

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2281

2001 SENATE JUDICIARY

SB 2281

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 29th, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	51.4-end/0-42.8
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2281: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SUBSECTION TO SECTION 14-07.1-02 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE ISSUANCE OF A PROTECTION ORDER BASED UPON ACTIONS OCCURRING OUTSIDE THE STATE.

Senator Watne, representing District 5, supports SB 2281. (testimony attached) Relates to protection orders issued to a person in this state even though the actions that precipitated the request for a protection order occurred in another state.

Senator Traynor, this would not require an order in the foreign state?

Senator Watne, no. The order would be within this state as I understand it.

Senator Traynor, the order issued in ND based on factual situations outside of the state.

Bonnie Palecek, representing the ND Council of Abused Women's Services, speaks in support of SB 2281. (testimony attached)

Senator Traynor, the Attorney General's office, are they aware of this bill?

COZ

NEXT FIGHE

Bonnie Palecek, yes they are.

Senator Traynor, did the Attorney General express any constitutional reservations about this bill?

Bonnie Palecek, not when we spoke.

Senator Trenbeath, how do you get jurisdiction on someone outside of the state if they don't reside within the state. To strike the situation of Grand Forks and East Grand Forks. But what about Grand Forks and New Jersey where the occurrence happens in New Jersey and the person flees to North Dakota?

Bonnie Palecek, That is the question that has been raised. It is very unusual authority. That is why it is limited.

Senator Trenbeath, It's less if your talking about an order that is only effected by the boundaries of this state. It seems to infringe upon the constitution if you start issuing these things in other states.

Bonnie Palecek, the way it has been justified to me is that it is very limited to the respondent.

Senator Trenbeath, that isn't the only effect of this bill. If it were the only effect I wouldn't have problem with it. But because presumably New Jersey has a law allowing that order to be filed in New Jersey and having the same effect there it has an effect on conduct in New Jersey based upon something that has happened here. That is were I have the problem.

Senator Traynor, I think there would be a problem Bonnie. There is a real question about getting jurisdiction on somebody and how do you serve him. Do you intend to send the Sheriff across the river in Fargo and server them in Minnesota? Is that proper? Can that be done?

Those are questions I would like the attorney general's input.

Senator Watne, the last sentence does say "the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person." It's very limited.

Senator Traynor, what happens if the violent act occurs in Minnesota? The second act also occurs in Minnesota. Would they be prosecuted here in North Dakota?

Senator Bercier, How about tribes? Are protection orders being viewed active on or off reservations.

Bonnie Palecek, not with the attorney general, but with the supreme court.

Senator Bercier, could we put an amendment in here regarding the tribes.

Carol Two Eagles, in favor of the bill with some modifications. Would like tribal issues put on the bill as well.

Diane Zanhaufsky, executive director of abused adult research in Bismark. Supports 2281.

Testimony from legal authority Sue Rau social worker.

Allison Hughs, representing Domestic Violence Crisis Center Center, Inc.(testimony attached)

Senator Traynor, in the case you cite was there a protection order issued by Arizona?

Allison Hughs, no there was not.

Senator Dever, when a proceeding takes place now, in this state, does the alleged abuser defend themselves in the proceeding?

Allison Hughs, basically they are allowed to have counsel, they can defend themselves. So many days are allowed to serve them and then to go to the court hearing.

Burt L. Riskedahl, District Judge South Central Judicial District, appears in support of this bill.
(testimony attached)

Page 4

Senate Judiciary Committee

Bill/Resolution Number SB 2281

Hearing Date January 29th, 2001

Senator Traynor, we're interested in the Attorney General's position on the bill. Do you agree that would be beneficial.

Burt L. Riskenahl, yes.

Senator Traynor closed the hearing on SB 2281.

