

2009 SENATE JUDICIARY

SB 2042

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2042

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7198

Committee Clerk Signature



Minutes: **Senator Nething, Chairmann**

Relating to parental rights & responsibilities and to parenting coordinators, relating to child custody and parental custody and visitation rights and duties.

Representative Shirley Myer – District 36 – Introduces the bill, addresses issues of child custody. She says this bill is to take away the adversarial nature of these proceeding. They recommend having parenting plan and to develop a parenting coordinator program, which is a neutral person you can go to who looks out for the best interest of the children. She knows this will not solve everyone's problems but it is a start.

Vonette Richter – Legislative Council – See written testimony.

Sherry Mills Moore – A volunteer lobbyist for the State Bar Association of ND and most recently served as the chair of the Custody and Visitation Task Force formed by the State Bar Association of ND. She explains the bill. See written testimony.

Mills Moore – Says this bill does not look at support only custody and visitation. Parents need to share the time and responsibility of their children. Decision making needs to be shared between them. Regarding the parenting coordinator she said a parenting coordinator is a mediator with teeth. She continues to go over the bill in detail. See written testimony.

Senator Nething – Asks what the judges views are on this bill.

Mills Moore – Said she presented this to the Judicial Conference in June and they did not take an official position on it but she had a lot of favorable comments from them.

Senator Olafson – Commends the task force on all the hard work put in to this bill. He asks if there is anything unique in this bill that other states are not doing.

Mills Moore – Said no, we are not ahead of the pack on any of this. There are other states with parenting coordinators, parenting plans are used in many states. There is nothing creative in the bill, just good sense.

Senator Fiebiger – Asks regarding the parenting plan, it has certain sections that have to be included, is there anything to prevent parents from making it more detailed if they choose.

Mills Moore – Responds these are the minimum requirements not maximum.

Senator Fiebiger – Asks if this bill permits and requires the parents to be more involved in the decision making.

Mills Moore – She responds that the parenting plan alone will require them to spend more time thinking about the future as separated parents.

Senator Schneider – Ask if she envisions the parenting coordinators to be trained mediators or social workers.

Mills Moore – Said they will come from a variety of places. There will be qualifications and training.

Senator Nething – Commends her on a big undertaking. He then asks her to explain the amendment.

Mills Moore – Explains the amendment, see attachment.

Senator Nething opens it up to opposition.

Nancy Carlson- Opposes the bill- She said she is a divorced single parent that has been receiving child support for the last 15 years. She did not oppose any parts of the bill until she

got the parenting coordinator section. She argues the way she loves her child does not have anything to do with her ex-spouse. She says of the part of parenting coordinators is very vague. She asks if a coordinator will be neutral. Qualifications for the job need to be determined. If the Supreme Court establishes these coordinators shouldn't they be responsible for them. If someone has a problem with one of these coordinators who do they go to? She asks where she, or anyone, would get the money to pay for this coordinator. She thinks the fees should come home from somewhere. She said if you make 90% of the income you're going to pay 90% of the fees. She understands the decision of the coordinator is binding, it also says they can make a decision without you being there. All they have to do is contact you. She said the only way to fight the decision is to go to court, she thought the point of all this was to keep from going to court. She worries where she would get the money for these fees. She also questions the confidentiality and why they can't appear in court. She believes there are too many "what ifs" in the coordinator plan and too many unanswered questions.

Judge Hagerty – She definitely supports this bill and feels it is a good step forward.

Close Hearing on 2042.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2042

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7752

Committee Clerk Signature

Diane Paus

Minutes: **Senator Nething, Chairman**

Committee work – Discuss the amendment

Verbal vote on amendment, Senator Fiebiger, seconded by Senator Schneider

All yes

Motion for do pass by Senator Fiebiger, seconded by Senator Olafson

Vote 6 yes, 0 no

Senator Fiebiger will carry

Re-referred to appropriations

FISCAL NOTE
Requested by Legislative Council
04/02/2009

Amendment to: Reengrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						\$42,040
Expenditures			\$52,040			\$42,040
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows the courts to appoint a parenting coordinator to assist in resolving parenting time disputes by addressing circumstances which are not specifically addressed by an existing court order.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 11 of the bill provides for the creation of the parenting coordinator program. The Supreme Court is responsible for establishing qualifications and maintaining a public roster of individuals eligible to serve as a parenting coordinator.

The House amendment provides legislative intent that the parenting coordinator program be self-sufficient after the 2009-11 biennium and changes the expiration date of the program to June 30, 2013. In order to provide training to coordinators after the 2009-11 biennium, the courts will need to assess administrative fees. The Judicial Branch will need to request continuing appropriation authority to collect and spend fees for this purpose.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The courts are to assign the cost of the parenting coordinator between the parties in the case. The Supreme Court would be responsible for determining necessary qualifications and maintaining a list of parenting coordinators. The Supreme Court would incur costs for providing training and supervising the coordinators. Other incidental program costs would include phone, postage, travel and miscellaneous office supplies. The amendment has no additional fiscal impact.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

Funding for this program was added to the Judicial Branch budget in the Senate.

Name:	Don Wolf	Agency:	ND Supreme Court
Phone Number:	328-3509	Date Prepared:	04/02/2009

FISCAL NOTE
Requested by Legislative Council
03/05/2009

Amendment to: Reengrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$52,040		\$42,040	
Appropriations						

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2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
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B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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Funding for this program was added to the Judicial Branch budget in the Senate.

Name:	Don Wolf	Agency:	Supreme Court
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Phone Number: 328-3509

Date Prepared: 03/05/2009

FISCAL NOTE
Requested by Legislative Council
02/12/2009

Amendment to: Engrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
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Expenditures			\$52,040		\$42,040	
Appropriations						

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B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Funding for this program is not included in the Judicial Branch budget recommendation.

Name:	Don Wolf	Agency:	Supreme Court
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FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$52,040		\$42,040	
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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This bill allows the courts to appoint a parenting coordinator to assist in resolving parenting time disputes by addressing circumstances which are not specifically addressed by an existing court order.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Funding for this program is not included in the Judicial Branch budget.

Name:	Don Wolf	Agency:	ND Supreme Court
Phone Number:	328-3509	Date Prepared:	12/09/2008

Phone Number: 328-3509

Date Prepared: 02/12/2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2042

a prima facie case is established, the "The"
Page 12, line 25, overstrike "If" and insert immediately thereafter "Only if", after "established"
insert "shall", overstrike the comma, and overstrike "shall"
Page 12, line 26, after "hearing" insert "only if a prima facie case is established"
Renumber accordingly

Date: 1-26-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

SB 2042

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Re-referred to App.

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen. Fiebigen Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebigen	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Fiebigen

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

Amendment Verbal pass

REPORT OF STANDING COMMITTEE

SB 2042: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2042 was placed on the Sixth order on the calendar.

Page 12, line 25, overstrike "If a prima facie case is established, the" and insert immediately thereafter "The"

Page 12, line 26, after "hearing" insert "only if a prima facie case is established"

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2042

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2042

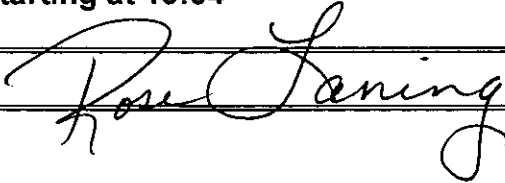
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: **8427 starting at 19:04**

Committee Clerk Signature



Minutes:

V. Chair Bowman called the committee hearing back to order at 9:15 am in regards to SB 2042 relating to parental rights and responsibilities, child custody, parental custody and visitation rights.

Rep. Shirley Meyer, District 36

Gave overview of SB 2042 and reminded the committee that in 2006 there was an initiated measure that advocated joint custody of children. The measure failed, but child custody is still a problem.

Chairman Holmberg: We noticed the bill had a hearing and the original fiscal note is dated 12-09-08, then the bill was amended and reprinted. Were the changes that were made in the policy committee, changes that would change the fiscal note or is the fiscal note from December still appropriate?

Sherry Mills Moore, Lobbyist, State Bar Association

The amendment put the word "only and just" and into one particular procedural part and would absolutely no fiscal effect.

Senator Christmann asked if the bill is rather trivial in terminology and wouldn't make that

much of an improvement since she didn't use the terminology in her testimony and reverted to the old terminology.

Shirley Meyer replied that the bill hasn't passed yet, but people/parents who fight are going to fight. A lot of noncustodial fathers had a problem with how courts dealt with them. They didn't like to be called non-custodial parents. She stated that the bill won't cure all, but felt with what the state bar and states have done. Terminology is punitive, but the parent coordinator program has a neutral party who sits down with parents and takes them out of an adversarial situation.

