already against the law. This statute is unnecessary to protect the public from that kind of deception.

Second: If the act was just about fraud, it wouldn't be in the sex crimes statute. That's right, Chapter 12.1-20 is titled "Sex Offenses." Cohabitation is a sex crime.¹

Third is the clincher: The State Supreme Court ruled on this specific point in 2001 in **North Dakota Fair Housing Council v. Peterson**. Illegal cohabitation in that case involved a couple who publicly declared that they were unmarried fiances. They did not attempt to deceive anyone. A landlord refused to rent to them because they weren't married.

At that time, North Dakota's Human Rights Act prohibited discrimination in housing on the basis of marital status. On behalf of the couple, the North Dakota Fair Housing

Potter testimony on SB 2138, page two of three

Council sued, citing the landlord's violation of the Human Rights Act. The plaintiff argued that the statute was only intended as an anti-fraud law.

The court rejected that argument, citing legislative history and intent.² The court was particularly clear in its finding - here was a couple who had not tried to defraud anyone. They had merely attempted to live together prior to their marriage (like many of our cohabitants, the couple eventually married). The court held that the protections of the Human Rights Act didn't apply to the couple because they were denied housing not simply because of marital status, but because they were attempting to break the law on cohabitation.

Neither Peterson nor any other landlord needs to worry any more that repeal of this sex crime will force them to rent to unmarried couples. If the state had repealed the cohabitation statute in the 1990s, no one could be denied an apartment or house on the basis of being unmarried. Today, it won't matter. The 2001 Session changed the law. North Dakota Century Code separately and specifically allows discrimination in housing based on marital status. 14-02.5-02, 4, allows landlords to refuse to rent to unmarried couples.

So this bill has nothing to do with housing, or extending any rights, other than the right not to be a criminal. If we mean to enforce this law we'll need a ten billion dollar prison. There are, according to the Census Bureau, 23,000 people living together in North Dakota as unmarried, opposite sex partners. If we don't mean to enforce it, it's an insult to law enforcement to keep it on the books.

This is the key issue before us today. We may disagree about the extent to which state law should regulate private behavior. But I think we all can agree that we shouldn't have laws that law enforcement refuses to enforce.

Law Enforcement all across the state has made this clear, by not enforcing the law for 69 years. So it stays on our books for what can be no other reason than as a statement of some kind of principle. Whatever point is intended by voting to retain this law from a far-gone era, the real effect of the vote is to encourage disrespect for law. We're saying that we have optional laws. Laws we don't really mean. We shouldn't have laws like that.

I respectfully request your favorable consideration of this simple housekeeping measure.

1. From Fair Housing Council v. Peterson:

Varying definitions of cohabitation exist. The 1996 edition of Merriam-Webster's Dictionary of Law defines cohabit as "to live together as a married couple or in the manner of a married couple." The 1999 edition of Black's Law Dictionary, at page 254, defines cohabitation as "[t]he fact or state of living together, esp. as partners in life, usu. with the suggestion of sexual relations." Notorious cohabitation is the "act of a man and a woman openly living together under circumstances that make the arrangement illegal under statutes that are now rarely enforced."

The Minnesota Supreme Court has defined "cohabit" as living "together in a sexual relationship when not legally married." State by Cooper v. French, 460 N.W.2d 2, 4 n.1 (Minn. 1990) (citing The American Heritage Dictionary of the English Language 259 (1980) (New College Dictionary)).

2. From Fair Housing Council v. Peterson:

The Housing Council and the Kippens argue the 1973 recodification of the cohabitation statute was intended to retain the statute only as an antifraud provision. Although the minutes of the interim committee clearly reflect that one member of the committee would have preferred to retain only an antifraud prohibition, the entire legislative history shows the interim committee deleted the antifraud language from the section, and the 1973 Senate Judiciary Committee was told the statute would "continue to prohibit unlawful cohabitation." Hearing on S.B. 2047, S.B. 2048, and S.B. 2049 Before the House Judiciary Comm., 43rd N.D. Legis. Sess. (Jan. 17, 1973) (testimony of Thomas M. Lockney, Attorney-at-Law).

HH #2
1-17-07



SENATE

NORTH DAKOTA LEGISLATIVE ASSEMBLY



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SB 2138

I'm Senator Carolyn Nelson, D21, urban Fargo. This bill is of great interest to my constituents from age 18 to age 90 plus. Let me relate several situations to you. My mother was widowed in 1999 at age 89 (Dad was 90). Two years later, a call came from the assisted living center. "Your mom and her friend Woody are more than friends. What do you plan to do?" They were happy, they were companions, they wanted to stay in the same room. It was legal in Florida, Woody's children removed him from the situation – they feared for their inheritance. Soon after, we moved mom to an assisted living center in Kansas City where she still resides, age 97.

Case 2, is also related to a member of the legislature. The mother-in-law is in her 80s, she has had a steady companion for the past 30 years. She also lives in Florida. Her health has failed and her son would like her to move to a facility in Grand Forks. Yes, they can do that. However, her companion cannot live with her, it's against the law. He can rent the single room next door but they can't room together. So... she is in a southern state where the two can room together during their final years – just like they did during the past 30 years but far from her son.

In both these cases, there is no indication of anything criminal, there is no sexual offense. In both cases, these mature adults wanted companionship, partnership, friendship, togetherness.

Last Sunday, one of the statewide newspapers had an article about partners and how they benefit health care of senior citizens – someone to reinforce doctor's orders and encourage self care. So why is this a class B misdemeanor?

The Century Code quotes a 1938 case and emphasis on "open and notorious" relationships. "Notorious" supposedly means that sex is involved and "open" means that someone else knows. Whose business is it? This is the main question that I'm asked by my younger constituents.

Case 3. Let's assume that Bjorn and Toni are getting married in April; they buy a house in January. Rather than pay rent on two apartments and the new house, they move into their new house and start "fixing it up". It's "open" and may be "notorious" according to the code, but is this really a criminal offense?

One only needs to check old tree claim records of early Dakota Territory times to see housing arrangements have not always been what some call "traditional". Financial, practical and relationship situations are nothing new.

Over the years, there have been plenty of opportunities for charging this "crime". It's time, we deleted 12.1-20-10. If not, the state's attorneys should enforce it.



North Dakota FAMILY ALLIANCE

Att #3a
1-17-07

A Trusted Voice

Tom D Freier
EXECUTIVE DIRECTOR

DEDICATED TO STRENGTHENING FAMILIES

Senate Judiciary Committee

SB 2138

January 17, 2007

Mr. Chairman and members of the Senate Judiciary Committee, thank you for hearing my testimony.

My name is Tom D Freier, and I represent the North Dakota Family Alliance.

I am here to oppose SB 2138. That opposition is consistent with our mission to strengthen and protect families.

In today's world, living together may seem like a good way to achieve some of the benefits of marriage and avoid the risk of divorce. Couples who live together can share expenses, learn more about each other, and eventually determine if this is the 'right' spouse for them. If it doesn't work out, breaking up is easy, with no legal or religious permission to dissolve the union.

The US Census estimates that about 10 million unmarried people are living with someone of the opposite sex, or cohabitating. That represents about 8% of US coupled households, with most being between 25 and 34 years of age. Many high school seniors believe that it usually a good idea for a couple to live together to determine compatibility.

The new view is that cohabitation represents a more progressive approach to intimate relationships. How much healthier women are to be free of social pressure to marry and stigma when they don't. How much better off people are today to be able to exercise choice in their sexual and domestic arrangements. How much better off marriage can be, and how many divorces can be avoided, when sexual relationships start with a trial run.

But a careful look at research and social science evidence suggest that living together is not a good way to prepare for marriage or to avoid divorce. Cohabiting is not a positive for the family, and poses special risks for women and children.

Specifically, research indicates that living together before marriage increases the risk of divorce. It increases the risk of domestic violence for women, and the risk of physical and sexual abuse for children. And unmarried couples have lower levels of happiness and wellbeing.

An Arizona study identified numerous problems prevalent in cohabitating households, including:

- 180% higher likelihood of domestic violence
- 46% to 90% higher likelihood of divorce in subsequent marriage
- 300% higher likelihood of depression
- 125% higher likelihood that children will see their parents break up before the reaching age 16
- much, much higher likelihood of child abuse
- greater likelihood of lower incomes

One study reported that after 5 to 7 years, 39% of cohabitating couples have broken their relationship, 40% have married (although the marriage might not have lasted), and 21% were still together. And especially troubling is that in a 2000 study, 41% of all unmarried households included children under 18 (more than likely that percentage is closer to 50% today). A high percentage of these children will see their parents break up before these children reach age 16. And even more disturbing is that the likelihood of multiple cohabitations, and the devastating effect on children.