**MOTION WAS MADE BY SENATOR WATNE TO AMEND PAGE 1, LINE 10,
SECONDED BY SENATOR LYSON. VOTE INDICATED 4 YEAS, 1 NAY AND 2
ABSENT AND NOT VOTING. SECOND MOTION MADE BY SENATOR LYSON TO
DO PASS AS AMENDED. VOTE INDICATED 6 YEAS, 1 NAY, AND 0 ABSENT AND
NOT VOTING. SENATOR WATNE VOLUNTEERED TO CARRY THE BILL.**

PROPOSED AMENDMENT TO SENATE BILL NO 2281

Page 1, line 10, after "state." Insert "In these cases, a respondent may be subject to the personal jurisdiction of the state of North Dakota."

Renumber accordingly.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, line 10, after the period insert "In these cases, a respondent may be subject to the personal jurisdiction of the state of ~~North Dakota~~."

Renumber accordingly

this

Date: 1/31/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 513 2281

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend pg. 1 line 10

Motion Made By H Watne Seconded By Lyson

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

Total (Yes) 4 No 1

Absent 2

Floor Assignment _____

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

Date: 1/31/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2280

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:

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 9:33 a.m.

Module No: SR-18-2084
Carrier: Watne
Insert LC: 10605.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2281: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Sixth order on the calendar.

Page 1, line 10, after the period insert "In these cases, a respondent may be subject to the personal jurisdiction of this state."

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2281

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-07-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		5072 to 6235
TAPE I		x	01 to 1698
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2081. Relating to the issuance of a protection order based upon actions occurring outside the state.

Senator Watne: District 5. (see attached testimony).

Bonnie Palecek: speaking on behalf of the North Dakota Council on Abused Women's Services (see attached testimony).

TAPE I SIDE B

Bonnie Palecek continues Also attached is a letter from District Judge Burt Riskedahl..

Rep. Klemin: If a North Dakota court issues a protection order for something that happened in another state it would still only protect the person while in North Dakota. If it happened in New Jersey and the person comes back to North Dakota gets an order and then goes back to New Jersey is she still protected in New Jersey.

Bonnie Palacheck: It would be honored if it had all of the elements of necessary for full faith and credit. This order would only apply to personal safety issues.

Rep Klemm: I am concerned about giving someone a false sense of security.

Bonnie Palachek: The intent of this is to provide protection in North Dakota.

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

Sue Rau: licensed social worker at the Abused Adult Resource Center in Bismarck, North Dakota.(see attached testimony).

Chairman DeKrey: Are there any questions for Ms Rau, seeing none thank you for appearing.

Allison Hughes: speaking on behalf of the North Dakota Council on Abused Women's Services, (see attached testimony).

Rep Delmore: Once the respondent appeared in the state, was the victim able to get a North Dakota protection order.

Allison Hughes: There was not enough criteria for a protection order.

Rep Klemm: A question to clarify, did the sister and mother live in North Dakota.

Allison Hughes: Yes.

Chairman DeKrey: Any further questions.

Rep Wrangham: Some of our laws to protect victims, we have harmed other victims. He then gives an example involving children. How can a respondent have their day in court, if they are not guilty.

Bonnie Palacek: The intent of this order is for personal safety, we will always have to weigh the facts the difficult or the impact.

Allison Hughes: Different judges have different ideas. Judges try to do what is best for the children.

Page 3

House Judiciary Committee

Bill/Resolution Number SB 2281

Hearing Date 03-07-01

Rep Klemm: I don't think that this amend is going to provide personal jurisdiction in North Dakota, I don't see how an order issued in this state would be valid in another state. Maybe this needs to be further amended with further working that would make it clear.

Rep Mahoney: Are you getting at the long arm statute, then goes on to clarify.

Rep Klemm: The long arm statute, and then goes on to explain his view.

Chairman DeKrey: Any further questions, thank you for appearing. We will close the hearing on SB 2281.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		2850 to 3421
Committee Clerk Signature <i>Juan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2281.

DISCUSSION

Rep Klemm: Discussed the amendments, he then moved the amendments, seconded by Rep Delmore.

Chairman DeKrey: Called for a voice vote on the amendments. Motion carries. Rep Delmore moved a DO PASS as amend, seconded by Vice Chr Kretschmar.

