

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2046

2001 SENATE JUDICIARY

SB 2046

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2046

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 24th, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	36.9-end/0.0-16.4
Committee Clerk Signature			

Minutes: Senator Traynor opened the hearing on SB 2046: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 12.1-18 AND FIVE NEW SECTIONS TO CHAPTER 14-05 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE REMOVAL OF CHILDREN FROM THE STATE, TO DECREES OF SEPARATION, AND THE DUTY TO SUPPORT CHILDREN; TO AMEND AND REENACT SECTIONS 14-04-04, 14-05-03, 14-05-08, 14-05-10, 14-05-17, 14-05-23, 14-05-25.1, AND 14-09-08 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DECREES OF SEPARATION AND DIVORCE; TO REPEAL SECTIONS 14-05-11 AND 14-05-12 AND CHAPTER 14-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO SEPARATION FROM BED AND BOARD AND GROUNDS FOR DIVORCE; TO PROVIDE A PENALTY; AND TO DECLARE AN EMERGENCY.

Vonette Richter, representing the legislative council interim committee. The first section of the bill is unrelated to the rest of the sections.

Senator Traynor: Section 1 reinstates old law?

Vonette Richter: Yes. Section 2 amends 14-04 which deals with children. Deals with the custody of the child and their best interest. Child would be based on same standard of divorce. Section 3 deals with separation and merges language in old chapter. This will be called separation and divorce. Need to update language and procedures. Section 4 are grounds for divorce. Committee felt a need to update the grounds. Subsection 5 is the abuse of alcohol. Subsection 7 is to remove insanity to serious mental illness. Subsection 8 deals with irreconcilable differences. Section 6 deals with denial of divorce, collusion or connivance are no longer here.

Senator Traynor: Where there a statutes of limitations on the board. What do you mean?

Sherry Mills Moore, testifies for the Bar Association. These are defenses for the grounds of a divorce.

Vonette Richter: Section 7 deals with residence requirements. Section 8 creates three new sections; separation which will become part of the divorce section. On page 4 should read separation of decree of separation on line 1 and 8. Section 9 deals again with temporary support, attorney fees, and custody. Section 10 is a cleanup section of the bill dealing with spousal support. Section 11 relates to money judgment. Section 12 is mutual duty to support children. Section 13 is an appeal. Chapter 14-06 is a repeal. Section 14, this is an emergency bill.

Senator Traynor: Is this a house keeping bill?

Vonette Richter: yes.

Senator Deaver: What is collusion?

Vonette Richter: Collusion is when the party says we were unfaithful so I want a divorce. We don't need grounds anymore. We say irreconcilable differences.

Senator Traynor: Court may compel both parties to support child? This doesn't mean on is obligated to support child.

Sherry Moor: Child support wants to make sure language is either/or/both.

Senator Traynor: Mental illness is that defined in another chapter?

Vonette Richter: There probably is a definition in another section, but it isn't crossed referenced.

Senator Traynor: Would you look that up for me.

Sherry Moore: (testimony attached) We need to contain section 1, because this is a breakout section. In section 12, pg. 5 14-09-08 line 9. Court may compel either of parties to provide for the support of the children of marriage. Strike out "the" in front of children and "of marriage" after children, change "parties" to "parents."

JANUARY 24TH, SIDE B, TAPE 2

Senator Dever: Does the wedding proceed the marriage?

Susan Beehler, representing R-Kids. Supports SB 2046. Has the same concern Sherry Moore has. Believes abducting children is wrong. When you have a mean ex they may use this against someone by saying they kidnapped a child by not notifying them of say, a 72 hour vacation. One concern is abuse and your non-costodial parent who can't do anything. Who do the children turn to. A non-costodial parent should have a right to protect the child.

Rose Stellar, executive director of the mental health association. (testimony attached) Wants line 27 deleted from the bill.

Audree Mclean, supports SB 2046. (testimony attached)

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Senate Judiciary Committee

Bill/Resolution Number SB 2046

Hearing Date ~~January 24th, 2001~~

Jan 25, 01

David Boeke, representing the protection and advocacy law, has a concern over the definition of "serious mental illness." Doesn't mean behaviors are exhibited, they can be treated. I think this can discriminate on their civil liberties.

Senator Traynor: Strike the 3 words in subsection 7?

David Boeke: yes.