In general, the evidence suggests that the most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father. This is the environment for the majority of children in a cohabitating household.

Studies indicate that the longer couples cohabitate the more likely their commitment will be weak, and chances of a successful marriage lower. In addition multiple failed cohabitation experiences do not lead to a successful future relationship, and actually have the opposite effect.

'While cohabitation may have the elements that make up intimacy, it lacks one major ingredient – commitment. Commitment is the fence that protects, the lock that guarantees, and the alarm system that ensures that vulnerability is not easily compromised. Marriage is a covenant of mutual protection, devotion, sacrifice and love. It is binding for that reason. It is not only safe for our most vulnerable moments but for the most vulnerable people in our world – our children.'

Instead of turning our heads aside and by default institutionalizing cohabitation, we need to put our efforts and energy into nurturing and revitalizing the age old institution of marriage which remains a cornerstone of a successful society.

Please give SB 2138 a Do Not Pass. Thank you.

Should We Live Together?

**What Young Adults Need to Know about
Cohabitation before Marriage**

A COMPREHENSIVE REVIEW OF RECENT RESEARCH

SECOND EDITION

**David Popenoe and
Barbara Dafoe Whitehead**



THE NATIONAL MARRIAGE PROJECT
The Next Generation Series



The National Marriage Project

The National Marriage Project is a nonpartisan, nonsectarian and interdisciplinary initiative located at Rutgers, the State University of New Jersey. The project is financially supported by the university in cooperation with private foundations. The Project's mission is to provide research and analysis on the state of marriage in America and to educate the public on the social, economic and cultural conditions affecting marital success and wellbeing.

The National Marriage Project has five goals: (1) annually publish *The State of Our Unions*, an index of the health of marriage and marital relationships in America; (2) investigate and report on younger adults' attitudes toward marriage; (3) examine the popular media's portrait of marriage; (4) serve as a clearinghouse source of research and expertise on marriage; and (5) bring together marriage and family experts to develop strategies for revitalizing marriage.

Leadership

The project is co-directed by two nationally prominent family experts. David Popenoe, Ph.D., a professor and former social and behavioral sciences dean at Rutgers, is the author of *Life Without Father*, *Disturbing the Nest* and many other scholarly and popular publications on marriage and family. Barbara Dafoe Whitehead, Ph.D., an author and social critic, writes extensively on issues of marriage, family and child wellbeing. She is the author of *The Divorce Culture* (Alfred A. Knopf, 1997).

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Alan Wolfe, Professor of Political Science and Director Center for Religion and Public Life, Boston College, and Contributing Editor, *The New Republic*

Executive Summary

Cohabitation is replacing marriage as the first living together experience for young men and women. When blushing brides walk down the aisle at the beginning of the new millennium, well over half have already lived together with a boyfriend.

For today's young adults, the first generation to come of age during the divorce revolution, living together seems like a good way to achieve some of the benefits of marriage and avoid the risk of divorce. Couples who live together can share expenses and learn more about each other. They can find out if their partner has what it takes to be married. If things don't work out, breaking up is easy to do. Cohabiting couples do not have to seek legal or religious permission to dissolve their union.

Not surprisingly, young adults favor cohabitation. According to surveys, most young people say it is a good idea to live with a person before marrying.

But a careful review of the available social science evidence suggests that living together is not a good way to prepare for marriage or to avoid divorce. What's more, it shows that the rise in cohabitation is not a positive family trend. Cohabiting unions tend to weaken the institution of marriage and pose special risks for women and children. Specifically, the research indicates that:

- Living together before marriage increases the risk of breaking up after marriage.
- Living together outside of marriage increases the risk of domestic violence for women, and the risk of physical and sexual abuse for children.
- Unmarried couples have lower levels of happiness and wellbeing than married couples.

Because this generation of young adults is so keenly aware of the fragility of marriage, it is especially important for them to know what contributes to marital success and what may threaten it. Yet many young people do not know the basic facts about cohabitation and its risks. Nor are parents, teachers, clergy and others who instruct the young in matters of sex, love and marriage well acquainted with the social science evidence. Therefore, one purpose of this paper is to report on the available research.

At the same time, we recognize the larger social and cultural trends that make cohabiting relationships attractive to many young adults today. Unmarried cohabitation is not likely to go away. Given this reality, the second purpose of this paper is to guide thinking on the question: "should we live together?" We offer four principles that may help. These principles may not be the last words on the subject but they are consistent with the available evidence and may help never-married young adults avoid painful losses in their love lives and achieve satisfying and long-lasting relationships and marriage.

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Cohabiting unions tend to weaken the institution of marriage and pose special risks for women and children.

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SHOULD WE LIVE TOGETHER?

“

By 2000, the total number of unmarried couples in America was almost 4.75 million, up from less than half a million in 1960.”

”

1. Consider not living together at all before marriage. Cohabitation appears not to be helpful and may be harmful as a try-out for marriage. There is no evidence that if you decide to cohabit before marriage you will have a stronger marriage than those who don't live together, and some evidence to suggest that if you live together before marriage, you are more likely to break up after marriage. Cohabitation is probably least harmful (though not necessarily helpful) when it is prenuptial – when both partners are definitely planning to marry, have formally announced their engagement and have picked a wedding date.
2. **Do not make a habit of cohabiting.** Be aware of the dangers of multiple living together experiences, both for your own sense of wellbeing and for your chances of establishing a strong lifelong partnership. Contrary to popular wisdom, you do not learn to have better relationships from multiple failed cohabiting relationships. In fact, multiple cohabiting is a strong predictor of the failure of future relationships.
3. Limit cohabitation to the shortest possible period of time. The longer you live together with a partner, the more likely it is that the low-commitment ethic of cohabitation will take hold, the opposite of what is required for a successful marriage.
4. Do not cohabit if children are involved. Children need and should have parents who are committed to staying together over the long term. Cohabiting parents break up at a much higher rate than married parents and the effects of breakup can be devastating and often long lasting. Moreover, children living in cohabiting unions with stepfathers or mother's boyfriends are at higher risk of sexual abuse and physical violence, including lethal violence, than are children living with married biological parents.

SHOULD WE LIVE TOGETHER?

What Young Adults Need to Know about Cohabitation before Marriage

A Comprehensive Review of Recent Research

Living together before marriage is one of America's most significant and unexpected family trends. By simple definition, living together—or unmarried cohabitation—is the status of couples who are sexual partners, not married to each other, and sharing a household. By 2000, the total number of unmarried couples in America was almost four and three-quarters million, up from less than half a million in 1960.¹ It is estimated that about a quarter of unmarried women between the ages of 25 and 39 are currently living with a partner and about half have lived at some time with an unmarried partner (the data are typically reported for women but not for men). Over half of all first marriages are now preceded by cohabitation, compared to virtually none earlier in the century.²

What makes cohabitation so significant is not only its prevalence but also its widespread popular acceptance. In recent representative national surveys nearly 66% of high school senior boys and 61% of the girls indicated that they "agreed" or "mostly agreed" with the statement "it is usually a good idea for a couple to live together before getting married in order to find out whether they really get along." And three quarters of the students stated that "a man and a woman who live together without being married" are either "experimenting with a worthwhile alternative lifestyle" or "doing their own thing and not affecting anyone else."³

Unlike divorce or unwed childbearing, the trend toward cohabitation has inspired virtually no public comment or criticism. It is hard to believe that across America, only thirty years ago, living together for unmarried, heterosexual couples was against the law.⁴ And it was considered immoral—living in sin—or at the very least highly improper. Women who provided sexual and housekeeping services to a man without the benefits of marriage were regarded as fools at best and morally loose at worst. A double standard existed, but cohabiting men were certainly not regarded with approbation.

Today, the old view of cohabitation seems yet another example of the repressive Victorian norms. The new view is that cohabitation represents a more progressive approach to intimate relationships. How much healthier women are to be free of social pressure to marry and stigma when they don't. How much better off people are today to be able to exercise choice in their sexual and domestic arrangements. How much better off marriage can be, and how many divorces can be avoided, when sexual relationships start with a trial period.