DISCUSSION

Chairman DeKrey: The clerk will call the roll on a DO PASS as amend motion on SB 2281. The motion passes with a vote of 13 YES, 0 NO and 2 ABSENT. Carrier Rep Disrud.

10605.0201
Title.0300

Prepared by the Legislative Council staff for
Representative Klemin
March 8, 2001

VR
3/14/01

HOUSE AMENDMENTS TO ENCLOSED SENATE BILL 2281 HOUSE JUDICIARY 03-15-01
Page 1, line 10, replace "may be" with "is"

Page 1, line 11, after "state" insert "upon entry into this state"

Page 1, line 14, after "person" insert "in this state"

Renumber accordingly

Date: 03-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2281

House JUDICIARY

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 10605.0201 0300

Action Taken Do Pass as amend

Motion Made By Rep Delmore Seconded By Vice Chr Kretschmar

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) 13 No 0

Absent 2

Floor Assignment Rep Disrud

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 10:20 a.m.

Module No: HR-45-5675
Carrier: Disrud
Insert LC: 10605.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2281, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2281 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "may be" with "is"

Page 1, line 11, after "state" insert "upon entry into this state"

Page 1, line 14, after "person" insert "in this state"

Renumber accordingly

2001 TESTIMONY

SB 2281



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Darlene Watne
District 5
520 28th Avenue SW
Minot, ND 58701-7065

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

January 25, 2001

Chairman Traynor and Members of the Senate Judiciary:

Senate Bill 2281 relates to protection orders across state lines. The bill simply makes a protection order issued to a person in this state effective even though the actions that precipitated the request for a protection order occurred in another state.

I am especially interested in this bill because of two Air Force Bases in our state and because we have cities that extend across our borders...such as Grand Forks and Fargo.

For example, if a woman is a resident of West Fargo, goes to visit a friend in East Fargo and is accosted by her husband at the friend's home to the extent she needs a protection order, just because the incident happened in East Fargo (the State of Minnesota), she still needs protection.

Bonnie Palachek asked me to sponsor this bill. With her extensive knowledge of our domestic violence laws, if she feels it is needed, I heartily agree with her. She has worked for many years on these issues and I'm proud to say the laws in North Dakota regarding domestic relations are good ones--and much of that credit goes to Bonnie. I urge a DO PASS.

Respectfully,

Darlene Watne
Senator Fifth District

CHAMBERS OF
BURT L. RISKEDAHN
JUDGE
BISMARCK, NORTH DAKOTA

State of North Dakota

DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

BOX 1013
514 EAST THAYER AVENUE
BISMARCK, ND 58502
(701) 222-0002
FAX: (701) 222-0000

January 29, 2001

HONORABLE JACK TRAYNOR, CHAIRMAN
SENATE JUDICIARY COMMITTEE
ND STATE SENATE
600 EAST BOULEVARD AVENUE
BISMARCK ND 58505

Re: Senate Bill 2281 - Dealing with issuance of protection orders under North Dakota
domestic violence statute, Century Code Section 14-07.1

Dear Senator Traynor:

I appreciated the opportunity to testify briefly at the hearing on the above bill
which is before your Committee and was heard on January 29, 2001.

I appeared in support of this bill in the belief that its passage would remove
reluctance by courts to issue protection orders when there are no recorded incidents of
domestic violence occurring within this state.

The Committee identified the area of concern with a statute such as this, which has
to do with personal jurisdiction over a respondent in another jurisdiction.

Brandi Sasse, the law clerk who attended the hearing with me, has identified three
state court decisions which deal specifically with domestic violence orders and the
question of personal jurisdiction of the out-of-state respondent.

In Benson v. Benson, 1995 W.L. 507638 (Minn. App.), the intermediate appellate
court concluded that a protection order could be issued under the Minnesota statute,
concluding that nothing in the domestic abuse act restricted the Court's jurisdiction to
abuse occurring within the state. This protection order had been issued based on the
respondent's conduct in Florida when he entered the residence the petitioner was
occupying during a divorce proceeding which was filed in Hennepin County District
Court. The appellate court upheld the trial court's dismissal of the petition for protection
based on reasons other than jurisdiction. The appellate court concluded that the
Minnesota statute did not require conduct occurring within its borders.