Senator Traynor closed the hearing on SB 2046.

MOTION MADE BY SENATOR WATNE TO AMEND PAGE 2, LINE 27, AND LINE 10, PAGE 5. SECONDED BY SENATOR NELSON. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. SECOND MOTION MADE BY SENATOR NELSON TO DO PASS AS AMENDED. SECONDED BY SENATOR WATNE. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. SENATOR NELSON VOLUNTEERED TO CARRY THE BILL.

Date: 1/24/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2046

Senate Judiciary

Committee

Subcommittee on

or

Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded

By

[illegible]**Total (Yes)**

No

Absent

Floor Assignment

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

Date: 1/24/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2046

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:18 a.m.

Module No: SR-13-1565
Carrier: C. Nelson
Insert LC: 10082.0401 Title: .0500

REPORT OF STANDING COMMITTEE

SB 2046: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2046 was placed on the Sixth order on the calendar.

Page 2, line 27, remove "Serious mental illness" and overstrike the period

Page 2, line 28, overstrike "8."

Page 4, line 1, replace "spousal support" with "separation"

Page 4, line 8, replace "spousal support" with "separation"

Page 5, line 9, after "either" insert "or both" and

Page 5, line 10, replace the second "the" with "their" and remove "of marriage"

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2046

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2046

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	3562 to 6193
TAPE II	X		01 to 338
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2046. Relating to separation from bed and board and grounds for divorce; to provide a penalty and to declare an emergency.

Yonette Richter: Legislative Council, Interim Judiciary Committee. This bill is a result of a working group statutory review of 1405, 1404, 1406. With the exception of the first section of the bill, the remainder of the bill deals with those three chapters. The first section provides a criminal penalty for removal of a child from the state in violation of custody decree. The remaining sections deal with separation and divorce.

Rep Mahoney: In divorce cases of my clients are on grounds of irreconcilable differences, in section six rather antiquated. If they want a divorce they can get one, isn't that outdated language in that section?

Yonette Richter: The working group discussed that, and there was some feeling that those two should stay in. The same could be said for the causes.

Page 2

House Judiciary Committee

Bill/Resolution Number SB 2046

Hearing Date 02-14-01

Rep Mahoney: The combination of some of the situations, they could come in and sue on those grounds.

Rep Grande: Could you tell me what limited and lapse of time mean?

Vonette Richter: The question was asked in the Senate, too much time has passed, other than that I am not sure.

Chairman DeKrey: If there are no other questions for Vonette, thank you for appearing.

Sherry Mills Moore: an attorney in private practice in Bismarck (see attached testimony)

Rep Grande: I am still confused about the time issue, the case was brought that was based on adultery, time had lapsed, you stuck around for a long time, can I have a divorce?

Sherry Mills Moore: if the base is on adultery and it happened a long time ago, you didn't do anything about it, the court say, if the bases of this divorce is to be adultery, then it would have to be denied for lapse of time.

Rep Mahoney: I think habitual intemperance is kind of a ____ term.

Rep Wrangham: In section one, page one, line 15 - Detaining the child outside this state in violation of the custody decree for more than 72 hours. Gives an example of a child visiting outside of the state and they are three hours late getting back, would they have committed a prima facie evidence for a class c felony would they?

Sherry Mills Moore: Probably not.

Susan Beehler: lobbyist R-Kids, testified in favor of this bill. If you abduct a child, there should be a penalty. But we also feel that if a parent has court ordered visitation and the custodial parent removes the child from the state, it should also work the same. When a custodial parent moves

across the nation, thus negating the court ordered visitation rights, then in fighting the battles it winds up having a jurisdiction issue. It is hard to fight it from across the country.

Rep Mahony: Section one applies to violation of the custody decree.

Susan Beehler: So that would affect visitation.

Rep Mahoney: That is right, a prima facie case is an evidentiary tool.

Chairman DeKrey: If there is no further testimony on SB 2046, we will close the hearing on SB 2046

TAPE II SIDE A

COMMITTEE ACTION

Chairman DeKrey: I would entertain a motion on SB 2046.

DISCUSSION

An amendment was proposed Rep Klemin moved the amendment, Rep Mahoney seconded the amendment. Voice vote taken on the amendments. Motion Passes.