Surprisingly, much of the accumulating social science research suggests other-

wise. What most cohabiting couples don't know, and what in fact few people know, are the conclusions of many recent studies on unmarried cohabitation and its implications for young people and for society. Living together before marriage may seem like a harmless or even a progressive family trend until one takes a careful look at the evidence.

How Living Together Before Marriage May Contribute to Marital Failure

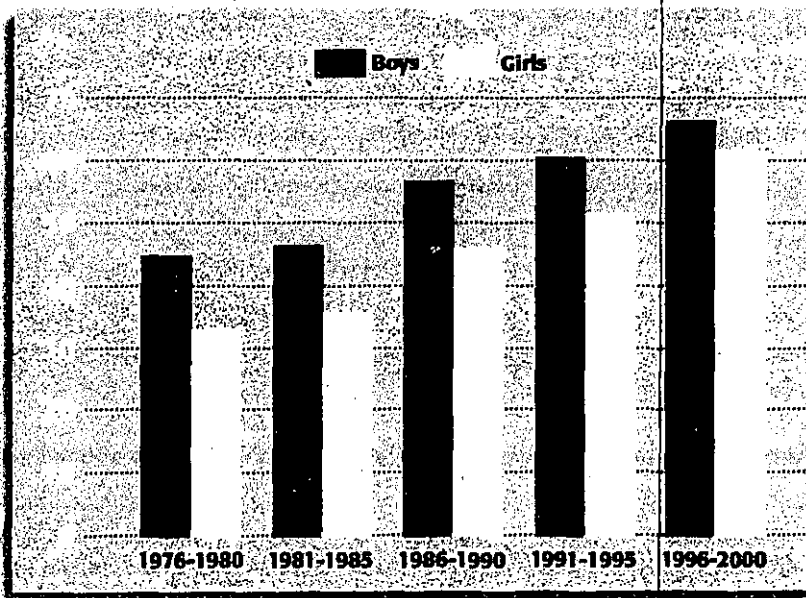
The vast majority of young people today want to marry and have children. And many if not most see cohabitation as a way to test marital compatibility and improve the chances of long-lasting marriage. Their reasoning is as follows: Given the high levels of divorce, why be in a hurry to marry? Why not test marital compatibility by sharing a bed and a bathroom for a year or even longer? If it doesn't work out, one can simply move out. According to this reasoning, cohabitation weeds out unsuitable partners through a process of natural de-selection. Over time, perhaps after several living-together relationships, a person will eventually find a marriageable mate.

The social science evidence challenges the popular idea that cohabiting ensures greater marital compatibility and thereby promotes stronger and more enduring marriages. Cohabitation does not reduce the likelihood of eventual divorce; in fact, it is associated with a higher divorce risk. Although the association was stronger a decade or two ago and has diminished in the younger generations, virtually all research on the topic has determined that the chances of divorce ending a marriage preceded by cohabitation are significantly greater than

for a marriage not preceded by cohabitation. A 1992 study of 3,300 cases, for example, based on the 1987 National Survey of Families and Households, found that in their marriages prior cohabitators "are estimated to have a hazard of dissolution that is about 46% higher than for noncohabitators." The authors of this study concluded, after reviewing all previous studies, that the enhanced risk of marital disruption following cohabitation "is beginning to take on the status of an empirical generalization."⁵

More in question within the research community is why the striking statistical association between

Percentage of High School Seniors Who "Agreed" or "Mostly Agreed" With the Statement That "It Is Usually a Good Idea for a Couple to Live Together Before Getting Married in Order to Find Out Whether They Really Get Along," by Period, United States.



cohabitation and divorce should exist. Perhaps the most obvious explanation is that those people willing to cohabit are more unconventional than others and less committed to the institution of marriage. These are the same people, then, who more easily will leave a marriage if it becomes troublesome. By this explanation, cohabitation doesn't cause divorce but is merely associated with it because the same types of people are involved in both phenomena.

There is substantial empirical support for this position. Yet, in most studies, even when this "selection effect" is carefully controlled statistically, a negative effect of cohabitation on later marriage stability still remains. And no positive contribution of cohabitation to marriage has been ever been found.⁶

The reasons for a negative "cohabitation effect" are not fully understood. One may be that while marriages are held together largely by a strong ethic of commitment, cohabiting relationships by their very nature tend to undercut this ethic. Although cohabiting relationships are like marriages in many ways—shared dwelling, economic union (at least in part), sexual intimacy, often even children—they typically differ in the levels of commitment and autonomy involved. According to recent studies, cohabitants tend not to be as committed as married couples in their dedication to the continuation of the relationship and reluctance to terminate it, and they are more oriented toward their own personal autonomy.⁷ It is reasonable to speculate, based on these studies, that once this low-commitment, high-autonomy pattern of relating is learned, it becomes hard to unlearn. One study found, for example, that "living with a romantic partner prior to marriage was associated with more negative and less positive problem solving support and behavior during marriage." A reason for this, the authors suggest, is that because long-term commitment is less certain in cohabitation, "there may be less motivation for cohabiting partners to develop their conflict resolution and support skills."⁸

The results of several studies suggest that cohabitation may change partners' attitudes toward the institution of marriage, contributing to either making marriage less likely, or if marriage takes place, less successful. A 1997 longitudinal study conducted by demographers at Pennsylvania State University concluded, for example, "cohabitation increased young people's acceptance of divorce, but other independent living experiences did not." And "the more months of exposure to cohabitation that young people experienced, the less enthusiastic they were toward marriage and childbearing."⁹

Particularly problematic is serial cohabitation. One study determined that the effect of cohabitation on later marital instability is found only when one or both partners had previously cohabited with someone other than their spouse.¹⁰ A reason for this could be that the experience of dissolving one cohabiting relationship generates a greater willingness to dissolve later relationships. People's tolerance for unhappiness is diminished, and they will scrap a marriage that might otherwise be salvaged. This may be similar to the attitudinal effects of divorce; going

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... over 66% of high school senior boys and 61% of the girls indicated that they "agreed" or "mostly agreed" with the statement 'it is usually a good idea for a couple to live together before getting married to find out whether they really get along.'

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... cohabitation increased young people's acceptance of divorce, but other independent living experiences did not.

99

through a divorce makes one more tolerant of divorce.

If the conclusions of these studies hold up under further investigation, they may contain the answer to the question of why premarital cohabitation should effect the stability of a later marriage. The act of cohabitation generates changes in people's attitudes toward marriage that make the stability of marriage less likely. Society wide, therefore, the growth of cohabitation will tend to further weaken marriage as an institution.

An important caveat must be inserted here. There is a growing understanding among researchers that different types and life-patterns of cohabitation must be distinguished clearly from each other. Cohabitation that is an immediate prelude to marriage, or prenuptial cohabitation—both partners plan to marry each other in the near future—is different from other forms. There is some evidence to support the proposition that living together for a short period of time with the person one intends to marry has no adverse effects on the subsequent marriage. Cohabitation in this case appears to be very similar to marriage; it merely takes place during the engagement period.¹¹ This proposition would appear to be less true, however, when one or both of the partners has had prior experience with cohabitation, or brings children into the relationship.

Cohabitation as an Alternative to Marriage

According to the latest information available, 46% of all cohabitations in a given year can be classified as precursors to marriage.¹² Most of the remainder can be considered some form of alternative to marriage, including trial marriages, and their number is increasing. This should be of great national concern, not only for what the growth of cohabitation is doing to the institution of marriage but for what it is doing, or not doing, for the participants involved. In general, cohabiting relationships tend in many ways to be less satisfactory than marriage relationships.