In Hughes on Behalf of Praul v. Cole, 572 N.W.2d 747 (Minn. App. 1995), the Court upheld the trial court's ruling denying the respondent's motion to dismiss for lack of personal jurisdiction. The protection order had been put in place for the protection of a minor child who had been abused by his non-resident father while visiting with the father outside of the state of Minnesota. In this case, the Court found the necessary "minimum contacts" in part based on the out-of-state conduct and the emotional and physical suffering by the child as a result of the respondent's physical abuse committed in Pennsylvania.

In J.N. v. D.S., 300 N.J.Super. 647, 693 A.2d 571 (N.J. 1996), the Court determined that a protection order could be issued in New Jersey based on abusive behavior directed at the plaintiff by the respondent in Nebraska. This particular case was cited by Bonnie Palecek in her testimony to the Committee on January 29, 2001.

My review of the cases located by Ms. Sasse indicate to me that courts may treat issues arising under domestic violence statutes with deference to legislatures which have put the statutes in place for very valid public policy reasons.

As I indicated to the Committee, I believe that courts in this state will be inclined to interpret such legislation in a way that will afford needed protections for domestic violence victims who come into this state after having been abused in other jurisdictions.

Thank you for the opportunity to comment further.

Sincerely,



Burt L. Riskedahl, District Judge
South Central Judicial District

BLR/af

cc: Members, Senate Judiciary Committee

222-8370
 BOTTINEAU
 Family Crisis Center
 222-2028
 KE
 Alternatives for
 Abused Families
 1-888-662-7378
 DICKINSON
 Domestic Violence and
 Rape Crisis Center
 225-4506
 ELLENDALE
 Kadish House
 449-4729
 FARGO
 Rape and Abuse Crisis Center
 400-344-7273
 FORT BERTHOLD RESERVATION
 Coalition Against
 Domestic Violence
 627-4171
 FORT YATES
 Tender Heart Against
 Domestic Violence
 854-3402
 GRAFTON
 Tri-County Crisis
 Intervention Center
 352-4242
 GRAND FORKS
 Community Violence
 Center
 JAMESTOWN
 S.A.F.E. Shelter
 488-353-7233
 McLEAN COUNTY
 McLean Family
 Resource Center
 400-651-8643
 MERCER COUNTY
 Women's Action and
 Resource Center
 473-2274
 MINOT
 Domestic Violence Crisis
 Center
 452-2258
 RANSOM COUNTY
 Abuse Resource Network
 433-5061
 SIOUX FALLS
 Domestic Violence Program,
 NW ND
 423-3233
 SIOUX FALLS CITY
 Abused Persons Outreach
 Center
 445-0078
 SIOUX FALLS
 Family Crisis Center
 442-0757

Senator Jack Traynor
 Chair, Senate Judiciary Committee
 SB 2281
 January 29, 2001

Senator Traynor and Members of the Committee:

I am Bonnie Palecek speaking on behalf of the ND Council on Abused Women's Services in support of SB 2281.

The provisions of this bill would fill a growing need to address the problems of victims of domestic violence seeking protection orders from North Dakota courts when the violence occurred exclusively outside of this state.

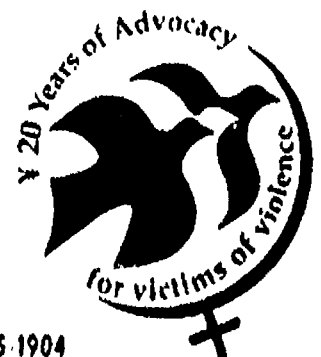
The problem has grown over the last year, as victim advocates from Minot and Bismarck will testify to later, and we currently have inconsistent judicial responses to protection order petitions, sometimes even within the same judicial district. Some judges are issuing such orders, and others are denying them.

