

2023 HOUSE JUDICIARY

HB 1113

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1113
1/10/2023

Relating to parenting investigators and guardians ad litem
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Chairman Klemin opened the hearing on HB 1113 at 11:00 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, , Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Parenting investors
- Court orders
- Attorney to guardian ad litem
- Immunity section
- Civil immunity for ordinary negligence

Sara Behrens: State Court Administrators office: Introduced the bill. In Support. Testimony #12658

Jaclyn Hall, Executive Director, ND Association for Justice: In opposition. Testimony #12761, #12764

Hearing closed at 11:27 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1113
1/11/2023

Relating to parenting investigators and guardian's ad litem

Chairman Klemin opened the hearing on HB 1113 at 11:13 AM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Amendment

Intern – Went over proposed amendment. 23.8017.01001 (#26943).

Rep. Vetter moved the amendment 23.8017.01001. Seconded by Rep. Christensen

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call Vote: 13 Yes 0 No 0 Absent Motion carried.

Rep. VanWinkle moved a Do Pass as Amended;
Representative. Henderson seconded.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 12 Yes 1 No 0 Absent Motion carried.
Carrier: Rep. Schneider

Closed at 11:25 AM.

Delores Shimek, Committee Clerk

January 11, 2023

44
21
1-11-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1113

Page 2, line 13, remove "is immune from civil liability for damages for acts or omissions"

Page 2, replace lines 14 and 15 with "appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the parenting investigator is a disputable presumption."

Page 3, line 6, remove the overstrike over "~~who acts in~~"

Page 3, remove the overstrike over lines 7 and 8 and insert immediately thereafter "attorney"

Page 3, line 9, remove the overstrike over "~~guardian ad litem~~"

Page 3, line 9, remove the overstrike over "~~is a disputable presumption~~"

Page 3, line 9, remove "is immune from civil"

Page 3, remove line 10

Page 3, line 11, remove "individual's duties and responsibilities as an attorney guardian ad litem"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1113: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1113 was placed on the Sixth order on the calendar.

Page 2, line 13, remove "is immune from civil liability for damages for acts or omissions"

Page 2, replace lines 14 and 15 with "appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the parenting investigator is a disputable presumption."

Page 3, line 6, remove the overstrike over "~~who acts in~~"

Page 3, remove the overstrike over lines 7 and 8 and insert immediately thereafter "attorney"

Page 3, line 9, remove the overstrike over "~~guardian ad litem~~"

Page 3, line 9, remove the overstrike over "~~is a disputable presumption~~"

Page 3, line 9, remove "is immune from civil"

Page 3, remove line 10

Page 3, line 11, remove "individual's duties and responsibilities as an attorney guardian ad litem"

Renumber accordingly

2023 SENATE JUDICIARY

HB 1113

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1113
3/15/2023

A bill relating to parenting investigators and guardian's ad litem.

8:13 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Luick, Estenson, Sickler, Braunberger, Myrdal and Paulson are present.

Discussion Topics:

- Parenting investigators
- Paying investigators
- Clarity in statutes
- Custody disagreements

8:13 AM Sara Behrens, Staff Attorney, State Court Administrators Office, introduced the bill and provided written testimony #24774.

8:38 AM Chairman Larson closed the public hearing.

8:38 Senator Luick moves to Do Pass the bill. Motion seconded by Senator Myrdal.

8:38 AM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Estenson will carry the bill.

This bill does not affect workforce development.

8:39 AM Chairman Larson closed the meeting.
Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1113, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1113 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1113

House Bill 1113
House Judiciary Committee
Testimony Presented by Sara Behrens
January 10, 2022

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1113. This bill amends sections 14-09-06.3 and 14-09-06.4 regarding parenting investigators and guardians ad litem. The amendments move all provisions regarding parenting investigators to section 14-09-06.3 and modify some language in section 14-09-06.4.

Section 14-09-06.3

- The title of the statute is updated to the current term “parenting investigations” rather than “custody investigations”
- The Supreme Court has enacted Rule of Court 8.6 governing the qualifications and duties of a parenting investigator. A parenting investigator must be on a roster of persons satisfying the qualifications in order to be appointed by the court. The roster is maintained by the State Court Administrator. Page 1, lines 13-14 provide for these rules to govern who is appointed a qualified parenting investigator.
- Page 1, lines 22-23 amend the statute to be in line with current practice. When the parenting investigator completes a report, the investigator files it with the court and serves it on the parties or their counsel.
- Page 2, lines 6-8 removes the requirement that the court enter an order for the costs to be paid by the parties. Instead, the common practice is that parenting investigators work out

the billing with the parties prior to the investigation. The court must, however, order that the county pay the investigator if the parties are found to be indigent.

- Page 2, lines 11-12, provides for the discharge of the parenting investigator following completion of the investigator's duties. This will provide a clear end to the parenting investigator's assignment on the case.
- Page 2, lines 13-15, provides civil immunity to the parenting investigator for ordinary negligence while performing their duties. Currently, the Code provides this immunity to in section 14-09-06.4.

Section 14-09-06.4

- The title adds "attorney" before guardian ad litem to make clear that the GAL must be an attorney. This is already provided for in Rule of Court 8.7. "Investigator" is removed as the parenting investigator is covered in the previous section.
- Page 2, lines 24-26, provides that the court can appoint a GAL if a motion is made by either party or the parties agree to the appointment. The court may appoint the GAL on its own initiative as well. "Investigator" is removed because it is covered in the prior section.
- Page 2, lines . 28-30 and Page 3, lines 1-5, add "attorney" prior to guardian ad litem and remove reference to the investigator as it is covered in the previous section.
- Page 3, lines 6-11, add "attorney prior to guardian ad litem, remove "investigator," and rework the immunity clause.
- The section is also split into 4 subsections for clarity and ease of reading.

