

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1232

2001 HOUSE HUMAN SERVICES

HB 1232

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1232

House Human Services Committee

☐ Conference Committee

Hearing Date January 24, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		0 to end
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Open hearing on HB 1232.

Vice Chairman Devlin: Sponsored Bill. HB 1232 is an attempt to defuse animosity in divorce actions involving children. The Bill will be a big step in helping parents get together to raise their children.

Sherry Mills Moore: Attorney in Private Practice and a Lobbyist for the State Bar Association. (See neutrality of HB 1232 in written testimony.) I understand the intent of this bill and find it laudable. The terms "custody" and "visitation" are fraught with baggage. The real problem is that the terms "custody" and "visitation" also carry true legal meaning. Years of law has been developed to define and refine and develop these words. So what may seem like the kind thing

to do can become very dangerous. If we eliminate a word that has years of developed law, we may very well throw out the baby with the bath water.

Rep. Weiler: You say you are neutral on this position, I was wondering if you have anything positive to say?

Sherry Mills Moore: The concept is good, but has to be carried out very carefully.

Rep. Weiler: In Section 1, do you think where "custodial" is crossed out and "of primary residence" is added, do you think it is a slower changeover if they are both in there?

Sherry Mills Moore: If you left it in, that generally is not a bad idea. I do know that when you use "primary residence" there are parents who would interpret that as the one who has the house lived in at the time of the divorce.

Rep. Weiler: I think you would have to add some wording in there.

Sherry Mills Moore: I'm not saying this can't be done, I'm just saying it needs to be done very carefully.

Rep. Price: Do you think it is time to have another encompassing study on the child support system? Seems we are spinning our wheels. It seems we can help 95% of the group with some piece of legislation but the other 5% we are going to nail in a bad way, so it defeats an idea. We are trying to help.

Sherry Mills Moore: Your laws should cover the biggest group. It needs to be done carefully.

Price Chairman: We are hearing that judges don't like family law; they don't like this topic, so they don't look at each individual case.

Sherry Mills Moore: The courts are inundated with this. I think they work very hard to see what families need. It is a hard part of their case load.

Rep. Pollert: Your bringing up questions about what is the meaning of "primary residence" or parental responsibility. Could an amendment be added to the bill, that specifically defines the meaning of the bill, so that statute knows how to interpret it?

Sherry Mills Moore: I was thinking of whether there could be a quick solution. We could say parental responsibility is suppose to mean everything custody ever meant.

Rep. Cleary: Would you like us to kill this bill and have the committee do a study for a resolution?

Sherry Mills Moore: This would be the cautious way.

Susan Beehler: Lobbyist for R-Kids. (See support of HB 1232 in written testimony.) When using the term "responsibility", it can be confusing because both parents have many of the responsibilities in caring for their children.

Margaret Kottre: Member of R-Kids. In support of HB 1232. There is a lot of animosity that is in the system. We do need to start doing something. A lot of things aren't equalized.

Dominic Volesky: Family Mediator. (See support of HB 1232 in written testimony.) Suggested changing terminology: Use "parenting arrangements" in lieu of "custody"; "primary care giver" in lieu of "parent of primary residence" or "custodial parent"; "secondary care giver or alternate care giver" in lieu of "parent of alternate residence" or "non-custodial parent"; "parenting time" in lieu of "visitation"; "parenting schedule" in lieu of "visitation schedule".

Chairman Price: Close hearing on HB 1232.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1232 b

House Human Services Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2		xx	900---1650
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:Chair Price : Let's take up HB1232.

Rep. Devlin : I don't know that we can fix this enough to satisfy judiciary. I think this should be studied over the interim.

Rep. Niemeier : There are larger issues involved so the study is the best answer.

Rep. Devlin : I move a DO NOT PASS.

Rep. Weller : I second.

VOTE: 14 YES and 0 NO with 0 absent. PASSED. Rep. Cleary will carry the bill.

Date: 1-24-61
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1232

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Devlin Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Cleary

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

REPORT OF STANDING COMMITTEE (410)
January 24, 2001 12:27 p.m.

Module No: HR-12-1500
Carrier: Cleary
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1232: Human Services Committee (Rep. Price, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1232 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

HB 1232

Chairperson Price and esteemed members of the House Human Services Committee.

For the record, I am Rep. Bill Devlin, District 23, from Finley.

HB1232 is another attempt to defuse some of the animosity that seems to take place in some divorce actions involving children.

A number of other states have already taken steps to make the language friendlier or more meaningful. It has bothered me for a number of years that terms like custody and visitations which are more suited for prisons or the handling of possessions are used when dealing with children in divorce or separation matters.

Children are not the possession of either party in a divorce action. Instead they are human beings to be nurtured by parents either jointly in a marriage or separately through shared parenting responsibilities.