Vonette Richter, Legislative Council

(Written attached testimony # 1 - Excerpt from 2009 Legislative Council Report)

She presented a portion of the final report that listed the recommendations of the task force and she also clarified terminology.

Senator Warner: We're also working on the judiciary budget. Does any of this play into family court?

Vonette Richter: I would say, "No, it does not." There is a pilot project or a mediation program and there may be some overlap with the same people working as mediators or parenting coordinators.

Senator Christmann: Does this have anything to do with amount of child support paid?

Vonette Richter: Child support is not addressed in bill.

Sally Holewa, State Court Administrator: My office prepared the fiscal note for this bill.

The cost in this fiscal bill is almost entirely recruiting and training. We're looking at about \$26,000 per biennium. My office has done some research and been in contact with several other states regarding their programs and what it takes to run the program financially. We feel confident that if you pass the bill, we are prepared to go forward.

V. Chair Bowman: Where are the coordinators trained and who pays for the training? Is that in the fiscal note?

Sally Holewa: Yes, that's included in \$52,000 for the 1st biennium. We bring in trainers for possibly week long training sessions.

Chairman Holmberg made the committee aware that this is a policy change, but there is no money in this bill. If it were to be funded it, that would have to be done in SB 2002 where there is a subcommittee. The subcommittee **Senator Christmann, Senator Kilzer, and Senator Warner**, have you discussed this addition?

Senator Christmann: No.

Senator Mathern asked what the consequences would be if the bill was passed and no money was appropriated.

Sally Holewa said if you pass it, you'll want to implement it. We'd fund it somehow, maybe pull money out somewhere else or maybe scale back on one training session. We'd do what we had to do to accommodate that.

Senator Mathern: It was a concern with the bill being separated. Thank you.

Sherry Mills Moore, Lobbyist, State Bar Association of North Dakota

Testified in favor of SB 2042. (Written attached testimony # 2)

Ms. Moore served as chair of the Custody and Visitation Task Force and reported on their findings after reviewing practices in other states. She also gave a long view of what this bill does.

(42:43)

Senator Christmann: looking through this briefly, it looks like the parents have to agree that they want this. It doesn't happen automatically, and then we have to pay for it. Are there a lot of states doing this? And if this is voluntary, as soon as the mediator rules against one parent, that parent will no longer want to participate in this program anymore, and it would unravel.

Sherry Mills Moore: It's not purely voluntary. The court would have the power to appoint even if one of the parties did not want to participate. It is a tool of the court as well as the parents. They may not like that decision and they can go back into court and try and get the order changed. It's the underlying order that they're not understanding or working with – it's flawed. But if that's not the problem, it's merely an interpretation of "I get holidays, and he get's weekends, and it's my weekend and his holiday and I want the kids, and he wants the kids. What are we going to do?" Both speak to the parenting coordinator. The parenting coordinator will listen to all this and hear what is said and how it's been applied. And I believe that Thanksgiving this year is dad's or mom's. It will be done that way then for that year. And in answer to your other question, a lot of other states are doing this. It's not cutting edge, but its new here.

(45:15)

Senator Fischer: This sounds a lot like the shared parenting initiative. If you have two people who don't get along, you don't get along. What makes you think this legislation will cure that?

Sherry Mills Moore: There are some people that no amount of legislation in the world will cure. If we could just pass a law that says get along, then we'd be done. There are a lot of features in here that are built to answer some of those concerns. One of the new factors of looking at what's best for children in resolving parenting time is that the courts would look at which parent would best foster the relationship with the other parent. The courts will look at who will be a better job of including the other parent. Parenting plans is another feature. People will have to file parenting plans with the court that go into a little more detail about how they are going to cooperate. There is a feature for joint decision making. People have to try to make their decisions together, but it also requires that there be a tie-breaker. You either have

to have a system or person if the parents don't agree. There are more features, but it is not a shared parenting initiative. There are a lot of improvements in this bill.

Senator Fischer: If you have people who aren't agreeing, and they go into this program, what make you think that they will agree? Some people are going to get their way and the other person may not like that. This will go back and forth.

Sherry Mills Moore: That's one piece of this legislation is the parenting coordinator. I don't think the purpose of a parenting coordinator is necessary to turn people into a working unit. That would be idealistic to think that's the result. It is to resolve disputes without it requiring going to court. Because a lot of the disputes that come up and the complaints we hear are how the visitation was applied. It's not how it got set up in the first place, but "She won't let me have them because I didn't pay the support." or whatever the complaint. So this would be for those families who can never get along after the fact, to have a tool to better deal with those short of the court house. It doesn't close the court house, but just gives them another person in their tool box to work with.

Senator Fischer: Do you think child support will get pulled into this at some time?

Sherry Mills Moore: Our counselors did not look at child support. We left the money out of it except for this fiscal note. There is no money attached to this, but child support walks hand in hand with custody and visitation, so as long as somebody has to pull out the check book or maybe doesn't want to, there will be ways they are tied together and will be reasons that people are unhappy with each other. This is an attempt to make the process of determination of custody better.

Chairman Holmberg closed the hearing on SB 2042.

Chairman Holmberg informed the committee that they have two choices here. We can leave the bill sitting on the table until SB 2002 is resolved. Although, as Senator Mathern pointed

out, the choice is that we fund or don't fund. I'm not lobbying one way or the other on that.

The committee will have to recommend. We can't pass the bill out because of the stand alone policy issue. What are the wishes of the committee?

Senator Mathern: I think most of the telephone calls I get calls I get relate to parenting time and child support. I think this is a public policy that makes a positive step. I think we should pass this bill now and hope the appropriations committee also funds it. I think the public policy here is crucial for our state for our families.

Senator Christmann: For clarification, this money is already calculated into the governor's budget, correct?

Chairman Holmberg: No. If the subcommittee was going to recommend funding this, you'd either have to add the money to the budget or find some money within the budget to reallocate. But that can be done irrespective of whether or not this bill is here or it's already been sent to the House. I'm looking at the subcommittee members, and when we have these kind of bills, if the subcommittee wants to keep it here, we will allow that.

Senator Kilzer: I suggest we hold it for a couple subcommittee meetings.

Chairman Holmberg: Thy will be done.

Senator Warner: If this is approved and if it is funded and then goes forward, then in the next biennium, does it appear in the judicial budget as a line item?

Chairman Holmberg: I don't know, but that would be their problem and they will make sure it's in there somewhere.

Senator Kilzer: We may never know where.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2042

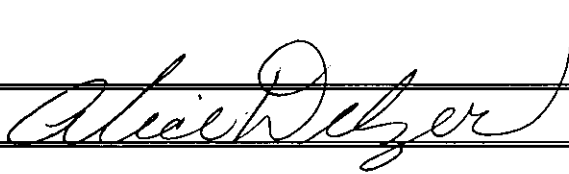
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-09--09

Recorder Job Number: 8988

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the discussion on SB 2042. 14.59)

Senator Mathern stated SB 2042 is a positive bill. (14.59)

Policy committee sent it to us as a Do Pass.

Chairman Holmberg stated to be politically correct we do this from time to time.

Senator Mathern stated we got the information regarding the cost per year. I think we should pass it.

Senator Mathern moved Do Pass. Seconded by Senator Krauter

Senator Christmann won't speak for other committee members but his own thoughts are we probably won't be able to give them what they wanted. If we were to add something to their responsibility so if we pass this we ought to support putting that money in that budget.

Changing titles is kind of silly. We should put a sunset clause on it and see if how it works for two years. (18.25)

Senator Mathern indicated one of the issues, in terms of sunset I think would be difficult is where does it apply because if we approve this policy change in terms of verbage in visitation, custody and all of that. I think that will become part of the language we use, it is going to take years and years to implement that. I see the concept of putting sunset clause on the actual

1 expenditure for the parenting coordinator. I think we ought to add that into the judicial bill or this bill and pass this out.

Senator Kilzer agreed with the sunset clause.

Senator Mathern suggests the Legislative Council draft an amendment on the parenting coordinator.

Senator Warner questioned committee members whether this is being implemented state wide and if there is a relationship to family court.

Senator Mathern stated it would be implemented state wide. It would be difficult for the family coordinator to be involved with every dispute, but it is state wide.

Chairman Holmberg indicated if the fiscal note was less, we would never have seen this bill.

Senator Kilzer asked who would want that job?