House Judiciary Committee

January 10, 2023

HB 1113

Good morning Chairman Klemin and members of the House Judiciary Committee, my name is Jaclyn Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am here in opposition of HB 1113 as it is written.

Guardian ad litem is defined as a guardian that a court appoints to watch after someone during a case. Unlike typical guardians or conservators, guardians ad litem only protect their wards' interests in a single case. Courts most frequently appoint a guardian ad litem in parents' disputes over child custody of their children. For example, the Child Abuse Prevention and Treatment Act requires states to appoint a guardian ad litem for children in abuse or neglect proceedings.

In some instances, courts also appoint a guardian ad litem in cases involving an allegedly incapacitated person. For example, if children sue, asking the court to declare their parent incapacitated and appoint a guardian or conservator, the court may appoint guardian ad litem to advocate the parent's best interests.

As part of the investigation, the court can appoint a parenting investigator or attorney ad litem to provide impartial information to the court. **To do their job, parenting investigators and attorney guardian ad litem are given a lot of responsibilities.** They must become familiar with the family and its history, which means reviewing the custody case as well as any relevant medical, criminal, child abuse and neglect, and educational reports.

HB 1113 provides civil immunity for parenting investigators for **ordinary** negligence in section 1, subsection 6 and provides civil immunity for attorney guardian ad litem in section 2, subsection 4.

Ordinary negligence is defined as a failure to meet the definition of ordinary care. Many circumstances impose a duty to exercise reasonable care on one or both parties. A driver, for example, has a duty to obey traffic laws and do his or her best to prevent car accidents. If a driver breaches this duty, such as by texting while driving, he or she has committed an act of negligence.

These investigators have a duty to provide the best evaluation for these individuals. By removing any consequence for not doing so, is doing a disservice to the individual. Immunity removes this requirement.

Guardian ad litem, regardless if they are parenting investigators or attorney guardian ad litem, is under a duty to help safeguard and protect the interests and welfare of their ward. By removing any consequence for not doing so is wrong.

There should be no question that the position of a guardian ad litem is extremely important. Regardless of the type of proceeding in which guardians are appointed, the lives of their wards, whether minors or people with disabilities, can be severely affected if the person serving as a guardian is incompetent or negligent. Both the ward and the court depend on the ability of the guardian ad litem to do their job properly. For this reason, it is expected that guardians will fulfill their duties fully, carefully, and non-negligently. Unfortunately, that is not always the case. **By providing immunity, you remove the requirement for a guardian ad litem to protect the interest of their wards.**

I urge you to remove this immunity provision for parenting investigators and attorney guardian ad litem. This will protect the individual they are appointed to support.

Thank you for your time and I will stand for questions.

A handwritten signature in blue ink, appearing to read "Jaclyn Hall", is written over a circular stamp or watermark. The signature is fluid and cursive.

North Dakota Association for Justice



**House Judiciary Committee
HB 1121
January 10, 2023**

Chairman Klemin and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association is in strong support of HB 1121. This issue was originally brought to the medical association by the North Dakota Chapter of Emergency Physicians in 2014. Although they were already in a protected class under the statute, they were seeing a large increase in assaults in the workplace and wanted a higher level of penalty to apply to all health care workers. The NDMA House of Delegates reviewed this issue and adopted a resolution to move forward in supporting legislation to protect all healthcare providers.

Currently, North Dakota law provides for an assault classification of Class C Felony when the victim is:

1. a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact;
2. an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3;
3. a person engaged in a judicial proceeding; or
4. a member of a municipal or volunteer fire department or emergency medical services personnel unit or an emergency department worker in the performance of the member's duties.

This bill would add to that list a victim employed or contracted by a health care facility, which the actor knows to be a fact, and the assault occurs on the health care facility property.

Assaults against healthcare workers are rising. The federal government reports that health care workers are four times more likely to experience workplace

House Bill 1113
Senate Judiciary Committee
Testimony Presented by Sara Behrens
March 15, 2023

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1113. This bill amends sections 14-09-06.3 and 14-09-06.4 regarding parenting investigators and guardians ad litem. The amendments move all provisions regarding parenting investigators to section 14-09-06.3 and modify some language in section 14-09-06.4.

Section 14-09-06.3

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the billing with the parties prior to the investigation. The court must, however, order that the county pay the investigator if the parties are found to be indigent.

- Page 2, lines 11-12, provides for the discharge of the parenting investigator following completion of the investigator's duties. This will provide a clear end to the parenting investigator's assignment on the case.
- Page 2, lines 13-16, provides civil immunity to the parenting investigator when acting in good faith. The good faith of the parenting investigator is presumed, but that presumption can be rebutted. Currently, the Code provides this immunity to in section 14-09-06.4.

Section 14-09-06.4

- The title adds "attorney" before guardian ad litem to make clear that the GAL must be an attorney. This is already provided for in Rule of Court 8.7. "Investigator" is removed as the parenting investigator is covered in the previous section.
- Page 2, lines 24-28, provides that the court can appoint a GAL if a motion is made by either party or the parties agree to the appointment. The court may appoint the GAL on its own initiative as well. "Investigator" is removed because it is covered in the prior section.
- Page 2, lines . 29-30 and Page 3, lines 1-5, add "attorney" prior to guardian ad litem and remove reference to the investigator as it is covered in the previous section.
- Page 3, lines 6-9, add "attorney prior to guardian ad litem, remove "investigator.".
- The section is also split into 4 subsections for clarity and ease of reading.

23.8017.01001
Title.02000

Adopted by the House Judiciary Committee

January 11, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1113

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Page 3, remove line 10

Page 3, line 11, remove "individual's duties and responsibilities as an attorney guardian ad litem"

Renumber accordingly