Other states, including Montana, Indiana, New York, and New Jersey have addressed the problem in a variety of ways, from statute to rule-making to case law. So-called "long-arm" statutes evidently do allow one state to reach into another on some occasions in spite of long-standing restrictions on this kind of authority.

A statement in a December 1996 New Jersey Superior Court opinion affirms New Jersey's jurisdictional authority in this type of case by asserting:

Were the court to deny jurisdiction in this case, the victim who seeks shelter in this state would be unprotected, unable to use the procedures established in this state which permit law enforcement officers and the courts to respond promptly and effectively, to domestic violence cases. The victim would have to wait, in fear, for the alleged abuser to commit an additional act of domestic violence, this time in New Jersey, before having recourse to the law and to the courts of this state.

It is this "waiting for something to happen" scenario that we wish to avoid. At the same time, all of the due process rights of the alleged offender would be protected, including the right to come to a hearing in the state in which the order was issued.



North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
 418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-800-472-2911 • Fax: 255-1904

It is also important to note that the protection offered in this provision would extend only to restraint from contacting or harassing the petitioner. It would not extend to any temporary support, award of property, or custody or visitation provisions. Therefore, the impact on the respondent should be minimal.

I was advised very recently that perhaps we need to include the actual words "personal jurisdiction" in the statute in order to assure that the state of North Dakota not only has the authority to issue such an order against someone in another state, but also to serve the order.

Therefore, I offer the attached amendment for your consideration.

Thank you.

James F. Erickson

PROPOSED AMENDMENT TO SENATE BILL NO 2281

Page 1, line 10, after "state." insert "In these cases, a respondent may be subject to the personal jurisdiction of the state of North Dakota."

Renumber accordingly.

SENATE BILL 2281 CARRY

Mr. President, fellow Senators - -

Senate Bill 2281 relates to protection orders across state lines. The bill simply makes a protection order issued to a person in this state effective even though the actions that precipitated the request for a protection order occurred in another state.

The amendment protects the jurisdiction part of this bill, it assures that the State of North Dakota not only has the authority to issue such an order against someone in another state, but also to serve the order.

Mr. President, fellow Senators - -

Senate Bill 2281 relates to protection orders across state lines. The bill simply makes a protection order issued to a person in this state effective even though the actions that precipitated the request for a protection order occurred in another state. The provisions of this bill fill a growing need to address the problems of victims of domestic violence seeking protection in such cases.

The problem has grown over the last year in areas of our state and we currently have inconsistent judicial responses to protection order petitions, sometimes even within the same judicial district. Some judges are issuing such orders and others are denying them. This bill will solve their dilemma.

Without this protection the victim who seeks shelter in this state would be unprotected unable to use the procedures established in this state which permit law enforcement officers and courts to respond, promptly and effectively, to domestic violence cases. The victim would have to wait in fear for the alleged abuser to commit another act before having recourse. This bill avoids this "waiting for something to happen" scenario.

At the same time all of the due process rights of the alleged offender would be protected, including the right to come to a hearing in the state in which the order is issued. It is also important to note that the protection offered in this provision would extend only to restraint from contacting or harassing the petitioner. It has nothing to do with temporary support, award of property, custody, or visitation

rights.

I believe this is an important bill because we have two Air Force Bases in our state and a number of border cities that cross the lines between two states.

We had one dissenting vote in the committee because of concern over the jurisdiction question, a state's rights outlook on the question.

A judge who researched this question of jurisdiction and who testified before our committee said the numbers of these types of cases are growing. He believed a letter or a phone call to a victim from the alleged perpetrator establishes a personal contact element in our state, which does solve the jurisdiction question. The amendment to this bill further protects the jurisdiction question.

The majority of your Judiciary Committee on a 6-1 vote urges a DO PASS.