Except perhaps for the short term prenuptial type of cohabitation, and probably also for the post-marriage cohabiting relationships of seniors and retired people who typically cohabit rather than marry for economic reasons,¹³ cohabitation and marriage relationships are qualitatively different. Cohabiting couples report lower levels of happiness, lower levels of sexual exclusivity and sexual satisfaction, and poorer relationships with their parents.¹⁴ One reason is that, as several sociologists not surprisingly concluded after a careful analysis, in unmarried cohabitation "levels of certainty about the relationship are lower than in marriage."¹⁵

It is easy to understand, therefore, why cohabiting is inherently much less stable than marriage and why, especially in view of the fact that it is easier to terminate, the break-up rate of cohabitators is far higher than for married partners. After 5 to 7 years, 39% of all cohabiting couples have broken their relationship, 40%

have married (although the marriage might not have lasted), and only 21% are still cohabiting.¹⁶

Still not fully known by the public at large is the fact that married couples have substantial benefits over the unmarried in labor force productivity, physical and mental health, general happiness, and longevity.¹⁷ There is evidence that these benefits are diluted for couples who are not married but merely cohabiting.¹⁸ Among the probable reasons for the benefits of marriage, as summarized by University of Chicago demographer Linda Waite,¹⁹ are:

- *The long-term contract implicit in marriage.* This facilitates emotional investment in the relationship, including the close monitoring of each other's behavior. The longer time horizon also makes specialization more likely; working as a couple, individuals can develop those skills in which they excel, leaving others to their partner.
- *The greater sharing of economic and social resources by married couples.* In addition to economies of scale, this enables couples to act as a small insurance pool against life uncertainties, reducing each person's need to protect themselves from unexpected events.
- *The better connection of married couples to the larger community.* This includes other individuals and groups (such as in-laws) as well as social institutions such as churches and synagogues. These can be important sources of social and emotional support and material benefits.

In addition to missing out on many of the benefits of marriage, cohabitators may face more serious difficulties. Annual rates of depression among cohabiting couples are more than three times what they are among married couples.²⁰ And women in cohabiting relationships are more likely than married women to suffer physical and sexual abuse. Some research has shown that aggression is at least twice as common among cohabitators as it is among married partners.²¹ Two studies, one in Canada and the other in the United States, found that women in cohabiting relationships are about nine times more likely to be killed by their partner than are women in marital relationships.²²

Again, the selection factor is undoubtedly strong in findings such as these. But the most careful statistical probing suggests that selection is not the only factor at work; the intrinsic nature of the cohabiting relationship also plays a role. As one scholar summed up the relevant research, "regardless of methodology....cohabitators engage in more violence than spouses."²³

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Why Cohabitation is Harmful for Children

Of all the types of cohabitation, that involving children is by far the most problematic. In 2000, 41% of all unmarried-couple households included a child under eighteen, up from only 21% in 1987.²⁴ For unmarried couples in the 25-34 age group the percentage with children is higher still, approaching half of all such households.²⁵ By one recent estimate nearly half of all children today will spend some time in a cohabiting family before age 16.²⁶

One of the greatest problems for children living with a cohabiting couple is the high risk that the couple will break up.²⁷ Fully three quarters of children born to cohabiting parents will see their parents split up before they reach age sixteen, whereas only about a third of children born to married parents face a similar fate. One reason is that marriage rates for cohabiting couples have been plummeting. In the last decade, the proportion of cohabiting mothers who go on to eventually marry the child's father declined from 57% to 44%.²⁸

Parental break up, as is now widely known, almost always entails a myriad of personal and social difficulties for children, some of which can be long lasting. For the children of a cohabiting couple these may come on top of a plethora of already existing problems. Several studies have found that children currently living with a mother and her unmarried partner have significantly more behavior problems and lower academic performance than children in intact families.²⁹

It is important to note that the great majority of children in unmarried-couple households were born not in the present union but in a previous union of one of the adult partners, usually the mother.³⁰ This means that they are living with an unmarried "stepfather" or mother's boyfriend, with whom the economic and social relationships are often tenuous. For example, unlike children in stepfamilies, these children have few legal claims to child support or other sources of family income should the couple separate.

Child abuse has become a major national problem and has increased dramatically in recent years, by more than 10% a year according to one estimate.³¹ In the opinion of most researchers, this increase is related strongly to changing family forms. Surprisingly, the available American data do not enable us to distinguish the abuse that takes place in married-couple households from that in cohabiting-couple households. We do have abuse-prevalence studies that look at stepparent families (both married and unmarried) and mother's boyfriends (both cohabiting and dating). Both show far higher levels of child abuse than is found in intact families.³² In general, the evidence suggests that the most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father. This is the environment for the majority of children in cohabiting couple households.³³

Part of the differences indicated above are due to differing income levels of the families involved. But this points up one of the other problems of cohabiting couples—their lower incomes. It is well known that children of single parents

fare poorly economically when compared to the children of married parents. Not so well known is that cohabiting couples are economically more like single parents than like married couples. While the 1996 poverty rate for children living in married couple households was about 6%, it was 31% for children living in cohabiting households, much closer to the rate of 45% for children living in families headed by single mothers.³⁴

One of the most important social science findings of recent years is that marriage is a wealth enhancing institution. According to one study, childrearing, cohabiting couples have only about two-thirds of the income of married couples with children, mainly due to the fact that the average income of male cohabiting partners is only about half that of male married partners.³⁵ The selection effect is surely at work here, with less well-off men and their partners choosing cohabitation over marriage. But it also is the case that men when they marry, especially those who then go on to have children, tend to become more responsible and productive.³⁶ They earn more than their unmarried counterparts. An additional factor not to be overlooked is the private transfer of wealth among extended family members, which is considerably lower for cohabiting couples than for married couples.³⁷ It is clear that family members are more willing to transfer wealth to "in-laws" than to mere boyfriends or girlfriends.

Who Cohabits and Why

Why has unmarried cohabitation become such a widespread practice throughout the modern world in such a short period of time?

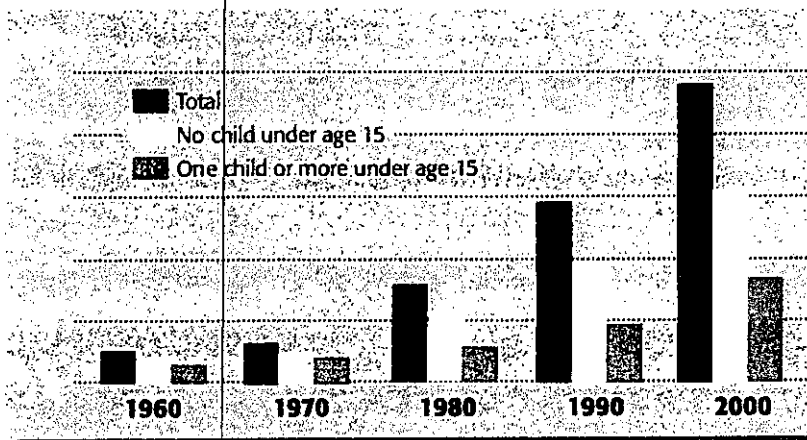
Demographic factors are surely involved. Puberty begins at an earlier age, as does the onset of sexual activity, and marriages take place at older ages mainly because of the longer time period spent getting educated and establishing careers. Thus there is an extended period of sexually active singlehood before first marriage. Also, our sustained material affluence enables many young people to live on their own for an extended time, apart from their parents.

During those years of young adulthood, nonmarital cohabitation can be a cost-saver, a source of companionship, and an assurance of relatively safe sexual practice. For some, cohabitation is a prelude to marriage, for some, an alternative to it, and for yet others, simply an alternative to living alone.³⁸

More broadly, the rise of cohabitation in the advanced nations has been attributed to the sexual revolu-

Number of Cohabiting, Unmarried, Adult Couples of the Opposite Sex, by Year, United States

Source: U.S. Bureau of the Census, Current Population Reports, Series P20-537, America's Families and Living Arrangements: March 2000, and earlier reports



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By one recent estimate, nearly half of all children today will spend some time in a cohabiting family before age 16.

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tion, which has virtually revoked the stigma against cohabitation.³⁹ In the past thirty years, with the advent of effective contraceptive technologies and widespread sexual permissiveness promoted by advertising and the organized entertainment industry, premarital sex has become widely accepted. In large segments of the population cohabitation no longer is associated with sin or social impropriety or pathology, nor are cohabiting couples subject to much, if any, disapproval.

Another important reason for cohabitation's growth is that the institution of marriage has changed dramatically, leading to an erosion of confidence in its stability. From a tradition strongly buttressed by economics, religion, and the law, marriage has become a more personalized relationship, what one wag has referred to as a mere "notarized date." People used to marry not just for love but also for family and economic considerations, and if love died during the course of a marriage, this was not considered sufficient reason to break up an established union. A divorce was legally difficult if not impossible to get, and people who divorced faced enormous social stigma.