Senator Mathern there is another feature here that is the court would need to consider in determining who has parenting responsibility, which parent is most likely to have an environment with the other parent. Right now, who will get custody, is not one of the variables. It is the judge's decision. (22.41)

Chairman Holmberg asked Becky about the mechanics first. The money is not in this bill. The money would need to be put in the judicial budget. Which is the cleanest method? The coordinator be a two year sunset, which is cleaner.(23.10)

Becky indicated it appears this bill does provide the coordinator funding in the judicial bill. The language can be added regarding

Senator Mathern moved we put the sunset clause in this bill for the parenting coordinator.

Seconded Senator Robinson

Discussion.

Senator Christmann indicated we are talking like we are hiring a parenting coordinator. His understanding is we are paying the Court system to hire and pay them (25.01)

Senator Mathern stated that essentially Senator Christmann is correct, this person would not get involved in all these cases, but would take most of their time to train judicial officials and other people in ways to address these problems. It is a new position in the court system that they don't have right now.

Senator Christmann stated that is not how he understands it. This bill provides money to the court system to train parenting coordinators but he doesn't know exactly how they will get their money, but the money for them is going to come from the parents of these kids.

Sandy stated this is not one coordinator it is just the cost for the training of parent coordinator. There is no request for a FTE for this bill, just the cost for the training of the coordinator.

Senator Christmann stated they will be private contractors.

Sandy indicated this is just for costs

Chairman Holmberg if the court had written the fiscal note less

Senator Mathern **Senator Christmann** is correct there two words used. Coordinator or the program.. The dept could implement it in different ways, we could still do a sunset the consequences is the same. But closer to the reality. Not find this person

Chairman Holmberg asked Becky if that can that be written about the program in the sunset clause.

Becky said she believed so.

Chairman Holmberg called for an oral vote on the amendment The amendment was a do pass. Chairman Holmberg asked for a motion on the amended bill.

Senator Mathern moved SB 2042 as a Do Pass as Amended. **Senator Krauter** seconded it. Roll call was taken with 13 yes, 0 and 1 absent.

Page 4

Senate Appropriations Committee

Bill/Resolution No. 2042

Hearing Date: 02-09-09

Chairman Holmberg asked Senator Mathern to carry the amendment and then he would have to talk to judiciary to see if they want to carry the bill (29.34)

Chairman Holmberg closed the hearing on SB 2042

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2042

Page 1, line 5, remove the second "and"

Page 1, line 7, after "duties" insert "; and to provide an expiration date"

Page 17, after line 30, insert:

"SECTION 13. EXPIRATION DATE. Section 11 of this Act is effective through June 30, 2011, and after that date is ineffective."

Renumber accordingly

Date: 2/9/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Mather Seconded By Krauter

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer	✓		Senator Warner	✓	
Senator Christmann	✓		Senator Robinson	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Bowman	✓		Senator Lindaas		
Senator Kilzer	✓		Senator Mather	✓	
Senator Grindberg	✓		Senator Seymour	✓	
Senator Wardner	✓				
Chairman Holmberg	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment P Mather carry Amendment

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

Potential Judiciary ? May carry the bill into floor.

REPORT OF STANDING COMMITTEE

SB 2042, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2042 was placed on the Sixth order on the calendar.

Page 1, line 5, remove the second "and"

Page 1, line 7, after "duties" insert "; and to provide an expiration date"

Page 17, after line 30, insert:

"SECTION 13. EXPIRATION DATE. Section 11 of this Act is effective through June 30, 2011, and after that date is ineffective."

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2042

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2042

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10006, 10009

Committee Clerk Signature

Al Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2042.

Sherry Mills Moore, Lobbyist for ND State Bar Association: Support (attachment), explained the bill.

Rep. Delmore: Would you see the court appointed person as someone who had some kind of specific training to do the job of parenting coordinator.

Sherry Mills Moore: Yes, there would be qualifications set out by the Supreme Court, and in all of the sessions it was discussed that there will have to be training. I think that will be one of the difficult parts. I see the parenting coordinators come from the background of an attorney, retired judges, counselors, pastors, etc. I think primarily you have to have some good skills.

Rep. Delmore: How are they appointed, would the judge choose a specific person, or do people choose them. Would that pose a problem if I wanted someone and my ex-husband would want someone else.

Sherry Mills Moore: I think the court would appoint them and it would be from a list that has the names of people trained as parenting coordinators.

Rep. Klemin: On the parenting coordinator section ties in with the sunset clause on section 13 of this bill. Why is it that there is a sunset clause on the parenting coordinator section.

Sherry Mills Moore: That was put in there by the Senate Appropriations subcommittee. I believe that the reasoning was that they wanted to see how it worked. The other reason for the sunset clause was so that they would be able to ascertain the effectiveness of the program.

Rep. Koppelman: Is that the only change between the first and second engrossment to the bill. What other changes were made.

Sherry Mills Moore: No, I think there were definite changes made, we had left out the word "only" (inaudible) and so there was some confusion in regard to modification whether a hearing should be held or not and that made it clear. I'm not sure if that was included in the bill that we presented at the first engrossment. (inaudible).

Rep. Griffin: On page 7, domestic violence protection orders, that the court shall consider those when determining whether to restrict or exclude. What do you envision that term to mean, would it include order prohibiting contact where there is criminal charges or include domestic violence restraining orders and do you think it would include temporary orders.

Sherry Mills Moore: This language is pretty much from the current law, I think it includes any of the domestic violence protection orders. The courts look at domestic violence orders. They wanted to specifically make it a part of the bill, that's current law (inaudible). If there is a no contact order, then it is difficult to require a parent to communicate in some of the ways that may require other parents. (can't hear).

Chairman DeKrey: Thank you. Further testimony in support.

Vonette Richter, Legislative Council: Neutral (attachment).

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Shirley Meyer: Sponsor, support (attachment).

Chairman DeKrey: What exactly is the money for, to train these people.

Rep. Shirley Meyer: I believe it is to establish and implement the parenting coordinator program and keep a roster, so that the people will know who to contact and they will get interviewed for the position of the parenting coordinator.

Rep. Koppelman: As Ms. Moore testified earlier that they have had some discussions regarding some of the components of Measure 3, and I don't know if you did, or if the committee officially did discuss it, has there been any feedback that you're aware of in terms of whether those folks believe this to address some of their issues.

Rep. Shirley Meyer: They did provide a great deal of documentation that Vonette was gracious enough to provide to all of the committee. I did try to forward all those pieces to you, and with that they realized, and I continue to have discussions with several of the people, as I'm sure you all have as well. The basic thing here is, if people want to fight, they're going to fight. If you want to carry a grudge, you're going to carry a grudge. This will not fix the person who wants to use their children as a weapon against the person they once loved. We realize that. But the people who truly believe in the best interests of their children and love their children, they will want what is best for their kids, they feel this is a start in the right direction. It really does make a difference and I don't mean to single out the non-custodial fathers, but some have been treated badly and I have had discussions with several of them that said this won't make any difference, and maybe it won't. But going forward in the future, we're hoping that it will start to make a difference for these kids. It will go back and forth. If they're willing to work this through, it helps. There are several that say this means nothing.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2042.

Rep. Kretschmar: I move to amend the bill, remove the sunset clause in section 13.

Rep. Wolf: Second.

Rep. Klemin: It seems to me that the Senate Appropriations put that on so they could take another look at the appropriation when it comes back next time, but if you look at the fiscal note, and it says that this is not part of the Supreme Court budget. I am presuming that next time it would be a part of the Supreme Court budget. So it only makes sense to take it off.

Chairman DeKrey: Further discussion, voice vote. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended and rerefer to Appropriations.

Rep. Wolf: Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED/REREFERRAL TO APPROPRIATIONS

CARRIER: Rep. Wolf

VR
3/3/09

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2042

Page 1, line 5, after the semicolon insert "and"

Page 1, line 7, remove "; and to provide an expiration date"

Page 18, remove lines 1 and 2

Renumber accordingly

Date: 3/3/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Wolf

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

w/ Rereferral to Appropriations

REPORT OF STANDING COMMITTEE

SB 2042, as reengrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2042 was placed on the Sixth order on the calendar.

Page 1, line 5, after the semicolon insert "and"

Page 1, line 7, remove "; and to provide an expiration date"

Page 18, remove lines 1 and 2

Renumber accordingly

2009 HOUSE APPROPRIATIONS

SB 2042

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **2042**

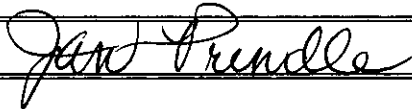
House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: **13 March 2009**

Recorder Job Number: 10936

Committee Clerk Signature



Minutes:

Chairman Delzer opened the hearing on Senate Bill 2042. Roll was taken at a previous hearing.

Representative DeKrey explained the bill. The system that we have has a lot of problems.