This bill may be the first step in helping to get parents to work together in raising their children. Only time will tell if it makes the difference I think it will, and I think this is a vital first step and hope this committee will give HB1232 a unanimous do pass recommendation.

STATE BAR ASSOCIATION OF NORTH DAKOTA

TESTIMONY ON HOUSE BILL 1232

SHERRY MILLS MOORE

Good Morning, I am Sherry Mills Moore, an attorney in private practice here in Bismarck, with a focus on family law, and also a volunteer lobbyist for the State Bar Association of North Dakota. In addition, for the last eight years, I have served as the chair of the Family Law Task Force, a joint committee of the North Dakota Supreme Court and the State Bar Association of North Dakota. This is the committee that worked in conjunction with the Interim Judiciary Committee of this legislature over the last two years.

I understand the intent of this bill and find it laudable. The terms "custody" and "visitation" are fraught with baggage. They don't feel good, they are used in penal situations, and parents fear their loss. With the exception of the penal similarities, however, this bill cannot dump the baggage. Loss of primary time and primary control of a child is loss of primary time and control regardless of the label. This bill falls under a rose by any other name analysis. The real problem is that the terms custody and visitation also carry true legal meaning. Years of law has been developed to define and refine and develop these words. So what may seem like the kind thing to do can become very dangerous. If we eliminate a word that has years of developed law, we may very well throw out the baby with the bathwater.

"Custody" is a specific concept. I see it as meaning, as between two parents, who is the boss...who governs the children...who has the most time with the children... where does the buck ultimately stop? *Parent responsibility* has no particular meaning under the law, so it takes on its common meaning. A person can have parental responsibility and not have custody - responsibility to notify the other parent of illness, right to attend school conferences, speak to doctors, obligation to pay support. If the term *parental responsibility* is substituted for *custody*, it puts a square block in a round hole.

Let me try to explain my concern, and like any lawyer let me start with a caveat. I have not been able to discern each and every place that these changes will result in very different and unintended consequences. I can try, however, to show you some of the problems.

For example, **Section 5, on page 3, Number 3.** This bill says that if a parent has perpetrated domestic violence, and that parent has not been allocated "parental responsibility" there must be supervised visitation. Almost all parents, even abusive ones, are allocated some parental responsibility, even if it is just the responsibility for support. The result would be that the substance of the law would change. Only if the parent is given no responsibility would supervised visitation be required. For the protection intended to arise, the abusive parent would have to be stripped of responsibility. That isn't what is best for the families. I am sure it is not the intended consequence but that is how the law would read. As it reads now, there is supervised visitation unless you are the custodial parent. Custody is easy, you either have it or you don't. Parental responsibility is something more of a sliding scale - you may have some but not as much as the other parent. This change of wording changes the law.

The same problem arises with **Section 17**, which reads that "the court must award parental responsibility for the child to a person, agency...." By this new wording the court must give responsibility to just one person when far more typically it is awarded in part to each or both parents. Custody on the other hand, unless specifically defined otherwise goes only to one. The meaning of the statute is that the court is to award custody to only one parent, but does not restrict the allocation of responsibility to each. In fact, NDCC 14-09-28 requires allocation of responsibilities and rights to each parent, except in the unusual situation.

Section 21 deals with changing custody. This section of the statute creates some very high thresholds for changing custody within two years of the last review, and for good reason. By the new wording, a parent who wanted some expanded responsibility - for example to be allowed to participate in a school conference - would now fall into that very high threshold for change. Under current law even visitation doesn't fall under this high standard, but now, it would, as would other simpler requests.

Visitation also is a term of art with its own definitions. The same section talks about interference with *parenting time* instead of *visitation* as a basis for changing custody. Interference with *parenting time* as a basis for change of custody feels very different than interference with *visitation*. *Visitation* has been set out in a judgment. Parenting time can refer far more broadly to those times and opportunities which we each have to parent. So, a noncustodial parent who does not have Saturday visitation may show up for the child's hockey practice and demand to participate. Restricting that would be interference with parenting time,

but not interference with visitation. Similarly, a parent who really should not, may show up at the child's school to drive for a field trip and be stopped by the custodial parent. This is an interference with parenting time but not with visitation.

These are only examples of some of the problems this bill creates. It goes against my grain to come forth as a Luddite, one wedded to no change, but sometimes language changes do way more than simply change the words. I think my concern really stems from fear of something very unintended happening without more time to really study the results. Perhaps the work represented in SB2046 can illustrate the problem. Long ago, the predecessor of the Family Law Task Force wanted to clean up the statutes, modernize them, coordinate them; but, it was a mammoth task because every language change represented the potential for unintended change. Each successive task force wanted to make changes but backed away, sometimes after a great deal of effort. Finally the Task Force and Interim Judiciary Committee put it together and the result is SB2046. The changes were simple but done with a lot of staff time and fine minds, over a long period of time. The changes of HB 1232 strike me as more far reaching and perilous, so I am doubly concerned that they will create those unintended consequences.