In today's marriages love is all, and it is a love tied to self-fulfillment. Divorce is available to everyone, with little stigma attached. If either love or a sense of self-fulfillment disappear, the marriage is considered to be over and divorce is the logical outcome.

Fully aware of this new fragility of marriage, people are taking cautionary actions. The attitude is either try it out first and make sure that it will work, or try to minimize the damage of breakup by settling for a weaker form of union, one that avoids a marriage license and, if need be, an eventual divorce.

The growth of cohabitation is also associated with the rise of feminism. Traditional marriage, both in law and in practice, typically involved male leadership. For some women, cohabitation seemingly avoids the legacy of patriarchy and at the same time provides more personal autonomy and equality in the relationship. Moreover, women's shift into the labor force and their growing economic independence make marriage less necessary and, for some, less desirable.

Underlying all of these trends is the broad cultural shift from a more religious society where marriage was considered the bedrock of civilization and people were imbued with a strong sense of social conformity and tradition, to a more secular society focused on individual autonomy and self-invention. This cultural rejection of traditional institutional and moral authority, evident in all of the advanced, Western societies, often has had "freedom of choice" as its theme and the acceptance of "alternative lifestyles" as its message.

In general, cohabitation is a phenomenon that began among the young in the lower classes and then moved up to the middle classes.⁴⁰ Cohabitation in America—especially cohabitation as an alternative to marriage—is more common among Blacks, Puerto Ricans, and disadvantaged white women.⁴¹ One reason for this is that male income and employment are lower among minorities and the lower classes, and male economic status remains an important determinant as to

whether or not a man feels ready to marry, and a woman wants to marry him.⁴² Cohabitation is also more common among those who are less religious than their peers. Indeed, some evidence suggests that the act of cohabitation actually diminishes religious participation, whereas marriage tends to increase it.⁴³

People who cohabit are much more likely to come from broken homes. Among young adults, those who experienced parental divorce, fatherlessness, or high levels of marital discord during childhood are more likely to form cohabiting unions than children who grew up in families with married parents who got along. They are also more likely to enter living-together relationships at younger ages.⁴⁴ For young people who have already suffered the losses associated with parental divorce, cohabitation may provide an early escape from family turmoil, although unfortunately it increases the likelihood of new losses and turmoil. For these people, cohabitation often recapitulates the childhood experience of coming together and splitting apart with the additional possibility of more violent conflict. Finally, cohabitation is a much more likely experience for those who themselves have been divorced.

What Are the Main Arguments For and Against Living Together Before Marriage in Modern Societies?

To the degree that there is a scholarly debate about the growth of cohabitation, it is typically polarized into "for" and "against" without much concern for the nuances. On one side is the religiously inspired view that living with someone outside of marriage, indeed all premarital sex, represents an assault on the sanctity of marriage. If you are ready for sex, you are ready for marriage, the argument goes, and the two should always go together, following biblical injunction. This side is typically supportive of early marriage as an antidote to sexual promiscuity, and as worthwhile in its own right.

The other side, based in secular thought, holds that we can't realistically expect people to remain sexually abstinent from today's puberty at age eleven or twelve (even earlier for some) to marriage in the late twenties, which is empirically the most desirable age for insuring a lasting union. Therefore, it is better that they cohabit during that time with a few others than be promiscuous with many. This side also finds the idea of a trial marriage quite appealing. Modern societies in any event, the argument goes, have become so highly sexualized and the practice of cohabitation has become so widely accepted that there is no way to stop it.

The anti-cohabitation perspective believes in linking sex to marriage, but fails to answer the question of how to postpone sex until marriage at a time when the age of marriage has risen to an average of almost 26, the highest in this century. Cold showers, anyone? Nor is there evidence to support the idea that marriage at a younger age is a good solution. On the contrary, teenage marriages, for example, have a much higher risk of breaking up than do marriages among young adults in their twenties. The reasons are fairly obvious; at older ages people are

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more emotionally mature and established in their jobs and careers, and usually better able to know what they want in a lifetime mate.

Pro-cohabitation arguments recognize the demographic and social realities but fail to answer another question: if the aim is to have a strong, lifelong marriage, and for most people it still is, can cohabitation be of any help? As we have seen, the statistical data are unsupportive on this point. So far, at least, living together before marriage has been remarkably unsuccessful as a generator of happy and long-lasting marriages.

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... the evidence suggests that the most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father.

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Should Unmarried Cohabitation be Institutionalized?

If marriage has been moving toward decreased social and legal recognition and control, cohabitation has moved in the opposite direction, steadily gaining social and legal identification as a distinct new institution. Cohabitation was illegal in all states prior to about 1970 and, although the law is seldom enforced, it remains illegal in a number of states. No state has yet established cohabitation as a legal relationship for all of its citizens, but most states have now decriminalized "consensual sexual acts" among adults, which include cohabitation.

In lieu of state laws, some marriage-like rights of cohabitators have gradually been established through the courts. The law typically comes into play, for example, when cohabitators who split up have disagreements about the division of property, when one of the partners argues that some kind of oral or implicit marriage-like contract existed, and when the courts accept this position. Whereas property claims by cohabitators traditionally have been denied on the ground that "parties to an illegal relationship do not have rights based on that relationship," courts have begun to rule more frequently that cohabitators do have certain rights based on such concepts as "equitable principles."⁴⁵ The legal changes underway mean that cohabitation is becoming less of a "no-strings attached" phenomenon, one involving some of the benefits of marriage with none of the costly legal procedures and financial consequences of divorce.

In the most famous case, *Marvin vs. Marvin*, what the news media labeled "palimony" in place of alimony was sought by a woman with whom Hollywood actor Lee Marvin lived for many years.⁴⁶ The Supreme Court of California upheld the woman's claim of an implied contract. Many states have not accepted key elements of the Marvin decision, and the financial award of palimony was eventually rejected on appeal. Yet the proposition that unmarried couples have the right to form contracts has come to be widely acknowledged.

In an attempt to reduce the uncertainties of the legal system, some cohabitators are now initiating formal "living together contracts."⁴⁷ Some of these contracts state clearly, with the intent of avoiding property entanglements should the relationship break down, that the relationship is not a marriage but merely "two free and independent human beings who happen to live together." Others, in con-

trast, seek to secure the rights of married couples in such matters as inheritance and child custody.

Marriage-like fiscal and legal benefits are also beginning to come to cohabiting couples. In the attempt to provide for gay and lesbian couples, for whom marriage is forbidden, many corporations, universities, municipalities, and even some states now provide "domestic partnership" benefits ranging from health insurance and pensions to the right to inherit the lease of a rent controlled apartment. In the process, such benefits have commonly been offered to unmarried heterosexual couples as well, one reason being to avoid lawsuits charging "illegal discrimination." Although the legal issues have only begun to be considered, the courts are likely to hold that the withholding of benefits from heterosexual cohabitators when they are offered to same-sex couples is a violation of U. S. laws against sex discrimination.

Religions have also started to reconsider cohabitation. Some religions have developed "commitment ceremonies" as an alternative to marriage ceremonies. So far these are mainly intended for same-sex couples and in some cases the elderly, but it seems only a matter of time before their purview is broadened.

Unlike in the United States, cohabitation has become an accepted new social institution in most northern European countries, and in several Scandinavian nations cohabitators have virtually the same legal rights as married couples. In Sweden and Denmark, for example, the world's cohabitation leaders, cohabitators and married couples have the same rights and obligations in taxation, welfare benefits, inheritance, and child care. Only a few differences remain, such as the right to adopt children, but even that difference may soon disappear. Not incidentally, Sweden also has the lowest marriage rate ever recorded (and one of the highest divorce rates); an estimated 30% of all couples sharing a household in Sweden today are unmarried.⁴⁸ For many Swedish and Danish couples cohabiting has become a substitute for, rather than a prelude to, marriage, and virtually all marriages in these nations are now preceded by cohabitation.

Is America moving toward the Scandinavian family model? Sweden and Denmark are the world's most secular societies, and some argue that American religiosity will work against increasing levels of cohabitation. Yet few religions prohibit cohabitation or even actively attempt to discourage it, so the religious barrier may be quite weak. Others argue that most Americans draw a sharper distinction than Scandinavians do between cohabitation and marriage, viewing marriage as a higher and more serious form of commitment. But as the practice of cohabitation in America becomes increasingly common, popular distinctions between cohabitation and marriage are fading. In short, the legal, social and religious barriers to cohabitation are weak and likely to get weaker. Unless there is an unexpected turnaround, America and the other Anglo countries, plus the rest of northern Europe, do appear to be headed gradually in the direction of Scandinavia.