This bill is an attempt to solve that. We took testimony from the state bar and other interested parties and we came to conclusion that the Judiciary Committee, for the small investment of money this would cost if it works, and there is a good chance that it would, the long-run benefits would save us a tremendous amount of money in the judiciary. A parenting coordinator would be assigned during custody cases and would have the authority within the judge's order of that assignment of custody that they would be able to enforce decisions in the custody order so they wouldn't have to run back to the courthouse all the time. The Supreme Court would monitor and train these people and that's what the fiscal note is for.

Chairman Delzer: Is this strictly permissive language or does it say "shall"? I know in the end it is going to be up to the judge whether they want to use one or not but does this require the judicial branch to put this in place and try it somewhere?

Representative DeKrey: That may be a better question for Sherry Mills Moore who helped draft this bill for the State Bar Association.

Sherry Mills Moore, volunteer lobbyist for the State Bar Association: I worked on this legislative package. I think the question is whether the court has to do this this way? I look at it as another tool in the toolbox as the court tries to deal with these feuding families. I believe that the Supreme Court would have to come the qualifications for these people and a way to roster them and have them approved just as they do with custody investigators and mediators. That ultimately whether or not they are appointed would be the province of the trial court.

Chairman Delzer: What did the Supreme Court say about the money?

Representative DeKrey: I had a sheet for the breakdown for the money. Most of that is training money.

Chairman Delzer: Did you ask them if it was in their budget or would it have to be added?

Representative DeKrey: This would have to be added.

Don Wolf, Director of Finance: The Senate already added it.

Representative Berg: Are there fees associated with this too? I see on page 16 they talk about fees of the parenting coordinator and the fiscal note it just shows expenditure but it does not show revenue. Is there some offsetting in these costs?

Sherry Mills Moore: The parties would have to pay for it themselves. If they can't afford it they wouldn't get it. This is not intended to make the parenting coordinators be a responsibility of the state for accounting. It is a self paid program. The fiscal note ties into the training and coordinating of the people who are qualified to do this.

Representative Berg: So that is the cost over and above the fees?

Sherry Mills Moore: That is the cost to us all in the state and the counties. The fees are referring to what the parenting coordinator would charge the parties to do this service.

Representative Berg: So there is an upfront cost for the training but after that it would be self sustaining.

Sherry Mills Moore: Correct, self sustaining by the feuding parties themselves.

Representative Berg: So this bill is introduced without an appropriation on it. Does that mean that, again that some of the training can be done internally without an additional cost or does it have to be an additional appropriation?

Sherry Mills Moore: I do not know. I know about the substance but not the money.

Chairman Delzer: Don, do you have a breakdown of the expenditures? Also you would probably need to answer the question of whether or not that could be added to the fees up front.

Don Wolf, Director of Finance: The breakdown would be, for training, would be \$20,000. That would include two one week training for parenting coordinators. Travel is \$8,040 which would be for the administrator to do some out of state training and for instate travel to supervise and review what is going on with the hearings. Professional supplies and materials is \$12,000 and other miscellaneous office expense such as phone, postage, printing costs is \$12,000.

Chairman Delzer: Why would that be so high?

Don Wolf, Director of Finance: I think there would be other costs they are trying to cover that would come up in addition to that.

Chairman Delzer: How many coordinators are you talking about training?

Don Wolf, Director of Finance: There would be no additional FTEs. Cathy Ferderer who is our family court coordinator would be taking on this responsibility also.

Chairman Delzer: How many volunteer coordinators are you talking about training?

Cathy Ferderer: It is a statewide program so we would have to have at least one in each district so they would be available if the court chose to appoint. I don't know how often these will be appointed but that would be my goal is to have one in each district. Possibly have two depending on the use. Also part of the training is, I am not aware of anyone in the state,

because this is a new not as able to provide that training so it would be a matter of bringing people in from other states who have implemented these programs to help us along with the training.

Chairman Delzer: The real question is why are we looking at this statewide instead of a pilot project with a sunset on it to see how it works?

Representative DeKrey: You could do that but there is not a district in the state that has less custody problems than any other part of the state. If they can find five or six people that they could train to cover the districts.

Chairman Delzer: The question for me is that you are jumping out there with both feet and this is without a doubt the answer to everything and if it isn't we have no way to stop it. Unless the Supreme Court decides that it is not working and just quits it.

Representative DeKrey: I think that if the Judiciary felt that it was not working in a biennium or two they wouldn't have any problems just deauthorizing it.

Chairman Delzer: We are putting that in code so I don't know about that.

Representative Meyer: What this is and you might remember when that initiative failed for Shared Parenting. It was a promise that many legislators gave that we would look into this issue and take it seriously. One in every two marriages ends in divorce. This impacts a lot of kids. The Supreme Court and Sherry Mills Moore will attest to that. They spent over a year trying to come up; we looked at best state practices. Each parenting coordinator programs are what is working in all these other states. Your comments of where to limit it or it is a program gone out of control, it won't be. I really feel like it will really help because it just gives the court another tool so that you don't have to keep petitioning the court to return. I believe personally it will save the court a tremendous amount of money so us as tax payers it should save us this and many more dollars down the road.

Representative Kempenich: Is there an FTE position in this bill?

Representative DeKrey: No. The courts already have staff and are going to find the person they would need to bring in to train. There is nobody in the state that has done this so there isn't anybody trained in the state. They would bring someone from another state in to train their coordinators and that's what the fiscal note is for. Once the coordinators are trained up then we would have somebody within the state to do our own training and it would be self-sustaining.

Representative Kempenich: They had a position in there and the Senate removed it.

Representative Meyer: No.

Representative Kempenich: Yes, they did. They got the funding in there but no FTE.

Representative Meyer: The original appropriation on this bill was for a GF appropriation. I believe the Senate put that in the judicial budget. It's not an FTE position, it's just to start this program to train these coordinators and then these people are paid for by the parties that are having a dispute. There never has been an FTE.

Representative Berg: From my perspective

Representative Berg: If this is a good program, we want it self-sustaining. If people feel the fees are worth it, they are going to with the Parenting Coordinator. The FN shows \$42.0 the following biennium. Maybe a better way of approaching the budget on this is to provide some money now but the intent is that this is going to be self sustaining. If it is used, I agree with Representative Meyer that is going to take pressure off the court system somewhere else—it's got to. As this pilot project becomes a bit more of a tool that is used, the Court will see that savings and they may be able to have very reasonable fees for the parent rather than having this ongoing funded. If we are going down that road, what is it that you critically need to get this up and running over the next two-year period and is that the \$50.0? I'm assuming these

parenting coordinators are going to get paid so they are going to show up and get the training.

The cost would really be to bring a trainer in and monitoring.

Representative DeKrey: There would need to be someone to oversee the training and to get the program up and running and then it would be self-sustaining after that. There will have to be someone at the Supreme Court that will have to track the coordinators. There would be some on-going administrative stuff down the road.

Representative Berg: Couldn't the person that is not doing as much litigation work do it?

Chairman Delzer: When you put this together did you give any reference to the fact that this should save the Supreme Court some time?

Don Wolf, Director of Finance: That is correct. It is hard to judge if we can cut spending elsewhere.

Chairman Delzer: What is the expectation of time relief? How much of their time is spent on this issue? Do you have a percentage of time?

Don Wolf, Director of Finance: I don't even know how you could calculate what that would be. I think this is supposed to be an additional tool that is available.

Chairman Delzer: I don't have a problem with it. I can live with the \$52,000 this time but I think we should put language in here that references that the intent of this session is that this should be a self-sustaining program in the future

Representative Berg: My request for Don would be: This \$42.0 that you have for the next biennium, I'd like you to rethink this and tell us if this going to be self-sustaining program what would the FN be? If we need to amend this to make that clear, what would the amendment say?

Don Wolf, Director of Finance: The question I have is there is still going to have to be on-going training to some extent for new coordinators that are coming in based on the fact that

some people may decide to not do it in the future and we need to have each of the regions of the state covered. The training is going to be much less frequent in the future, but I still foresee that there's going to have be some sort.

Representative Berg: The point is that training needs to be part of the fees you charge in the future. I would like to have an amendment that makes that clear.

Don Wolf, Director of Finance: I think we will have a better idea once we actually get in to the program and get it up and running a little bit as far as what those costs are. I don't anticipate that it will be very high. We tried to do a fair FN with the \$52.0.

Representative Berg: Maybe I am not making myself clear. The FN before us says \$52.0 and \$42.0. We want this to be self-sustaining. Then the FN would be 0 in the future.

Don Wolf, Director of Finance: I understand.

Chairman Delzer: Representative DeKrey, did you amend this bill? The sunset clause on it?