Chairman DeKrey: we now have the bill before us as amended . Rep Delmore moved a DO PASS as amend, seconded by Rep Grande. The clerk will take the roll on a DO PASS as amend on SB 2046. The motion passes with 15 YES, 0 NO and 0 ABSENT. Carrier is Rep Fairfield.

10082.0501
Title.0600

Adopted by the Judiciary Committee
February 14, 2001

VR
2/14/01

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL 2046 HOUSE JUDICIARY 02-15-01
Page 1, line 14, replace "under" with "in violation of"

Renumber accordingly

Date: 02-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2046

House JUDICIARY

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do pass as amend

Motion Made By

Rep Delmore

Seconded By

Rep Grande

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total

(Yes)

15

No

0

Absent

0

Floor Assignment

Rep Fairfield

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

REPORT OF STANDING COMMITTEE (410)
February 15, 2001 8:44 a.m.

Module No: HR-28-3446
Carrier: Fairfield
Insert LC: 10082.0501 Title: .0600

REPORT OF STANDING COMMITTEE

SB 2046, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2046 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "under" with "in violation of"

Renumber accordingly

2001 TESTIMONY

SB 2046

MENTAL HEALTH ASSOCIATION IN NORTH DAKOTA

SB 2046 Testimony Before Senate Judiciary Committee January 24, 2001

Mr. Chairman and members of the Committee, my name is Rose Stoller, Executive Director of the Mental Health Association in North Dakota. The Mental Health Association in North Dakota is a nonprofit volunteer citizens organization affiliated with the National Mental Health Association which is the oldest and largest nonprofit organization addressing all aspects of mental health and mental illness. Our state association will be 50 years old next year, and has as our mission to ensure the availability of appropriate, accessible, and adequately funded treatment and support services for persons with mental illnesses. An important part of our mission is to combat and eliminate the stigma that is associated with mental illness.

The Mental Health Association in North Dakota appears today to address only Section 4 of the Bill amending NDCC Section 14-05-03 Causes for Divorce. As amended on page 2 of the Bill, "serious mental illness" is identified as a cause for divorce, replacing the outmoded language referencing the term "insanity" and its definitions. The Mental Health Association in North Dakota opposes the inclusion of any illness as a proper cause for divorce, but are particularly adamant in our opposition to the use of a person's mental illness as a cause for divorce.

While the Mental Health Association in North Dakota appreciates the efforts of the interim legislative committee to "clean up" outdated references in the divorce statute, we are concerned that the step taken by the interim committee is, in fact, a step backwards. The existing language allows a person to petition for divorce on the grounds that their spouse is insane and has been an "inmate of an institution" for at least five years. The juxtaposition of the terms "insane" and "inmate" reflect the stigma that persons with mental illness must struggle against daily. Certainly this language should be deleted. With all that we know today about mental illnesses and their treatment, it is not an

improvement to the divorce law to substitute serious mental illness for insanity as a cause for divorce.

Since North Dakota recognizes "no-fault" divorce, we cannot understand any attempt to single out one illness as justifying divorce as opposed to other disabling illnesses. Clinging to the belief that mental illness is intrinsically different from other illnesses only perpetuates the stigma attached to these illnesses. It, unfortunately and perhaps unintentionally, reinforces the belief that persons with mental illnesses are weak, sinful, and guilty of character flaws, or, more tragically, dangerous and dysfunctional. We need to recognize that these beliefs are as outmoded as the belief that the world is flat.

Mental illness is a disease of the brain. It is a health problem not unlike diabetes, heart disease, Parkinson's disease, Multiple Sclerosis, or high blood pressure. All of these health problems, including mental illness, are diagnosable and treatable. Mental health disorders are common; the 1999 US Surgeon General's Report on Mental Health reports that 1 of every 5 American adults (54 million) will suffer a serious mental health disorder during their lifetime. The success rate for treatment of mental illnesses ranges from 75% to 90%.

The Mental Health Association in North Dakota believes that "Irreconcilable differences" is more than sufficient as a cause for divorce. It is unconscionable that a person would support their divorce petition by claiming that a spouse suffers from a chronic health condition. Why, then, would we allow as a statutory cause for divorce that a spouse suffers from a serious mental illness? We urge this committee to amend SB 2046 by deleting line 27 of the bill.

The amendment that we propose would read as follows:

On page 2, line 27, delete "Serious mental illness."

On page 2, line 28, overstrike the "8."