BISMARCK
Abused Adult Resource Center

222-3370

BOTTINEAU

Crisis Center

255-3028

GRAND FORKS

Sexual Assault Services for

Abused Families

1-888-662-7378

DICKINSON

Domestic Violence and

Rape Crisis Center

225-4506

ELLENDALE

Kadish House

349-4729

FARGO

Rape and Abuse Crisis Center

800-344-7273

FORT BERTHOLD RESERVATION

Coalition Against

Domestic Violence

627-4171

FORT YATES

Tender Heart Against

Domestic Violence

854-3861 Ext. 228

GRAFTON

Tri-County Crisis

Intervention Center

854-3861 Ext. 228

GRAND FORKS

Domestic Violence

Intervention Center

JAMESTOWN

S.A.F.E. Shelter

888-353-7233

MCLEAN COUNTY

McLean Family

Resource Center

800-651-8643

MERCER COUNTY

Women's Action and

Resource Center

873-2274

MINOT

Domestic Violence Crisis

Center

852-2258

RANSOM COUNTY

Abuse Resource Network

683-5061

STANLEY

Domestic Violence Program,

NW, ND

628-3233

WILLEY CITY

Abused Persons Outreach

255-3028

WILLISTON

Family Crisis Center

642-2115

WILLISTON

Family Crisis Shelter

572-0757

Representative Duane DeKrey
Chair, House Judiciary Committee
SB2281
March 7, 2001

Representative DeKrey and members of the Judiciary committee:

I am Bonnie Palecek speaking on behalf of the ND Council on Abused Women's Services in support of SB2281.

The provisions of this bill would fill a growing need to address the problems of victims of domestic violence seeking protection orders from North Dakota courts when the violence occurred exclusively outside of this state.

The problem has grown over the last year, as victim advocates from Minot and Bismarck will testify to later, and we currently have inconsistent judicial responses to protection order petitions, sometimes even within the same judicial district. Some judges are issuing such orders, and others are denying them.

Other states, including Montana, Indiana, New York, and New Jersey have addressed the problem in a variety of ways, from statute to rule-making to case law. So-called "long-arm" statutes evidently do allow one state to reach into another on some occasions in spite of long-standing restrictions on this kind of authority.

A statement in December 1996 New Jersey Superior Court opinion affirms New Jersey's jurisdictional authority in this type of case by asserting:

Were the court to deny jurisdiction in this case, the victim who seeks shelter in this state would be unprotected, unable to use the procedures established in this state which permit law enforcement officers and the courts to respond, promptly and effectively, to domestic violence cases. The victim would have to wait, in fear, for the alleged abuser to commit an additional act of domestic violence, this time in New Jersey, before having recourse to the law and to the courts of this state.

It is this "waiting for something to happen" scenario that we wish to avoid. At the same time, all of the due process rights of the alleged offender would be protected, including the right to come to a hearing in the state in which the order was issued.

After speaking with National Resource Center attorney compiling a list of similar statutes across the country, I was advised that it would be advantageous to actually include the words "personal jurisdiction" in our proposed statute. That language was adopted as an amendment by the Senate.

This bill would affirm the authority that many North Dakota courts are already exercising in granting these orders. We ask that you support the passage of SB2281 and help assure these important protections for victims of domestic violence.

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-800-472-2911 • Fax: 255-1904

HB1476



Page 1 of 1



Domestic Violence Crisis Center, Inc.

BOX 881 • MINOT, NORTH DAKOTA 58702

OFFICE: 852-2258 • FAX 838-7053 • e-mail: dvcc@minot.com

24 HOUR CRISIS LINE: 857-2200 • RAPE CRISIS LINE: 857-2500

Repres. Duane DeKrey
Chair, House Judiciary
SB2281
March 7, 2001

Repres. DeKrey and Members of the Committee:

My name is Allison Hughes and I am speaking on behalf of the ND Council on Abused Women's Services in support of SB2281.

This bill addresses cases in which out of state victims come to North Dakota without orders of protection and seek one here. In my experience as the Pro se Advocate at the Domestic Violence Crisis Center, Inc. in Minot, ND, there is a great need to protect victims fleeing from domestic violence relationships from out of state. The number of victims obtaining services from the Domestic Violence Crisis Center Inc. that came from out of state has remained steady in the last couple of years. According to the active cases of the Domestic Violence Crisis Center Inc., 18 individuals from out of state were served in 1998, 18 were served in 1999, and 12 were served in 2000. These statistics only show the numbers for one crisis center in the state.