Representative Glassheim: It seems to me that we ought to move ahead on this. The idea is very good and it could help create a lot of justice and a lot better feeling throughout the state. The \$50.0 is a rather small amount for the good it's going to do. In terms of the next biennium, that could stand on its own. They'll see how it's going and anyone can change it anyway next time and we'll see what they put in for. If they find the cost is stopping a lot of people from using this, then they may not want to add another \$10 more to make it self-sustaining. It seems to me we ought to get the evidence and find out how it's going and we'll have another crack at it next time to either put it separate or not put it separate. We might find that it is such a good thing that it is worth the state's \$40.0 to do it. Or there may be savings in time where they will just pick it up in the Judicial budget. I don't know why we have to decide it four years ahead of time.

Chairman Delzer: The expiration date makes quite a difference to me because that means that we'll come back before the next legislative session.

Representative DeKrey: I remember why we did take the sunset clause off. The feeling in the Committee was exactly what Representative Glassheim said. We come in every session and we look at all this stuff and it will either be in the budget or it won't—that is the sunset clause.

Chairman Delzer: I want to try to put it back on.

Representative Meyer: One of the aspects of this and it's hard to put a dollar amount to human stuff, but the costs involved in this are the people that are going to participate in this program. It will help them a great deal if they do not have to hire an attorney. The cost savings for your taxpayers out there are tremendous. I don't mean to talk for the attorneys in this room, but there are many who if they never had to deal with another child support case, it would be great for them, as it would for the judges here. That's where this was going. Just to emphasize again, the task force from the State Bar spent over a year on this and it was their recommendation that this go forward. Let's try it.

Chairman Delzer closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2042

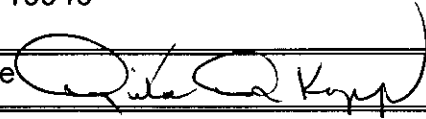
House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/13/09

Recorder Job Number: 10940

Committee Clerk Signature



Minutes:

Chairman Delzer opened the discussion on 2042.

Chairman Delzer: Does anybody have any concerns on 2042? Personally I would like to put the expiration clause back in.

Representative Berg: It sounds like something that a lot of people feel is a good direction to go.

It sounds like it is going to be self sustaining. It is going to relieve pressure if it works. If it doesn't work, it won't. My whole thing on this deal is let's just say, I don't have a problem with the sunset clause or something like that. I think we probably ought to throw that out four years or something and give them time to do it. I would like an amendment that just says that we expect this to be self sustaining after this next biennium. I think personally those numbers put in there were pulled out of the air. I think the kind of training they are talking about is not going to cost \$50,000. I don't have a problem if that money is in and it is. The Senate added it in. We don't have to split hairs over that, but I have to believe that they can do this via internet or there has to be an association that provides that training. My recap would be if you want to do a sunset, that is fine. Let's throw it out four years; it gives them time to get up and get self sustaining. Just have language that says we expect this to be self sustaining in the budget or on the fees, whatever the fees are there offset.

Chairman Delzer: Legislative intent?

Representative Berg: Whatever. They can figure it out.

Representative Meyer: The monies that they came up with were because of the mediators that we already have in place. They based that funding mechanism on the court mediators that we have. That is approximately what it costs to maintain that program and to train those people. I believe that is where the costs came from.

Representative Berg: If we put in any amount of money, they could justify all those expenses and I think they would have competent people that were appropriate to meet with parents at that time. Rather than split all those hairs, let's just...

Representative Meyer: One of the discussions that we had during the summer is that we want to keep this affordable to the parents, especially because they have to pay equal costs. To get the funds to be self sustaining, instead of raising the fines for this, charge for the seminars that these parenting coordinators would attend. The training seminars, instead of making the fine system go through the court and having to deal with all that, one of the things we did discuss in our committee was that the seminars that the parenting coordinators (because they are eventually the people who are going to be paid to do this job) would pay their own costs to learn this program.

Chairman Delzer: Committee members, if we put intent language in there, basically what we are saying is we don't want to see a line item in the next budget that this costs money. We don't care how they do it.

Representative Berg: Here's the problem. If this works, they are going to add \$200,000 to their budget and bring it to the legislature because we all support that. My point is if, in fact, it does what we intend, it is going to make the judge's lives easier. The judges are going to be flipping over backwards to encourage parents to do this. They are going to be paying people; they are

going to find money to get people there to get the training. If it doesn't streamline the process, then it hasn't accomplished the goals we originally set out. I just really think it will fix itself if it works.

Chairman Delzer: Anything further, Becky? Do you think you know what we are asking for as an amendment on that?

Becky Keller, Legislative Council: I just have one question for clarification on the funding that was put into 2002 from the Senate for that. I haven't added it to the one-time funding section; but if you would like, we could do that.

Chairman Delzer: Add it to the one time funding section. Do we want to take up any of our smaller ones or do we want to take a break?

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2042

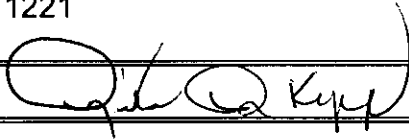
House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/18/09

Recorder Job Number: 11221

Committee Clerk Signature



Minutes:

Chairman Delzer opened the discussion of Senate Bill 2042. Representative Berg and I were discussing bills and 2121 and 2042 came up. We have an amendment to 2002 that is going to affect both of them. 2042 is the parenting coordinated program. The Senate had put the money for it in the bill. The amendment that we have here would say that it is the intent of the 61st assembly that the coordinated program would be self sustaining and not receive funding from the general fund after the 2009-2011 biennium. Questions by the committee?

Comments? Motion for the?

Representative Berg: The concept there was this was going to save a lot of judge's time because they are going to deal with a lot of these issues with someone who is trained versus just going through the legal process. They just needed some funds to get some people going. The thought is long term that they are going to use some of their savings to fund the training. Right? I move the amendment.

Chairman Delzer: We have a motion from Representative Berg and a second from Representative Meyer. Discussion on the amendment?

Representative Kaldor: I am not tickled about the amendment, but I don't want to get into a big debate about this if it compromises the legislation because I think it is needed legislation. I

don't have any trouble committing to even two biennia. We probably won't learn too much from the first year, maybe even the first two years about how well it works. I am just going to register that. I support the bill. I think it is a good thing and I think it probably will save money, but I don't know that for a fact.

Chairman Delzer: That's right; we are changing the sunset from 2011 to 2013 too. I forgot to mention that. We still have the motion and the second. Is that okay? Representative Glassheim, did you have something to add?

Representative Glassheim: I just think it is really penny ante to do something like this. We don't do it for almost any other program. They've been working, we take them as they come each time, we make them justify themselves, we don't see any advance, why you necessarily want it to be self sufficient, I don't know. Hardly anything is self sufficient in our judicial system. I want this crime to be self sufficient. It just doesn't make any sense to me to pick on this and be so pinchpenny about it and decide for the future legislature what we think about it without any knowledge about anything else. (03:20)

Chairman Delzer: Representative Glassheim, I certainly can't speak for everybody else, but my thought on this. I think it is a fine amendment. In the first place, it is going to a four year sunset. Secondly, they basically said they should cover themselves, that it is a good deal. The fact of the matter is we know it is just intent language. It doesn't bind the next legislature. If they decide they want to. As a matter of fact, if judicial puts in for funding for it, we don't even say they can't do that. We say it is the intent of us at this time that they would not, but we certainly don't bind them in any way.

Representative Berg: I would just suggest that there is probably a 90% chance this would continue to be funded out of the general fund in the future. Even with this harsh amendment, I would be willing to wager money with anyone, but clearly the purpose of this is one to tone

down tensions and things that go on with these disputes. Everyone has come forward and said this is going to save a lot of money if people go through it. I quite frankly think they will be looking for them to use it more to save them money and save them time if we suggest it is self sustaining versus if it is sitting out there by itself as a separate entity.

Chairman Delzer: Plus I think it increases the chance of it passing. Any further discussion?

All in favor of the amendment, say aye. We will list that as a 5 to 2, I guess it is. The amendment is adopted. Representative Meyer, you wish to move a "do pass as amended".

We have a motion and a second by Representative Berg. Any discussion? Motion carries.

(Roll call vote was 7-0-1.) Representative Meyer, will you carry that?

2009 HOUSE STANDING COMMITTEE MINUTES

SB 2042

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 25, 2009

Recorder Job Number: 11525

Committee Clerk Signature

Janette Cook

Minutes:

Rep. Delzer: Rep. Meyer is carrying this bill, it came out of judicial process, interim committee, but I will try to explain it. It deals with parenting coordinators. The Senate put the money into the Judicial Budget. Government Operations committee put legislative intent section on that says, it is the intent of the legislature that the parenting coordinator program become self-sustaining after the current biennium. They are going to charge fees for this. There are amendments. We changed the expiration date to 2013. One issue with this is it is supposed to help couples having custody issues. I'm not sure it's totally voluntary, or if the courts can tell them they have to do it.