Thank you for your time today. I would gladly be available for questions during your committee discussions, should you wish to further discuss the position of the Mental Health Association in North Dakota.

STATE BAR ASSOCIATION OF NORTH DAKOTA

TESTIMONY IN SUPPORT OF SENATE BILL 2046

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, and this bill is one of the products.

Actually this bill is a byproduct, in the best sense of the word, of many years of intention backed by production. The Family Law Task Force wanted to clean up and coordinate the family law sections of the Century Code but just didn't have the resources. In combination with the Interim Judiciary Committee, that finally came to fruition. This bill cleans, corrects, consolidates, and coordinates the statutes which govern divorce, separation, and annulment. The subcommittee that put in the sweat on this task was led by former Senator Wayne Stenehjem. There were no hidden agendas, or tricks.

Section 1. This section puts back on the books the crime of parental abduction. Last session the Uniform Child Custody Jurisdiction and Enforcement Act was adopted and in so doing the Uniform Child Custody Jurisdiction Act was repealed. Because it substituted a new and improved uniform law for an old uniform law, somehow that part which had been crafted just for North Dakota to deal with parental kidnapping was also repealed. Parental kidnapping needs to remain a criminal act. For that reason, this section reinstates the same provision which was inadvertently, I believe, repealed.

Section 2 - A marriage can end by divorce, separation, or annulment. For divorce and separation the standard for a custody determination is different than for an annulment. It may matter to the parties how the marriage is dissolved, but not to the best interest of the child. Because custody should be determined by the same measure in all three, with this change, annulment would come into line with the other two.

Section 3- This is the first section which begins the consolidation process. An action for Separation from Bed and Board is different than an action for Divorce, but the process and most provisions are very much the same. This bill puts the two type of actions into the same chapter of the Century Code, making distinctions where necessary between the two. Section 7, Section 9, and Section 11 do the same.

Section 4 - This section modernizes the terminology for the grounds for divorce by renaming *habitual intemperance* and *insanity*. *Habitual intemperance* becomes *abuse of alcohol or controlled substances* and *insanity* becomes *serious mental illness*. Section 5 goes on to define the terms.

Section 6 - For many years the Century Code has listed defenses to the grounds for divorce. This section eliminates the defenses of connivance and collusion, primarily because they are archaic, never used, and confusing. Once learned for the bar examination I would venture they are forgotten.

Section 7 - The purpose of this section is to consolidate the chapters dealing with separation and divorce.

Sections 8 - Puts the specific provisions necessary and unique to an action for separation into Chapter 5 of the North Dakota Century Code. I believe there is a typographical error in the section title as well as line 8 of page 4, wherein it reads *Revocation of decree of spousal support* but should read *Revocation of decree of separation*. This section primarily moves the process for converting a separation into a divorce into the divorce chapter.

Section 9 - The purpose of this section is to consolidate the chapters dealing with separation and divorce.

Section 10 -- This section makes no real substantive changes but updates the language and separates out property division, child support, and spousal support. If SB2044 seems in trouble, please don't abandon Section 1 which deals with division of property. Section 10 of this bill deals with spousal support and Section 12 with child support. All three sections track the law as it now stands, no substantive changes are made or intended to be made. It simply made more sense to clean up 14-05-24 in this cleansing process.

Section 11 - The purpose of this section is to consolidate the chapters dealing with separation and divorce.

Section 12 - This is the section on child support broken out from 14-05-24.

Section 13 - This section repeals connivance and collusion as grounds for divorce and separation.

I thank you for the opportunity to support 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.