Let me close with a very short story. A family court judge from England gave a presentation on their custody system to a group of family law attorneys in Minnesota. From the information she provided we could see that the term they used for "custody" had changed several times. Someone asked her why. She replied that each term eventually became imbued with its own emotional baggage, so they shed it and moved on, and then that term picked up the same baggage so they moved on again. I think in its heart that this bill would do very little to disguise the true fact that one parent will have more say so and more time than the other. If we are to chase kinder words, I think we have to be very careful that all we are doing is that -- using kinder words--and not change years and years of carefully legislated and crafted law. "Custody" and "Visitation" are terms of art, which have come to have special meaning. If the words are changed, that is, you remove the art, you will, I think, truly create unintended problems.

I thank you for the opportunity to speak to this bill. If you have any questions, I would be happy to try to answer them. If any arise in the future you may contact our Executive Director, Christine Hogan, at 255-1404, or myself by telephone at 222-4777 or e-mail address of esther@btigate.com. Thank you.

Testimony HB1232

**Wednesday January 24, 2001 Human Service Committee 8:30AM
Fort Union room**

Good morning Chairman Representative Price and members of the Human Services Committee,

My name is Susan Beehler, a working mom with 5 children, a custodial parent, and a Girl Scout leader to two troops in Mandan, and training to become an advocate for AARC.

Members of R-KIDS support HB1232, parenting time and parent responsibility are much more reflective of the relationship a divorced parent wants to have with their child. Many states are already using these words. In some states we have found that parenting time in some states means the time each parent regardless of residency has with their child. To avoid any confusion parenting time and parental responsibility need to be clearly defined in the Century Code.

Susan Beehler 663-4728

susieqbee@prodigy.net

Definitions for Chapter 14

Residence means the place where a party has established a permanent home from which the party has no present intention of moving.

Custody Unless otherwise agreed by the parties:

Legal or sole custody means the right to determine the child's upbringing,

~~education, health care and religious training~~

~~with exception of Chapter 14 (Parents rights)~~

Joint legal custody or shared parenting means both parents have equal rights and responsibilities, including the right to participate in major decisions

determining the child's upbringing ~~may or may not share residence~~

Joint physical custody or shared physical parenting means that the routine daily care and control and residence of the child is structured between the parents and the child spends at least 92 overnights with each parent

Split physical care means that each parent has physical care of at least one of the children by means of that child or children residing with the parent the majority of the time

Physical custody means the routine daily care and control and residence of the child

Visitation is time the non-custodial parent has with their child

Parenting time is time either parent has with child regardless of custody

Non-custodial parent is a parent the child does not reside with the majority of the time

Custodial parent is a parent the child resides with the majority of the time

HOUSE BILL NO. 1232

Testimony by:
Dominic J. Volesky

Good Morning Chairperson Price and members of the House Human Services Committee. My name is Dominic Volesky. I have been a family mediator for a number of years and am well acquainted with the terminology used regarding the children of divorced and separated persons. I feel it is imperative that this committee recommends a Do Pass for this bill and support legislative action to modernize the terms used in Court orders, decisions and other matters pertaining to the children involved.

I do agree changes are needed but do not totally agree with the terminology being proposed. I will not bore you with going through this document line by line in regard to my suggestions. I only have a desire to encourage and, perhaps, have certain terms changed before this bill is given a Do Pass. My suggestions are based on terms being used both nationally and internationally and by the forerunner of family mediation, the Academy of Family Mediators (now merged with two other highly respected national organizations- SPIDR and CRIenet).

May I suggest using or referring to:

Parenting Arrangement(s)
[arrangement is a condition]

In lieu of or rather than:
"Custody" or "allocation of parental responsibility"
[responsibility is a duty owed to the children]
[What is "legal" responsibility?]
[Or is it parental "rights"?]

Primary Care Giver

"Parent of primary residence" or "custodial parent"

Secondary Care Giver or
Alternate Care Giver

"Parent of alternate residence" or "non-custodial parent"

Parenting time

"Visitation"

Parenting Schedule

"Visitation schedule"

In regard to the proposed terminology of allocation of parental responsibility, allocation may imply distributing the responsibilities rather than establishing the condition of who has primary responsibility for various parenting activities. In my experience and that of many noted family mediators, the term arrangement implies management of and is, therefore more appropriate for the old term "custody". Allocation may also infer "control" which might not be in the best interests of the children.

When using the term "Responsibility", it can be confusing because both parents have many of the same responsibilities in caring for and providing for their children, not different responsibilities as allocation might infer.

Thank you. I will be happy to answer any questions you may have.