Rep. Delzer moved the amendments.

Rep. Berg seconded the motion.

A voice vote was taken.

The motion carried and the amendment was adopted.

Rep. Delzer moved a Do Pass on SB 2042 as amended.

Rep. Berg seconded the motion.

Rep. Skarphol: Mitchell Sanderson was opposed to this. Could you tell us what his objection was?

Rep. Delzer: I received a one line e-mail and that said it was unconstitutional and will be challenged.

Rep. Berg: I think that it is a good bill. The purpose of this bill is to get parents talking to benefit the children. The comments were that it will save a lot of time if it works.

Rep. Glassheim: There is one part-time state coordinator. Each of the parties will have to pay for the person who helps them through it. It is not all paid for by the state. The counselors are all paid for by the disputing parties.

Rep. Hawken: What about people who can't afford to pay?

Rep. Delzer: That was never asked. Maybe Mr. Wolf would want to answer that.

Don Wolf, Finance Director, Supreme Court: Largest percentage of cost is for the training for the parent coordinators. We could charge the attorneys of the counselors for the cost of the training. As far as assessing a fee to the people participating in the program, it would be mainly the administrative cost that we would have to pass along. Right now we are not sure how many will be participating. There could potentially be several hundred dollars that we would have to charge per couple for the administrative cost of this.

Rep. Delzer: That is why the money was left in this time. Then it will come back before the next legislature, and it given four years to see if it would work.

Rep. Berg: It was my understanding that we are paying for the training out of this money. The bill is for one-time money for training to get this to work. The people that it is going to appeal to are the ones that are paying \$150 or more for their attorney. This will be a reduced cost. I think it is a good bill, and we should pass it.

Rep. Skarphol: Typically the biggest loser is the one who has the least assets. If you're forced to do this, and you don't have any resources to pay the cost, aren't you are putting someone in a bad position?

Rep. Berg: No one is mandated to do this. This is just a tool if the parents wish to go to mediation in this manner. When it came to us it was not about paying for people to enter into this mediation, but to provide this as an option. The bill will provide one-time money to get the training up to a level so this mediation will work. These people who are in mediation and this creates an opportunity for the people who have less money to get things resolved.

Chm. Svedjan: If they are not forced into this and the disputing party decides to take the judicial route, would they qualify for the indigent defense funds?

Rep. Berg: I do not believe there are state funds that would apply.

Rep. Delzer: On page sixteen it says, 'that neither party may be required to submit to a dispute (inaudible) coordinator if the party cannot afford to pay the fees of a coordinator or an affordable coordinator is not available'.

Rep. Skarphol: Does the court system have the opportunity to not use this in the event that they see it is not being successful? Can they suspend the utilization of it until the next legislative session?

Rep. Delzer: I would guess they would have that ability. We didn't get into the policy of the bill. Rep. Meyer is up on that.

Rep. Wald: Page 9 you are changing from custody to residential responsibility. Can you tell me what the difference is?

Rep. Delzer: We did not get into the policy.

Rep. Glassheim: They changed the names to be more neutral. I think it is more for correctness. On p. 15, 'the court upon its own motion or by motion or agreement of the party may appoint a parenting coordinator to assist'. It is in the hands of the court. If it is working, they will do it. If it is not working, they won't.

A roll call vote was taken on SB 2042 as amended. **Aye 20 Nay 0 Absent 5**

The motion carried.

Representative S. Meyer will carry SB 2042.

March 16, 2009

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2042

In lieu of the amendments adopted by the House as printed on page 806 of the House Journal, Reengrossed Senate Bill No. 2042 is amended as follows:

Page 17, after line 28, insert:

"SECTION 12. LEGISLATIVE INTENT - FUNDING. It is the intent of the sixty-first legislative assembly that the parenting coordinator program provided of this Act be self-sustaining and not receive any funding from the general fund after the 2009-11 biennium."

Page 18, line 2, replace "2011" with "2013"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment provides legislative intent that the parenting coordinator program be self-sufficient after the 2009-11 biennium and changes the expiration date of the Act to June 30, 2013.

March 16, 2009

VR
3/31/0

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2042

In lieu of the amendments adopted by the House as printed on page 806 of the House Journal, Reengrossed Senate Bill No. 2042 is amended as follows:

Page 17, after line 30, insert:

"SECTION 13. LEGISLATIVE INTENT - FUNDING. It is the intent of the sixty-first legislative assembly that the parenting coordinator program provided for in section 11 of this Act be self-sustaining and not receive any funding from the general fund after the 2009-11 biennium."

Page 18, line 2, replace "2011" with "2013"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment provides legislative intent that the parenting coordinator program be self-sufficient after the 2009-11 biennium and changes the expiration date of the Act to June 30, 2013.

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90276.0402

Action Taken Do Pass As Amended

☐ Voice Vote

☒ Roll Call Vote

Motion Made By Representative Meyer: Seconded By Representative Berg:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Glassheim	X	
Vice Chairman Thoreson	X		Representative Meyer	X	
Representative Kempenich			Representative Kaldor	X	
Representative Berg	X				
Representative Dosch	X				

Total (Yes) 7 No 0

Absent 1

Floor Assignment Representative Meyer:

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

Date: 3/25/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0402

Action Taken Adopt Amendment .0402

Motion Made By Delzer Seconded By Berg

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Voice Vote - Carried

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

Date: 3/25/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Full House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 0402

Action Taken No Pass as Amended

Motion Made By Delzer Seconded By Berg

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 20 No 0

Absent 5

Floor Assignment Rep. S. Meyer

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

REPORT OF STANDING COMMITTEE

SB 2042, as reengrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Reengrossed SB 2042 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 806 of the House Journal, Reengrossed Senate Bill No. 2042 is amended as follows:

Page 17, after line 30, insert:

"SECTION 13. LEGISLATIVE INTENT - FUNDING. It is the intent of the sixty-first legislative assembly that the parenting coordinator program provided for in section 11 of this Act be self-sustaining and not receive any funding from the general fund after the 2009-11 biennium."

Page 18, line 2, replace "2011" with "2013"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment provides legislative intent that the parenting coordinator program be self-sufficient after the 2009-11 biennium and changes the expiration date of the Act to June 30, 2013.

2009 TESTIMONY

SB 2042

Donette Richter

*Attachment 1
SB 2042*

**EXCERPT FROM 2009 LEGISLATIVE COUNCIL REPORT
Interim Judicial Process Committee
Senate Bill No. 2042**

*Same given
to Senate
Approp.*

CHILD CUSTODY - BEST STATE PRACTICES STUDY

House Concurrent Resolution No. 3008 directed the Legislative Council to study the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. By Legislative Council directive, the scope of this study was limited to a study of the best state practices relating to child custody.

Testimony and Committee Considerations

The committee received testimony and information from individuals personally affected by child custody and visitation issues. The committee also received extensive information and recommendations from the Child Custody and Visitation Task Force, a group formed by the State Bar Association of North Dakota to conduct an in-depth review of custody and visitation laws and issues in North Dakota and other states.

Child Custody and Visitation Laws

As part of the committee's review of the best state practices with respect to child custody, the committee received testimony from individuals and family organizations regarding the state's child custody and visitation laws. A common theme of the testimony was that the state's child custody and visitation system is in need of improvement. According to the testimony, the current system of deciding child custody and visitation is designed to be adversarial and, consequently, does not promote cooperation between the parties and is not in the child's best interests. It was noted that the system and the state's laws do not address the diversity there is within families and fail to ensure both parents can be in the child's life. The testimony also emphasized that the system is easily manipulated by the physical custodial parent even when joint custody is awarded. A member of coalition for families and children asserted that judges often deny custody changes based upon procedural technicalities. The testimony indicated that there is gender discrimination in the current system. It was suggested that shared parenting would resolve many of the custody and visitation problems that occur between parents.

The committee also received extensive testimony from and worked closely with a task force formed by the State Bar Association of North Dakota to study custody and visitation issues. The 15-member task force included judges, legislators, laypersons, custody investigators, private practice attorneys, a custodial father, and a member of the clergy. The topics addressed by the task force included the use of parenting coordinators, the family court concept, the early intervention process, the primary caretaker presumption, and states that mandate parenting plans. Because the Family Law Section of the State Bar Association continues to study mediation and other forms of alternative dispute resolution, the task force chose not to duplicate those efforts. The task force emphasized that when looking at best state practices, both the procedure and the resources necessary to implement those procedures must be considered.

