

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

3025

2005 HOUSE JUDICIARY

HCR 3025

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3025

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/8/05

Tape Number	Side A	Side B	Meter #
1	xx		7.8-25.7
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

Chairman DeKrey: We will open the hearing on HCR 3025.

Rep. Dan Ruby: Sponsor of the bill, explained the reason for the bill. I introduced this resolution to address something I'm sure we all hear about. In looking at the different areas of the issue throughout the interim, I talked to people in LC many times about different things, and hit a lot of roadblocks. You often hear about someone not getting their child support, the state enforces that. However, if somebody doesn't receive their visitation, which I believe for the children and parents, is just as important to see their children as it is for the other to receive the money. In that case, if somebody is denied their visitation, the state won't enforce that court order even though it's in the divorce papers. So they must get a lawyer, and many times they can't afford one or aren't sure that they could win the case if they did spend the money. In response to that, LC said that Child Support Enforcement Unit enforces the child support, can't they also enforce the visitation, and I was told very clearly that these are two separate things and

they need to be handled two different ways. They are completely different, not associated. I think there is some association in that people who would receive their visitation correctly are more likely to feel better about paying their child support and anything we can help that, I think is important too. But there are a lot of situations why child support is denied, or if a court order and they're not supposed to receive it, then they shouldn't if there are circumstances that dictate that. However, in many cases, there are two loving parents, who for one reason or another can't along together, but both truly love their children and I introduced this to look into this issue because I would know if we set up a separate unit for child visitation enforcement, there would be a hefty fiscal note, unless it can be looked at and done within a different agency, many social services. Of course, they would tell you that they don't have the staff or resources. They are already looking at times if there is abuse or if there are reasons why somebody shouldn't be there, they should also know in cases why someone should be there. Very simply, this is to study this issue a little further, maybe come up with some solutions as to what could be done to improve this. I did receive an e-mail recently that said if there is a problem out there, why are you studying to see if there is a problem. I know there is a problem, I'm not asking for the study to see if there's a problem, we know that there's a problem. We just need to find out a good, reasonable, rationale way of finding out what we can do.

Representative Koppelman: What options are there now for parents who feel that their visitation rights, that the court has granted, are not being availed to those rights. Do they go back to the court, do they go to law enforcement.

Rep. Dan Ruby: In the experience that I've dealt with people that have asked, they say they must go back to the court; however, there are decisions, did they get their children, did they bring

them back on time, did they get them on the day they were, but did not agree to a change because it didn't work for one or the another. There are so many reasons why it can be difficult to transfer children, sometimes out of state. I know of one individual who is separated, and he had every other weekend, two weeks in the summer, he had some other times as they would allow, certain holidays. He got word that his ex- was going to leave the state, so he went to Ward County, and asked if she could leave. They said no. A week later, she's gone. They said what do you want us to do, what are you going to do about it, she violated our agreement, they told him he had to go to court, that's up to you to get to court. In that situation, the children were already, by the time he talked to his lawyer, enrolled in school, he decided not to go after them. I told him that was a mistake at the time. It wasn't until they were past the age of 18, and he was visiting with them down there, and one of the kids was saying something, I could have brought you back, and the kids said why didn't you. I don't know how he's living with that. I'm sure it bothers him to this day. He was looking at, I'm still paying off the lawyer from the divorce, I've got other bills, now I'm going to stick myself in debt.

Representative Onstad: Was there any thought of adding grandparents. It seems to me that they become a part of that.

Rep. Dan Ruby: Very good point. I do receive information from people who are very concerned about that too. I would have no problem encouraging that to be a part of the discussion and introduced in there.

Representative Delmore: Would you also agree that there are some instances where child visitation because of abuse and neglect, are not going to be a viable option, as much as all of us would like to see two parents raise these children.

Rep. Dan Ruby: Absolutely. I would not encourage the enforcement of something like that to be in conflict with other orders, where a spouse had to leave the home because of abuse, or a separation was because of abuse, either the spouse or children, no, those people, I don't have much sympathy for them. Those situations, again, are where we need to make sure that if something were to go through, that rules would have to be written to make sure that it includes all these different scenarios that can come up, that's why I just didn't want to introduce something and have everyone throw a million scenarios and problems at me because they are there. It's a very emotional situation, not just the divorce but also the child visitation, and child support.

Chairman DeKrey: Thank you. Further testimony in support of HCR 3025.