One case that applies to this bill is one in which a young woman arrived at our center from the state of Arizona. She was fleeing a domestic violence situation that had been going on for 29 years. She feared for her life and was in need of protection immediately. She had recently been physically abused and met all criteria for obtaining a Temporary Protection Order in the state of ND. The order was completed and service was done in Arizona and the hearing date for the Protection Order was set. At the hearing the respondents attorney asked that the order be dismissed on the grounds that ND did not have personal jurisdiction over the respondent and the incident of domestic violence alleged did not occur in the state of ND. The court granted the dismissal, finding that the Court has no personal jurisdiction over the respondent pursuant to Rule (4) (b) (2) of the North Dakota Rules of Civil Procedure.

Following the hearing, that same night, the respondent went to the victim's sister's home demanding that he speak to the victim. The victim phoned the police and they informed her that the order was not valid. During the incident the respondent proclaimed that there wasn't anything she could do about it because the protection order wasn't valid.

After a month of constant harassment and stalking the respondent once again pursued the victim. While the victim was visiting her elderly mother in a secured building the abuser some how was able to enter the building and demanded to speak to her. Since this last incident the respondent has been back to the state of North Dakota attempting to make contact with the victim.





Domestic Violence Crisis Center, Inc.

BOX 881 • MINOT, NORTH DAKOTA 58702

OFFICE: 852-2258 • FAX 838-7053 • e-mail: dvcc@minot.com
24 HOUR CRISIS LINE: 857-2200 • RAPE CRISIS LINE: 857-2500

We as advocates are committed to providing direct and immediate services to all victims of domestic violence, and supporting those who provide such services. It is our intent to work toward these goals without discrimination based on age, race, sex, religion, political philosophy, sexual orientation, national origin, and origin of residence. All victims of domestic violence and sexual assault should have the ability to take control over their own lives and pursue happiness for their families in our communities no matter where they reside.

This bill would benefit all victims of domestic violence who are fleeing for their safety and help advocates serve their clients to the best of their ability.

We urge the committee's favorable consideration of SB2281. Thank you.

Sincerely,

Allison A. Hughes
Pro se Advocate
Domestic Violence Crisis Center, Inc.



**Representative Duane L. DeKrey
Chair, Judiciary Committee
SB2281**

Representative DeKray and Members of the Committee:

My name is Sue Rau, I am employed as a licensed social worker at the Abused Adult Resource Center in Bismarck, ND. I am here to speak in support of SB2281.

I work with victims of domestic violence and sexual assault. My responsibilities include assisting victims of domestic violence and/or sexual assault with the application for Domestic Violence Protection Orders. These orders have helped protect victims from further harm and have helped them leave potentially violent situations with the impression that a protection order could provide them with legal protection.

I am here to give a case example of a "glitch" in the order.

This case opened in October of 1998 with the victim requesting information about domestic violence. During the weekend of December 20, 1999 the victim called the hotline in reference to an incident of her abuser scaring her. The incident happened at 2:00 a.m. with the abuser pounding on the victim's door and demanding to see his daughter. When this attempt failed he jumped up to her balcony and started pounding on the sliding door. The victim called 911 and the police arrived and spoke to the suspect. They told him to leave the area and not return or he would be arrested. He did not return but started the next day with harassing phone calls.

The victim came to the office on Monday morning to speak with an advocate. A safety plan was discussed with the victim and a dangerousness assessment was done, to which 5 out of the 8 indicators were prevalent (see supplement). The victim applied for a temporary protection order and the order was granted. The victim was very concerned about her safety because the abuser's behavior was becoming more and more aggressive since their separation one year ago.

The order was served on the respondent that same day December 20th. On December 21st the respondent called the victim's home and left a message on her mother's answering machine. Both are violations of the protection order.

The permanent protection order hearing was held January 4, 2000. The order was granted and the judge ordered that the victim's attorney draw up the papers. The respondent's attorney volunteered to serve his client the permanent protection order. The papers were sent to the respondent's attorney and were not delivered as promised to the respondent by his attorney.