The institutionalization of cohabitation in the public and private sectors has

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potentially serious social consequences that need to be carefully considered. At first glance, in a world where close relationships are in increasingly short supply, why not recognize and support such relationships in whatever form they occur? Surely this is the approach that would seem to blend social justice and compassion with the goal of personal freedom. But is it not in society's greater interest to foster long-term, committed relationships among childrearing couples? In this regard the advantages of marriage are substantial. It is only marriage that has the implicit long-term contract, the greater sharing of economic and social resources, and the better connection to the larger community.

The recognition and support of unmarried cohabitation unfortunately casts marriage as merely one of several alternative lifestyle choices. As the alternatives to it are strengthened, the institution of marriage is bound to weaken. After all, if cohabitators have the same rights and responsibilities as married couples, why bother to marry? Why bother, indeed, if society itself expresses no strong preference one way or the other. It is simpler and less complicated to live together.

The expansion of domestic partner benefits to heterosexual cohabiting couples, then, may be an easy way to avoid legal challenges, but the troubling issue arises: cities and private businesses that extend these benefits are in effect subsidizing the formation of fragile family forms. Even more troublingly, they are subsidizing family forms that pose increased risks of violence to women and children. While the granting of certain marriage-like legal rights to cohabiting couples may be advisable in some circumstances to protect children and other dependents in the event of couple break up, an extensive granting of such rights serves to undercut an essential institution that is already established to regulate family relationships. These issues, at the least, should cause us to proceed toward the further institutionalization of unmarried cohabitation only after very careful deliberation and forethought.

Some Principles to Guide the Practice of Cohabitation Before Marriage

Unmarried cohabitation has become a prominent feature of modern life and is undoubtedly here to stay in some form. The demographic, economic, and cultural forces of modern life would appear to be too strong to permit any society merely to turn back the clock, even if it so desired. Yet by all of the empirical evidence at our disposal, not to mention the wisdom of the ages, the institution of marriage remains a cornerstone of a successful society. And the practice of cohabitation, far from being a friend of marriage, looks more and more like its enemy. As a goal of social change, therefore, perhaps the best that we can hope for is to contain cohabitation in ways that minimize its damage to marriage.

With that goal in mind, are there any principles that we might give to young

adults to guide their thinking about living together before marriage? In developing such principles it is important to note that, because men and women differ somewhat in their sexual and mate-selection strategies, cohabitation often has a different meaning for each sex. Women tend to see it as a step toward eventual marriage, while men regard it more as a sexual opportunity without the ties of long-term commitment. A woman's willingness to cohabit runs the risk of sending men precisely the wrong signal. What our grandmothers supposedly knew might well be true: If a woman truly wants a man to marry her, wisdom dictates a measure of playing hard to get.⁴⁹

Pulling together what we know from recent social science research about cohabitation and its effects, here are four principles concerning living together before marriage that seem most likely to promote, or at least not curtail, long-term committed relationships among childrearing couples:

- Consider **not living together** at all before marriage. Cohabitation appears not to be helpful and may be harmful as a try-out for marriage. There is no evidence that if you decide to cohabit before marriage you will have a stronger marriage than those who don't live together, and some evidence to suggest that if you live together before marriage, you are more likely to break up after marriage. Cohabitation is probably least harmful (though not necessarily helpful) when it is prenuptial — when both partners are definitely planning to marry, have formally announced their engagement and have picked a wedding date.
- Do not make a **habit** of cohabiting. Be aware of the dangers of multiple living together experiences, both for your own sense of wellbeing and for your chances of establishing a strong lifelong partnership. Contrary to popular wisdom, you do not learn to have better relationships from multiple failed cohabiting relationships. In fact, multiple cohabiting is a strong predictor of the failure of future relationships.
- Limit cohabitation to the **shortest possible** period of time. The longer you live together with a partner, the more likely it is that the low-commitment ethic of cohabitation will take hold, the opposite of what is required for a successful marriage.
- Do not cohabit if **children** are involved. Children need and should have parents who are committed to staying together over the long term. Cohabiting parents break up at a much higher rate than married parents and the effects of breakup can be devastating and often long lasting. Moreover, children living in cohabiting unions with "stepfathers" or mother's boyfriends are at higher risk of sexual abuse and physical violence, including lethal violence, than are children living with married biological parents.

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Male economic status remains an important determinant as to whether or not a man feels ready to marry, and a woman wants to marry him.

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Conclusion

Despite its widespread acceptance by the young, the remarkable growth of unmarried cohabitation in recent years does not appear to be in children's or the society's best interest. The evidence suggests that it has weakened marriage and the intact, two-parent family and thereby damaged our social wellbeing, especially that of women and children. We can not go back in history, but it seems time to establish some guidelines for the practice of cohabitation and to seriously question the further institutionalization of this new family form.

In place of institutionalizing cohabitation, in our opinion, we should be trying to revitalize marriage—not along classic male-dominant lines but along modern egalitarian lines. Particularly helpful in this regard would be educating young people about marriage from the early school years onward; getting them to make the wisest choices in their lifetime mates, and stressing the importance of long-term commitment to marriages. Such an educational venture could build on the fact that a huge majority of our nation's young people still express the strong desire to be in a long-term monogamous marriage.

These ideas are offered to the American public and especially to society's leaders in the spirit of generating a discussion. Our conclusions are tentative, and certainly not the last word on the subject. There is an obvious need for more research on cohabitation, and the findings of new research, of course, could alter our thinking. What is most important now, in our view, is a national debate on a topic that heretofore has been overlooked. Indeed, few issues seem more critical for the future of marriage and for generations to come.

Notes

- ¹ U. S. Census Bureau. *Statistical Abstract of the United States: 2000* (Washington, DC: GPO, 2001): 52
- ² Larry Bumpass and Hsien-Hen Lu. "Trends in Cohabitation and Implications for Children's Family Contexts in the U.S.," *Population Studies* 54 (2000) 29-41. The most likely to cohabit are people aged 20 to 24.
- ³ J. G. Bachman, L. D. Johnston and P. M. O'Malley, *Monitoring the Future: Questionnaire Responses from the Nation's High School Seniors, 2000*. (Ann Arbor, MI: Institute for Social Research, University of Michigan: 2001)
- ⁴ The state statutes prohibiting "adultery" and "fornication," which included cohabitation, were not often enforced.
- ⁵ Alfred DeMaris and K. Vaninadha Rao, "Premarital Cohabitation and Subsequent Marital Stability in the United States: A Reassessment," *Journal of Marriage and the Family* 54 (1992): 178-190. A Canadian study found that premarital cohabitation may double the risk of subsequent marital disruption. Zheng Wu, *Cohabitation* (New York: Oxford University Press, 2000), 149
- ⁶ The relationship between cohabitation and marital instability is discussed in the following articles: Alfred DeMaris and William MacDonald, "Premarital Cohabitation and Marital Instability: A Test of the Unconventional Hypothesis," *Journal of Marriage and the Family* 55 (1993): 399-407; William J. Axinn and Arland Thornton, "The Relationship Between Cohabitation and Divorce: Selectivity or Causal Influence," *Demography* 29-3 (1992): 357-374; Robert Schoen "First Unions and the Stability of First Marriages," *Journal of Marriage and the Family* 54 (1992): 281-284; Elizabeth Thomson and Ugo Colella, "Cohabitation and Marital Stability: Quality or Commitment?" *Journal of Marriage and the Family* 54 9 (1992): 259-267; Lee A. Lillard, Michael J. Brien, and Linda J. Waite, "Premarital Cohabitation and Subsequent Marital Dissolution: A Matter of Self-Selection?" *Demography*, 32-3 (1995): 437-457; David R. Hall and John Z. Zhao, "Cohabitation and Divorce in Canada: Testing the Selectivity Hypothesis," *Journal of Marriage and the Family* 57 (1995): 421-427; Marin Clarkberg, Ross M. Stolzenberg, and Linda Waite, "Attitudes, Values, and Entrance into Cohabitation versus Marital Unions," *Social Forces* 74-2 (1995): 609-634; Stephen L. Nock, "Spouse Preferences of Never-Married, Divorced, and Cohabiting Americans," *Journal of Divorce and Remarriage* 24-3/4 (1995): 91-108
- ⁷ Stephen L. Nock, "A Comparison of Marriages and Cohabiting Relationships," *Journal of Family Issues* 16-1 (1995): 53-76. See also: Robert Schoen and Robin M. Weinick, "Partner Choice in Marriages and Cohabitations," *Journal of Marriage and the Family* 55 (1993): 408-414; and Scott M. Stanley, Sarah W. Whitton and Howard Markman, "Maybe I Do: Interpersonal Commitment and Premarital and Non-Marital Cohabitation," unpublished manuscript, University of Denver, 2000.
- ⁸ Catherine L. Cohan and Stacey Kleinbaum, "Toward A Greater Understanding of the Cohabitation Effect: Premarital Cohabitation and Marital Communication," *Journal of Marriage and the Family*, 64 (2002): 180-192.
- ⁹ William G. Axinn and Jennifer S. Barber, "Living Arrangements and Family Formation Attitudes in Early Adulthood," *Journal of Marriage and the Family* 59 (1997): 595-611. See also Marin Clarkberg, "Family Formation Experiences and Changing Values: The Effects of Cohabitation and Marriage on the Important Things in Life," in Ron Lesthaeghe, ed., *Meaning and Choice: Value Orientations and Life Course Decisions*, NIDI Monograph 38, (The Hague: Netherlands, Netherlands Interdisciplinary Demographic Institute, forthcoming). Axinn and Thornton, 1992, op. cit., and Elizabeth Thomson and Ugo Colella, 1992, op. cit.
- ¹⁰ DeMaris and McDonald, 1993, op. cit.; Jan E. Slets, "The Link Between Past and Present Intimate Relationships," *Journal of Family Issues* 14-2 (1993): 236-260
- ¹¹ Susan L. Brown and Alan Booth, "Cohabitation Versus Marriage: A Comparison of Relationship Quality," *Journal of Marriage and the Family* 58 (1996): 668-678
- ¹² Lynne N. Casper and Suzanne M. Bianchi, *Continuity and Change in the American Family* (Thousand Oaks, CA: Sage Publications, 2002) Ch. 2. Surprisingly, only 52% of those classified as "precursors to marriage" had actually married after five to even years and 31% had split up!