According to the testimony, the task force reviewed child custody and visitation practices in other states with an eye toward what does and does not seem to work well in our state. It was noted that the child custody and visitation laws and requirements of New Hampshire, in particular, were reviewed extensively by the task force. The task force also reported that it met with proponents of failed 2006 initiated Measure No. 3 as well as those individuals and organizations that were circulating a new proposed custody measure.

The first recommendation of the task force included a change in some of the terminology currently used in family law. It was recommended that the term "custody" be changed to "primary residential responsibility" and the term "visitation" be changed to "parenting time." The recommendation also included the codification of definitions of terms used to delineate the rights and responsibilities of parents to their children, including the terms decision-making responsibility, parental rights and responsibilities, parenting plan, parenting schedule, residential responsibility, and primary residential responsibility.

The second recommendation of the task force dealt with the concept of a parenting plan. It was recommended that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court. The recommended elements of a parenting plan included decision-making responsibilities, information sharing and access, transportation and exchange of the child, a procedure for review and adjustment of the plan, and methods for resolving disputes. Under the recommendation, a court could not approve a parenting plan unless the plan contained a method of resolving disputes. The committee reviewed the parenting plan forms of the state of Oregon.

The third recommendation of the task force dealt with the best interest factors used by the court for determining the custody of a child. This recommendation, it was noted, maintains the general structure of the best interest analysis while clarifying several best interest factors and adding several new best interest factors. For example, it was recommended that a new factor be added to the best interest analysis which would require a court to consider the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. This new factor, it was noted, was recommended because both parents are important to a child. According to the testimony, this language is used by many other states and it recognizes the need of a child to be close to both parents while taking into consideration the practical reality of two parents raising a child when they do not live together. It was also recommended that the best interest factors of moral fitness and the mental and physical health of the parents be limited to impact those factors have on the child.

The fourth recommendation of the task force was the establishment of a parenting coordinator program. A parenting coordinator is a neutral person who helps to resolve visitation or "parenting time" disputes. According to the testimony, while most parents are able to work through disputes, some high-conflict families cannot work through the disputes without the assistance of the court. Because access to the court is often not as swift as some disputes require, the testimony indicated that a parenting coordinator could resolve the more quickly and cost effectively than a court proceeding. The recommendation set out the duties of a parenting coordinator, the procedure for allocating the fees of the parenting coordinator between the parties, and the procedure for modifying or ending a parenting coordinator's appointment. According to the testimony, the Supreme Court would be responsible for establishing the qualifications of parent coordinators. It was noted that a parenting coordinator would work independently but would be appointed by the court. A parenting coordinator would be employed in a way that would be similar to a guardian ad litem or child custody investigator. The testimony indicated that the use of a parenting coordinator would have a fiscal impact but in the long run, resources will be saved and conflicts reduced. According to the testimony, most of the states with parenting coordinator programs only appoint a parenting coordinator if the parties are able to pay for the cost of the service. The testimony indicated that the proposals developed by the task force were approved by the State Bar Association of North Dakota Board of Governors.

The committee considered a bill draft that would implement the recommendations of the task force. The bill draft would provide for changes in the terminology used in family law;

require that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court require the use of a parenting plan; add several best interest factors; clarify several current best interest factors; and establish a parenting coordinator program. The bill draft would apply to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process.

Committee discussion regarding the bill draft raised the issue of whether the issue of grandparent visitation should be included in the parenting plan. The discussion indicated that while it may be possible to tie NDCC Section 14-09-05.1, the section that allows grandparents to file a motion for visitation, to the parenting plan, grandparent visitation issues usually do not arise until after the parenting plan has been developed and the custody matter has been decided. It was noted that the parties to a parenting plan would not be precluded from addressing other issues in their parenting plans, such as grandparent visitation.

Testimony in support of the bill draft indicated that the bill draft will help take family law in the state in the right direction. According to the testimony, the bill draft would help fit fathers who want to be involved in their children's lives. It was noted that the proposals would help make family law issues fairer for both parents.

Other testimony in support of the bill draft indicated that there will always be difficult domestic relations cases but the use of parenting plans, the additional best interest factor of considering which parent will best foster the relationship with the other parent, and the use of parenting coordinators will help address some of those concerns.

Committee members concluded that the bill draft would help address some of those areas of concern that have been raised by interested persons over the past several years. The committee noted that when one or more of the parties to a family law dispute want to be in conflict with another party, there is not much the system can do to alleviate that conflict, but the bill draft will help to resolve some of those conflict issues.

The committee also considered a bill draft that would provide that unless there is evidence of domestic violence, upon the request of either party for joint custody, the court would be required to use a rebuttable presumption that joint custody is in the best interests of the child.

Testimony in support of the bill draft indicated that 23 states have a preference for joint custody. According to the testimony, the bill draft would be compatible with the

recommendations proposed by the task force. It was noted that bill draft would not infringe on the court's ability to make determinations based upon the best interest standard.

Testimony in opposition to the bill draft indicated that if joint custody means equal or "50/50" custody, such arrangements can be difficult for the child, especially if the parents do not live in the same school district. According to the testimony, it does not make sense to presume that equal time with each parent is in the best interests of the child. It was also noted that a presumption of joint custody may not be compatible with the other best interest factors.

The committee concluded that the bill draft that would require the court to use a rebuttable presumption that joint custody is in the best interests of the child should not be recommended to the Legislative Council.

Recommendation

The committee recommended Senate Bill No. 2042 that would provide for changes in the terminology used in family law; require that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court require the use of a parenting plan; add several best interest factors; clarify several current best interest factors; and establish a parenting coordinator program. The bill draft would apply to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process

STATE BAR ASSOCIATION OF NORTH DAKOTA

**TESTIMONY ON SENATE BILL 2042
SHERRY MILLS MOORE**

Good Morning, I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota, here today in support of to offer ^{support} ~~technical~~ assistance on this bill. I am an attorney in private practice here in Bismarck, with a focus on family law. In addition, I have most recently served as the chair of the Custody and Visitation Task Force formed by the State Bar Association of North Dakota.

The Task Force was formed because the State Bar Association of North Dakota made a commitment in the last session to study custody and visitation in this state and consider what could be improved. It was comprised of judges, legislators, lawyers, mediators and lay persons. The group overlapped in that that most members were also parents, one legislator is also a practitioner, many practitioners were also guardian ad litem, custody investigators and mediators.

The Task Force reviewed practices in other states with an eye towards what does and does not seem to work well in our own state. We met with proponents of the failed Initiated Measure #3 . Then we tackled the issues that we thought most in need of work, or perhaps most amenable to repair. SB 2042 is the result of that work as well as the work of the Interim Committee.

Let me first give you the long view of what this bill does, and then I will lay out the specifics. And I begin that process by telling you what this bill does not do. It does not address child support. It is not intended to, this is not about money.

What the bill does do is as follows:

- Incorporates the use of **parenting plans** to help parents to be more specific in their proposed parenting;
- Uses more **parent-friendly language**, such as “parenting time” and “parenting responsibility”, and “decision-making responsibility” rather than “custody” and “visitation”.
- Fleshes out the parents’ allocation of **decision-making** responsibility.
- Changes the best interest factors:
 - Adds a factor which looks at which parent would best support a **relationship with the other parent**.
 - Narrows the moral and health factors to require consideration only as each **impacts the child**. So, for example, if a parent has a disability, but is fully able to care for the children, the health factor would not work against that parent. Combining and clarifying (but not changing the meaning) of two factors -- *length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity*, and, *the permanence, as a family unit, of the existing or proposed custodial home*.
 - Elevates the **weight of the preference** of the child but only after the court determines the child of sufficient maturity, a finding which itself needs a higher level of proof. In other words, the preference of the child would have substantial weight, BUT ONLY AFTER, by clear and convincing evidence, the court finds the child to be sufficiently mature. In addition, the court can look to whether the child's preference is the result of undesirable or improper influences.
- One of the most audible problems facing parents who are not raising their children in the same home are visitation issues. There are a variety of reasons these are the subject of complaints against the system.

- Visitation disputes often require speedier resolution than the courts are able to give – (if disagreeing about Thanksgiving arises on the weekend before Thanksgiving it is unlikely to be resolved in time for Thanksgiving)
- To some degree the system feels “done” with them -- attorneys and court having tried the case or settled the case and are reluctant to put the same energy into applying the case.
- Sometimes the only end to these problems is the aging out of the children, so while the actual initial custody placement may be done at some point, the issues of application, can go on for a long time.
- Cost of these disputes can be prohibitive, limiting access to the courts.