This is where our problem begins. On the 6th of January 2000 the respondent was at the same restaurant as the victim and her family, he left without incident. A police report was done but no charges filed as the respondent had left the premises promptly.

On January 9, 2000 a violation of the order occurred at the Radisson Inn. The respondent showed up at a Christmas party that he knew the victim would be attending. The security guards were summoned to have the respondent removed from the premises. The security guards reviewed the victim's order and stated that he would have to leave or be in violation of the order. The respondent became belligerent and refused to leave as the order stated he had to remain 100 feet from the victim. The respondent claimed if he remained at the far side of the room and the victim on the other side he would not be in violation of the order. The Bismarck Police were called to the scene. The officers obtained the dimensions of the room and stated he would have to leave the Radisson or be arrested. By chance the respondent's attorney was at another party that was also being held at the Radisson and told the police he would take care of his client. The police left the scene, as did the respondent and his attorney. The respondent did return to the Radisson but remained outside the room the victim was in until she left the party. She stated she left so there wouldn't be any trouble.

The police report was sent to the State's Attorney's Office for review and possible charges. The assistant state's attorney refused to charge out the violation. The assistant state's attorney stated that when a permanent protection order has been awarded by the court, the temporary order is then voided by the permanent order and is no longer valid. The permanent order then becomes the valid order but is not enforceable until this order is served upon the respondent. That means unless the order is served, law enforcement cannot enforce the permanent protection order and they can't use the temporary protection order to arrest or charge out because it was voided by the issuance of the permanent order. This means that the victim has no protection from her abuser during the period between the issuance of the permanent order and the service of the permanent order.

Unfortunately, in this case the victim dismissed her order and chose not to pursue the issue further as she felt let down by the system. She did everything that she was supposed to do to protect herself, but she felt the system let her down.

This "glitch" in the process can be potentially dangerous for victims. The respondents will not be held accountable for violations because there is not an order to enforce. The respondents can then return to the homes of the victims and inflict harm or harass victims without consequences. This can be a dangerous time of victims and their families.

We urge the committee's favorable consideration of SB2079.

Thanks you for hearing our testimony.

Sincerely,



Sue Rau, LSW
Abused Adult Resource Center

**Representative Duane L. DeKrey
Chair, Judiciary Committee
SB2281**

Representative Dekray and Members of the Committee:

My name is Sue Rau, I am employed as a licensed social worker at the Abused Adult Resource Center in Bismarck, North Dakota. I am here to speak in support of SB2281.

I work with victims of domestic violence and sexual assault. My responsibilities include assisting victims of domestic violence and/or sexual assault with the application for Domestic Violence Protection Orders. These orders have helped protect victims from further harm and have helped them leave potentially violent situations.

The Abused Adult Resource Center serves clients from all over the United States. Many of the women who come to our agency from out of state are unable to obtain a Domestic Violence Protection Order due to jurisdictional issues. Judges in other districts in North Dakota do issue orders against people in another state. Our judges in the South Central District do not issue protection orders because they do not have jurisdiction over someone living in another state. In other words, they cannot tell someone who resides in another state what they can or cannot do. If their abuser enters the state of North Dakota then and only then can we have an order issued.

Last year our agency assisted with 200 protection orders. Approximately 5% of our cases are out of state related. We have turned people away for protection orders because of this jurisdictional issue. When victims move to North Dakota because of domestic violence they many times leave in a hurry. They don't have time to file for an order for protection in their state before they leave, their safety is most important. Once in North Dakota they find out they cannot get an order. The victims are at risk for further harm and with no way to get an order. One of the ironies is they can file for divorce and be granted it but not an order for protection. Many times the victim does not want a divorce or are not married so divorce is not the answer. They simply want safety.

This bill would assist victims with providing a safe environment away from their abusive party. We urge the committee's favorable consideration of SB2281.

Thanks you for hearing our testimony.

Sincerely,



**Sue Rau, LSW
Abused Adult Resource Center**