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North Dakota FAMILY ALLIANCE

A Trusted Voice

Tom D Freier
EXECUTIVE DIRECTOR

DEDICATED TO STRENGTHENING FAMILIES

House Judiciary Committee

February 27, 2007

SB 2138

Mr. Chairman and members of the House Judiciary Committee, thank you for hearing my testimony.

My name is Tom D Freier, and I represent the North Dakota Family Alliance.

The North Dakota Family Alliance opposes the removal of language currently in the North Dakota Century Code addressing cohabitation. This opposition is consistent with our mission to strengthen and protect families.

In today's world, living together may seem like a good way to achieve some of the benefits of marriage and avoid the risk of divorce. Couples who live together can share expenses, learn more about each other, and eventually determine if this is the 'right' spouse for them. If it doesn't work out, breaking up is easy, with no legal or religious permission to dissolve the union.

The US Census estimates that about 10 million unmarried people are living with someone of the opposite sex, or cohabitating. That represents about 8% of United States coupled households, with most being between 25 and 34 years of age. Many high school seniors believe that it usually a good idea for a couple to live together to determine compatibility.

The new view is that cohabitation represents a more progressive approach to intimate relationships. How much healthier women are to be free of social pressure to marry and stigma when they don't. How much better off people are today to be able to exercise choice in their sexual and domestic arrangements. How much better off marriage can be, and how many divorces can be avoided, when sexual relationships start with a trial run.

But a careful look at research and social science evidence suggest that living together is not a good way to prepare for marriage or to avoid divorce. Cohabiting is not a positive for the family, and poses special risks for women and children.

Specifically, research indicates that living together before marriage increases the risk of divorce. It increases the risk of domestic violence for women, and the risk of physical and sexual abuse for children. And unmarried couples have lower levels of happiness and wellbeing.



North Dakota FAMILY ALLIANCE

A Trusted Voice

Tom D Freier
EXECUTIVE DIRECTOR

DEDICATED TO STRENGTHENING FAMILIES

An Arizona study identified numerous problems prevalent in cohabitating households, including:

- 180% higher likelihood of domestic violence
- 46% to 90% higher likelihood of divorce in subsequent marriage
- 300% higher likelihood of depression
- 125% higher likelihood that children will see their parents break up before the reaching age 16
- much, much higher likelihood of child abuse
- greater likelihood of lower incomes

One study reported that after 5 to 7 years, 39% of cohabitating couples have broken their relationship, 40% have married (although the marriage might not have lasted), and 21% were still together. And especially troubling is that in a 2000 study, 41% of all unmarried households included children under 18 (more than likely that percentage is closer to 50% today). A high percentage of these children will see their parents break up before these children reach age 16. And even more disturbing is that the likelihood of multiple cohabitations, and the devastating effect on children.

In general, the evidence suggests that the most unsafe of all family environments for children is that in which the mother is living with someone other than the child's biological father. This is the environment for the majority of children in a cohabitating household.

Studies indicate that the longer couples cohabitate the more likely their commitment will be weak, and chances of a successful marriage lower. In addition multiple failed cohabitation experiences do not lead to a successful future relationship, and actually have the opposite effect.

'While cohabitation may have the elements that make up intimacy, it lacks one major ingredient - commitment. Commitment is the fence that protects, the lock that guarantees, and the alarm system that ensures that vulnerability is not easily compromised. Marriage is a covenant of mutual protection, devotion, sacrifice and love. It is binding for that reason. It is not only safe for our most vulnerable moments but for the most vulnerable people in our world - our children.'

Instead of turning our heads aside and by default institutionalizing cohabitation, we need to put our efforts and energy into nurturing and revitalizing the age old institution of marriage which remains a cornerstone of a successful society.



The Center for Arizona Policy Issue Brief

Cohabitation – Census Results & Social Research Findings

Highlights

The Council on Family Law recently issued a study that reveals the rise of cohabitation in our society. The trend is to view cohabitation and marriage as equal, when in fact they are two very different types of relationships.¹

The 2000 Census revealed that the percentage of U.S. cohabiting households increased by 72% during the 1990's. While popular sentiment may be that cohabitation is an effective method to test the "fitness" of a potential long-term relationship, this sentiment has no basis in reality. Social research has identified numerous troubles that are prevalent in cohabiting households, including:

- 180% higher likelihood of domestic violence
- 46% to 90% higher likelihood of divorce in subsequent marriage
- 300% higher likelihood of depression
- 125% higher likelihood that children will see their parents break-up prior to reaching age 16
- 2100% to 3400% higher likelihood of child abuse
- Significantly higher likelihood of alcohol problems

Perhaps the troubles are merely symptoms of an underlying problem – living under the pretense of an enduring relationship while lacking the essential elements of commitment and security.

Although cohabiting households – unmarried couples living together – continue to represent a small portion of the overall population of the U.S., there has been a significant increase during the last decade. This increase has come at the expense of households that historically have been headed by married couples:

Prepared by The Center for Arizona Policy, a non-profit, non-partisan research and education organization.
Nothing contained herein should be construed as an effort to aid or hinder any legislation.