Bonnie Palacek, ND Council on Abused Women's Services: We were not a part of preparing this resolution, but when we saw it, we were very interested in its implications and are very much in support of studying this issue. As Rep. Ruby pointed out, it is an issue that we are asked about a lot. This committee, and certainly the legislature, have been involved over the years, about creating a rebuttal presumption, which means that if there is a dispute over custody or visitation that the presumption is, if there is violence in the relationship, the nonviolent parent would have custody and in fact, visitation would only be ordered if there was supervised visitation. This whole issue really led us to look at what is a safe and neutral environment for visitation. Right now, we have a grant from the federal government which we've had renewed a couple of times, which allows us to pass through funding to five visitation centers in the state. Some of them are located in domestic violence programs. Some of them are independently community based, one recently was begun on the Turtle Mountain Reservation and so the tribe is

involved there. They're really working very hard to make sure that in all cases, because they are not limited to cases of domestic violence or sexual abuse, that they are a safe and neutral environment for these children. We would really like to know how well these visitation centers are working, whether they are approached, whether the kinds of cases they are seeing or screening is appropriate and particularly working in the best interests of the children. We have a federal grant pending right now, we're supposed to hear in March which would study exactly that. It was interesting that the question was raised about the relationship between a visitation center and paying child support. We all know that that isn't supposed to be connected. You're not paying to see your child. That's one of the things we proposed to be studied in this project if we're funded. We need to know more about how that's working. The courts in ND are very interested in this as well. Several judicial districts have agreed to partner with us in this project, if indeed we're funded. They're wanting to know, do they have less work, if the visitation center is working well, then in fact is child support paid more, are there fewer incidents of altercations between the parents and does it, in fact, lessen the burden on the court, because that is the recourse, you have to go back to court, it's expensive and a burden on our courts. We would be very interested in this study. We would like to see how often the rebuttal presumption is being used as a statute, we'd like to know, do ND statistics match with national statistics, which we know indicate that in cases of violent relationships, if the perpetrator of the violence goes after custody, it is more likely that that parent will get custody. It's counter intuitive, but those are the national statistics. We don't know if that bears itself out in ND and we would like to know the answer for that as well. Another big area, whole role of guardian ad litem in ND for children. I know you've looked at some issues with adults and elderly guardians and people with

disabilities. But in terms of guardians for children, we really have very few standards. There isn't a grievance procedure, so if someone has a grievance against a guardian, there is no way to move forward with that. We would really see this kind of a study as a springboard to looking at some of those issues that are so critical for children in studies conducted by both the lay guardians, I think they call them custody investigators, and the guardians ad litem who are actually attorneys looking out for the best interest of children. We're supportive of this study.

Representative Galvin: You use the term "rebuttal presumption". Can you define that for me.

Bonnie Palacek: The presumption part of it is that it is presumed that the nonviolent parent would have custody, or unsupervised visitation with a child, unless the other side provides an argument, which is the rebuttal part of it, that that shouldn't be the case. So it shifts the burden of proof on the person that would have a protection order against him or her, or have a history of domestic violence or was convicted of a sex offense. If there was domestic violence, the presumption is that the nonviolent parent will have custody and unsupervised visitation, but that's not absolute, it's open to being rebutted.

Chairman DeKrey: Thank you. Further testimony in support.

Vicky Altringer, Lay Guardian Ad Litem: There is such a thing as custody investigators and mediators. I'm concerned about this issue, because it comes up all the time when I go to court for deprived children. As a lay guardian ad litem, we used to go to court for deprived children. I really support this bill.

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

Chairman DeKrey: What are the committee's wishes in regard to HCR 3025.

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House Judiciary Committee
Bill/Resolution Number HCR 3025
Hearing Date 2/8/05

Representative Koppelman: I move a Do Pass.

Representative Zaiser: Seconded.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. DeKrey

Date: 2/8/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3025

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Koppelman Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. DeKrey

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2005 10:33 a.m.

Module No: HR-25-2099
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3025: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3025 was placed on the Tenth order on the calendar.

2005 SENATE JUDICIARY

HCR 3025

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3025

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1		X	3140 - End
Committee Clerk Signature <i>Maria S Solberg</i>			

Minutes: Relating to the study of the fairness & equity to issuance of enforcement of child visitation orders.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Dan Ruby, Dist. #38 Introduced the Resolution (meter 3119) A frustration that people talk to me about is that if you do not pay your child support the state makes sure you pay. If you do not receive your court ordered visitation the person must go through the process of obtaining a lawyer, time and expense, to go after there right. The courts want to keep these as separate issues even though they are related. This is a plan to take a look at this to see what can be done.

Sen. Traynor asked if in the research was there more or less visitation having an affect on the child support? People tend to be more willing to pay when they have seen there kids.

Senator Triplett asked if the issue was in front of the judge or being able to afford an attorney an absence of justice? He responded that he does not want to second guess the judges determination and in many cases these are an agreement that two parties have made and things change later and one does not honor the agreement.

Sen. Traynor stated that this is about the "visitation" not child support this is already enforced.

Testimony in Opposition of the Bill

None

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Trenbeath made the motion to DO Pass and **Senator Syverson** seconded the motion. All members were in favor and motion passes.

Carrier: **Sen. Trenbeath**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/14/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 3025

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Trenbeath Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Trenbeath

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

1
REPORT OF STANDING COMMITTEE (410)
March 14, 2005 12:41 p.m.

Module No: SR-46-4864
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3025: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3025 was placed on the
Fourteenth order on the calendar.