January 24, 2001

Chairperson and Other Committee Members

I am here to strongly urge you to approve the amendment or addition of Section 1 to Senate Bill 2046. The reason I am so concerned about this portion of the bill is because my daughter was abducted by her father, my ex-husband, in 1997. At that time, the crime was considered a Class C Felony. It is my understanding that now it is considered less than that meaning a person that committed the crime would not spend any time in jail. After he "removed" our daughter from the state, he was sentenced to five years of probation. The only time he spent in jail was a few days after he was arrested in Salt Lake City, Utah. Then he was released to his parents who were to bring him back to North Dakota and take him to the Burleigh County Sheriff's Department. He was arrested again after he was back in Bismarck for three days and failed to turn himself in so he spent a couple more days in jail. Before my ex-husband took our daughter, he cut her hair (shaved to the skin around the ears), died her light blonde hair a dark reddish brown with permanent color and dressed her in "boy" clothes the whole time they were gone. When I picked her up, she also seemed as though she hadn't been bathed since they left. They were gone for eight days. After I brought our daughter back home, she had a hard time attending daycare since some of the kids teased her that she looked like a boy. Since her father was sentenced, he has only been able to see her at the Family Safety Center. During some of their visits, he has mentioned to her that he would never take her away again because he didn't want to spend any more time in jail-never even mentioning what the effect could be on her. I truly believe he would do it again if ever given the chance. Actions such as these can be very traumatic for a 3 year old child or a child of any age and I feel that the parent committing them should definitely serve some jail time. Anyway, my point is that if he knew he would go to jail again or prison, he might be less likely to commit this crime again. Therefore, I strongly urge you to pass this important legislation; not only for my situation but for the sake of all children.

Thank you very much for your time.

Audree McLean

25-03.1-02

1

10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness

25-013-01 - Protection - 1/15/73

12. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.

25-11-01

Minnesota Mental Health
Comps. A

4. "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

STATE OF NORTH DAKOTA
FIFTY-SEVENTH LEGISLATIVE ASSEMBLY
SENATE JUDICIARY COMMITTEE

Senate Bill 2046

Hearing scheduled for 9:30 a.m., Wednesday, January 24, 2001.

CHAIRMAN TRAYNOR AND COMMITTEE MEMBERS:

I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project, which provides advocacy services for people with disabilities. This document is a summary of the testimony I provided on Senate Bill 2046 on Wednesday morning, January 24, 2001.

A proposed amendment to subsection 14-05-03 (7) of the North Dakota Century Code appears on page 2, lines 15 to 27, of SB 2046. It is a good idea to delete the outdated language about insanity as a grounds for divorce. Unfortunately, the proposed replacement language, "serious mental illness," threatens to continue a discriminatory provision in our divorce law.

"Serious mental illness" is a category for numerous diagnoses. It neither states nor implies anything about the symptoms shown by a spouse who has serious mental illness, about whether the spouse cooperates in realistic treatment options, about the success of treatment, about the use or misuse of prescription medications, about whether the spouse satisfies the ordinary responsibilities of marriage, or about whether the spouse meets other family obligations, such as those of parenthood.

The proposal implicates the North Dakota Human Rights Act (N.D.C.C. chapter 14-02.4), the Americans with Disabilities Act (42 U.S.C. chapter 126), the state constitution (article I, sections 1, 12, 21, and 22), and the federal constitution (Fourteenth Amendment, section 1). North Dakota divorce law should not permit a divorce based solely upon proof that one spouse has a diagnosis that is a serious mental illness. Serious mental illness, alone, is only a label. It has nothing to do with the propriety of divorce.

State divorce law should not continue to attach a stigma and a prejudice against one illness. Certainly, the Legislature would not legitimize divorce based upon severe diabetes, advanced arthritis, or serious osteoporosis. The serious-mental-illness label is no better than the serious-diabetes, the advanced-arthritis, or the serious-osteoporosis labels as legal justification for a divorce.

The serious-mental-illness grounds for divorce would push a divorce court into a trial within a trial. When a plaintiff alleges serious mental illness as the grounds for a divorce, the court would make a judicial determination about whether the spouse has a serious mental illness, before deciding whether to grant a divorce based upon serious mental illness. This would involve additional pretrial proceedings, expert witnesses, and numerous other witnesses.

This would run up the costs of litigation for the individuals and for the judicial system. This is contrary to current judicial reforms that provide for less costs, fewer formal court proceedings, and less adversarial means of settling disputes -- particularly disputes involving domestic relations.

In default proceedings, a divorce court could judicially declare an absent spouse to have serious mental illness.

In summary, "Irreconcilable differences" (presently in subsection 14-05-03 (8) of the North Dakota Century Code) is a legitimate, nondiscriminatory basis for divorce in any case in which one spouse might have a serious mental illness diagnosis. In contrast, the serious-mental-illness label is a poor policy choice as grounds for divorce and would be, at best, of questionable constitutional validity.

The Protection & Advocacy Project urges the Senate Judiciary Committee to remove "serious mental illness" from page 2, line 27, of SB 2046 [and to overstrike "8." on page 2, line 28]. Thank you.