Marriage ♦ 2

(January 2006)

	<u>1990</u>	<u>2000</u>	<u>Change</u>
Married households	55%	52%	-3%
Cohabiting households	3%	5%	+2%
Single, noncohabiting households	42%	43%	+1%

Results of Social Research Studies

- **Increased Rate of Domestic Violence**

Cohabiting couples are **180 % more likely** than married couples to report episodes of hitting, shoving and throwing things, even after controlling for income, race, education and age.²

A study using a nationally representative sample of more than two thousand 19 to 48-year-old adults found that partners in cohabiting unions have **more disagreements, fight more often and report lower levels of happiness** than their married counterparts.³

- **Increased Rate of Divorce in Subsequent Marriage**

In a study of 3,300 cases, cohabiting couples who subsequently married had a **46 % higher divorce rate** when compared to couples who did not cohabit prior to marriage.⁴

In a longitudinal study of cohabiting couples, it was found that [1] cohabitation **increased acceptance of divorce** and [2] the longer the existence of the cohabiting relationship, the **less enthusiastic** the couple was **toward marriage and childbearing**.⁵

Couples who cohabit before marriage are **90 % more likely to divorce** within ten years than couples who did not cohabit.⁶

- **Poorer Psychological Health**

Cohabiting couples **report lower levels of happiness and sexual satisfaction** with each other as well as poorer relationships with their parents.⁷

Cohabiting couples are **300 % more likely to suffer from depression** than married couples.⁸

- **Adverse Consequences To Children**

Children born to cohabiting parents are **125 % more likely** to see their parents breakup before they reach age 16 when compared to children born to married parents.⁹

Children living with a mother and a cohabiting partner have **significantly more behavioral problems and lower academic performance** than children living in intact families.¹⁰

A study in Great Britain found that rates of child abuse for children living with married biological parents were phenomenally lower when compared to other child house-hold living arrangements:¹¹

<u>Child Household Living Arrangement</u>	<u>Percentage of Higher Child Abuse Rate</u>
Living with a single, biological parent	1500%
Living with a cohabiting , unmarried biological parent	2100%
Living with a biological mother and a cohabiting boyfriend who is not the father of the child	3400%

In the United States, children are 48 times more likely to die from child abuse in cohabitation homes. In 82% of these cases, the situation was a mother with a live-in boyfriend, with 74% of the deaths being caused by the boyfriend.¹²

- **Increased Alcohol Problems**

In a seven-year study involving 1200 unmarried adults aged 18 to 24 years, researchers found that **participants who chose to cohabitate during the seven-year study had significantly more alcohol problems than participants who chose to marry.** Neither premarital levels of alcohol problems among cohabitators nor other demographic characteristics could explain the greater number of alcohol problems among cohabitators. The researchers concluded that there is something peculiar about the status of cohabitation, rather than the characteristics of cohabitators, that causes a significantly higher rate of alcohol problems.¹³

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³ Brown and Booth, "Cohabitation Versus Marriage: A Comparison of Relationship Quality," *Journal of Marriage and Family*, volume 58, August 1996, pages 668-678.

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⁵ Axinn and Barber, "Living Arrangements and Family Formation Attitudes in Early Adulthood," *Journal of Marriage and the Family*, volume 59, 1997, pages 595-611.

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⁸ Robins, Lee and Reiger, "Psychiatric Disorders in America," *New York Free Press*, 1990, page 72.

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API IN THE NEWS

For Immediate Release: January 11, 2007

Contact: Lisa Gabig 205.870.9900

Baptist Press Highlights API Study

Birmingham, AL – In case you missed it, the Baptist Press (*FIRST PERSON: The truth about cohabitation*, 1/9/06) cited the Alabama Policy Institute's (API) study *Effects on Cohabitation Length on Personal and Relational Well Being*.

FIRST-PERSON: The truth about cohabitation

By Ed Litton

Jan 9, 2007

SARALAND, Ala. (BP)—The number of unmarried couples living together in America increased tenfold from 1960 to 2000. The U.S. Census estimates that about 10 million people are living with someone of the opposite sex. That totals about 8 percent of U.S. coupled households. Most unmarried partners who live together are between 25 and 34 years of age.

It once was stigmatized as "living in sin" or "shacking up," but now cohabitation has replaced dating. It has become mainstream as a way to discover if a person is a suitable partner for life. While marriage as an ideal is not dead, it does seem to be staggering and falling into the ropes.

According to USA Today, more than two-thirds of married couples in the United States now say they lived together before marriage. The number of unmarried, opposite-sex households is rising dramatically.

A crisis of confidence exists among younger Americans, not just in the institution of marriage, but in the process of finding a suitable life mate. The most divorced generation in history is struggling to trust the traditional courting process, choosing instead to dive right into the most intimate aspects of a relationship. Thus, some argue that since divorce is a reality, it makes sense to measure compatibility, and what better way to discover compatibility than to do a trial run at marriage. There is great confidence today in this new found process, but the question is, does it work?

In a groundbreaking study that examined the effects of cohabitation on the long-term quality of marriage, the Alabama Policy Institute (API) conducted a study of more than 1,300 married couples. The results are eye-opening. The study shows that the longer a couple cohabits before marriage, the less satisfied they are with their marriage. John Hill, API's director of research, said, "Specifically, couples who cohabit before marriage tend to be more depressed, more dependent and are more likely to believe their relationship will end as compared with married couples who did not cohabit." The API study indicates that in times of stress and conflict couples who cohabit are more likely to handle their conflicts with heated arguing, hitting and throwing. According to USA TODAY, couples live together about two years and then either marry or break up.

Marriage is more than who you sleep next to and with whom you may share expenses. It is the deepest sharing of the most intimate part of your life. This is not easy to graph on a chart, but every human soul longs for it. God created us for intimacy and He built an environment in which we can experience it. Cohabitation has all the powerful elements that make up intimacy but lacks one major ingredient - commitment. Commitment is the fence that protects, the lock that guarantees, and the alarm system that ensures that vulnerability is not easily compromised. Marriage is a covenant of mutual protection, devotion, sacrifice and love. It is binding for this very reason. It is not only safe for our most vulnerable moments but also for the most vulnerable people in the world - children.

When we remember what marriage was designed to do and who designed it, the contorted, sophomoric logic of those who conclude that living together is a good choice evaporates. It is not inconsequential that the loss of confidence in marriage coincides with a loss in confidence in God and the Bible. The children and grandchildren of the sexual revolution need to examine what that revolution has caused: a skyrocketing divorce rate and a frustrating loss of intimacy. The best experiment may be to experiment with the ancient writings of a timeless God who loved us enough to construct a safe place called marriage in which to flourish.

The Alabama Policy Institute is an independent, non-profit research and education organization. As a resource to federal, state and local government, the media, and citizens, we research the issues being debated in Montgomery and Washington and provide our analysis and ideas through our publications and reports.

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House Judiciary Committee, Sen. Tracy Potter testimony on SB 2138, February 27, 2007

The bill before you is the work of your counterparts in the Senate. The sponsors had introduced a straightforward repeal of Section 12.1-20-10. I think the Judiciary Committee improved the bill.

Personally I don't care whether or not my neighbors have a marriage certificate. That's their business - not mine. Introducing the bill in the Senate I quoted Mark Twain saying, "I don't care what you do as long as you don't scare the horses." An email came telling me I was wrong - Queen Victoria said it.

Whoever said it, the attitude is right. As good neighbors, we should take our neighbors as they are. Their private lives are their business.

Even if we can't all agree with that philosophy, we should all agree that it's none of the government's business. It is not the proper role of government to regulate our private lives and personal relationships.

We could argue these issues about personal freedom and public morality, or argue the statistics about how much better it would be if everyone were married and every child had two loving parents. - But those aren't the issues before us. The issue is clear: it's about respect for the law.

This particular sex crime - cohabitation is in the Century Code Chapter titled "Sex Offenses" - is being committed by 23,000 North Dakotans as we meet in the 60th Legislative Session. No one in this chamber can seriously want to have those people prosecuted, fined and jailed. But our official position is that we expect law enforcement and the judicial system to do just that. Properly and intelligently law enforcement has rebelled. They know we don't mean it. They know we have optional laws. We really shouldn't have laws like that. Where do we draw the line? Which ones do we mean? For 69 years law enforcement in North Dakota has been purposely and correctly derelict in their duty to regulate our citizens' choice of roommates. Thank goodness they have. Let's take them off the hook. It's about time.

One last item. Some have wondered if repealing the cohabitation ban would force landlords to rent to unmarried couples. The answer is clear - it's "no." The 2001 Session specifically allowed discrimination in housing based on marital status. NDCC 14-02.5-02 4, permits landlords to refuse to rent to unmarried couples.

Now, I mentioned at the start that the current engrossment is the work of Sen. Nething's committee. The bill before you does not repeal the cohabitation statute, but instead moves it out of the Chapter on Sex Offenses and more clearly defines the crime. It will now be a crime only if the cohabitants fraudulently pretend to be married. Some have suggested that this is what the law has always meant, but the North Dakota Supreme Court had the opportunity to define the crime in 2001, and by its definition those 23,000 North Dakotans who live together as opposite sex partners were sex criminals. If your House agrees with the Senate, which sends this to you with a 35-10 vote, you'll give those 23,000 people a chance to start over as law-abiding citizens. And you'll be casting a vote of respect for the Century Code.