Parenting coordinators can be one solution to this problem. For parents who are in high conflict over post judgment scheduling issues SB 2042 adds parenting coordinators to the parent's tool chest. Also known as visitation expeditors, these individuals would be appointed after an initial custody order. Their purpose would be to resolve parenting time disputes by interpreting, clarifying and addressing circumstances not specifically addressed by an existing court order. The challenge would be to not unconstitutionally delegate judicial authority and yet to have a swifter method of resolving disputes.

Many other states use parenting coordinators. They are some kind of hybrid between a special master and a mediator. Mediators try to get people to reach their own agreement. Parenting coordinators would do the same, but failing that, would make a decision. Stated perhaps simplistically, parenting coordinators are mediators with teeth.

The State Bar Association of North Dakota supports SB 2042 because we think it in fact does incorporate better solutions to the very difficult problems which arise in custody. It may seem axiomatic, but any time the

judicial system works better, our clients are work better. And any time our client's work better, their children benefit.

I just went through on overview of the changes which SB 2042 would make, here are the specifics .

SECTION 1.

(Page 1)

In this section, §14-05-22 is amended by making technical changes so the language conforms to the new terminology.

Subsections 3 and 4 and 5 (Page 2, lines 1-23). The language in these subsections is deleted from this section and moved to Section 4 (Page 5, lines 1-25).

SECTION 2.

(Page 2)

In this section, §14-05-23 is amended by making technical changes so the language conforms to the new terminology.

SECTION 3.

(Page 3)

In this section, §14-09-05.1 is amended by making technical changes so the language conforms to the new terminology.

SECTION 4.

(Page 4)

The following **five** new sections are added to chapter 14-09. These sections provide much of the substantive and procedural changes contemplated by the Task Force.

I. Definitions

(Page 4, lines 10-24).

The definitions are included to flesh out the later sections. Although seemingly self-explanatory, they serve to delineate the rights and responsibilities of parents to their children. The following explains each definition and provides examples of what falls within the definition.

Decision making responsibility is the thinking part of parenting. Currently, this would be included in the term *joint legal custody*. Examples would be to decide whether or not a child is held back to repeat a grade, to go forward with a medical procedure, or which school the child goes to. It does not involve how much child support a parent would pay, nor does it override a division of parenting time between parents.

Parental rights and responsibilities is the umbrella term in that it covers all rights and responsibilities a parent has under this chapter as related to custody.

Parenting plan is the written plan parents submit to the court outlining how they are going to go forward in the future with regard to their child. The details of what should be included in a parenting plan and the interaction between the parents and the court are included in a later section.

Parenting schedule is the time when the child would be with each parent. Under current terminology this would spell out the terms of visitation.

Parenting time is the time the child is with a parent.

Primary residential responsibility is the parent with more than 50% of the residential responsibility. This would in essence be equivalent under current terminology to the parent who has physical custody.

Residential responsibility is the obligation to provide a home for the child.

II. Parental rights and responsibilities – Best interests and welfare of child. (Page 5, lines 26 – 31 & Page 6, lines 1 - 16).

Subsection 1 consolidates four prior code sections, NDCC §§14-09-04, 14-09-05, 14-09-06 and 14-09-06.1. Section 12 of the bill draft repeals these sections.

The existing sections gave power to the court to allocate custody of children according to the children's best interest and recognized that with regard to custody mothers and fathers are to be treated equally. The existing sections distinguished between children of married and unmarried parents, and were duplicative and confusing. Rather than continuing to distinguish between children on the basis of their parent's marital status,

these have been consolidated and clarified. These particular changes are not substantive nor intended to modify current case law.

Subsections 2, 3, and 4 were moved from §14-05-22 and changes were made to reflect the new terminology.

III. Parenting Plans – Contents

(Page 5, lines 26 – 31 & Page 6, lines 1- 16)

This section establishes the substance and process for parenting plans. To some extent this currently this is done by proposals or agreements submitted to the court. This new section guides parents in developing **parenting plans** which delineate how they are going to handle their children in the future when they do not live together. Parenting plans explain when the children are going to be with each parent and how the parents are going to make decisions about their children.

Subsection 1 requires parents to develop and file the plan with the court. If they are unable to agree, the court will establish a plan based on the best interest of the child.

Subsection 2 establishes the minimum terms to be covered in the parenting plan. These include decision-making responsibility, information sharing and access, legal residence, residential responsibility and parenting schedule, transportation and exchange of the child, procedure for review and adjustment and methods of resolving disputes.

Paragraph a - Decision-making responsibility is defined in the definition section and has its own section which is discussed below. The parenting plan will need to identify how decisions are going to be made. This means that the parents have to state which parent is going to make decisions, or how they are going to make them together. They may allocate decision-making differently for major decisions or routine decisions, but both need to be addressed. A major decision would be whether a child gets braces. A routine decision would be what time the child goes to bed. Typically, routine decisions are left to the parent who has the child at the time the decision needs to be made. Major decisions are either allocated to one parent or shared in some fashion.

Information sharing and access refers to how each parent is going to be able to communicate with the child and learn what is going on in the child's life. Currently the parents each have specific access rights under § 14-09-28. These rights are included in the section entitled Parental Rights and Responsibilities. Certainly parents can address additional communication methods in their parenting plans.

Legal residence of a child for school attendance settles the issue of where the child will go to school.

One of the most significant terms of the parenting plan will be when the child is with each parent. Residential responsibility and parenting responsibility address this issue. Under the plan they will decide how to manage holidays, weekends, weekdays, and summers. Under existing law, this is referred to as the custody and visitation schedule.

Transportation and exchange of the child is self explanatory. The safety provision is included to address concerns of domestic violence.

Parenting plans will cover an extended time period during which life change is inevitable. Procedure for review and adjustment of the plan describes how parents will address changes that arise in the future.

Under the current system when parties have trouble agreeing to changes the most common solution is to go back to court. Under the proposed bill parents will agree to how they are going to try to resolve disputes. Those methods may include mediation or talking to a professional – counselor, minister. It does not eliminate the option of going to court.

IV. Decision-making responsibility.

(Page 6, lines 17 – 31, Page 7, lines 1-3)

This new section provides guidance to the court regarding the decision-making process. Generally, the court must accept the parent's decision-making agreement unless the court makes written findings that the agreement is not in the best interest of the children. If the parents do not agree, the court allocates the decision-making authority based on the child's best interest. Either way, if the decision-making is shared in some respect, the allocation must address a method of dispute resolution if the parent's do not agree. For example, the allocation may say if the parents do not agree, dad will decide. Or, it may say, if they do not agree, they will work with a third party to resolve the dispute.

Existing law specifically addresses issues of domestic violence and custody. Nothing in this proposed new law is meant to in any way change the way present law deals with domestic violence. The new section requires that domestic violence be considered in the allocation of decision-making responsibility. Because domestic violence can impact the dynamic of parental interaction, this new provision requires specific findings to support a joint-decision making order. This section also requires the court to consider the child's best interest as well as safety of the parents and children.

V. Parental Rights and Responsibilities
(Page 7, lines 4-26)

Currently NDCC § 14-09-28 addresses parental rights and responsibilities. Those provisions have been moved to this section. Section 12 repeals the current statute.

SECTION 5.
(Page 7 , lines 27 through Page 10, Line 12))

This section amends §14-09-06.2 which deals with the best interest of the children. While maintaining the general structure of the best interest analysis and most of the substance, several factors were clarified and new factors were added. In addition, changes were made so the language conforms to the new terminology.

In **paragraph (1) subsection (a)** language was added at the end to focus the court's inquiry on the ability of the parents to provide nurture, love, affection and guidance.

Paragraph (b) language was re-written to focus the court's inquiry on the ability of the parents to provide adequate food, clothing, shelter, medical care and a safe environment.

Paragraph (c) language was re-written to focus the court's inquiry on the ability of the parents to provide for the child's present and future developmental needs.

Existing factors in **paragraphs (d) and (e)** deal with the stability of the child's environment both from a historical perspective, as well as projecting into the future. The language in the two existing paragraphs is confusing.

The proposed language in paragraph (d) combines and clarifies the concepts embodied in existing paragraphs (d) and (e). Proposed paragraph (d) requires the court to look at the sufficiency and stability of each parent's home environment, the length of time the child has lived in each home and the desirability of maintaining continuity in the child's home and community. The amendments are not intended to eliminate the court's ability to consider the permanence of the family unit, a consideration embodied in existing paragraph (e). This factor also now codifies the impact of the extended family, something the court has long done in considering a child's best interest.

New **paragraph (e)** adds a factor to best interest analysis dealing with the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. This factor was added because both parents are important to a child. This is language used by many other states and recognizes the need of a child to be close to both parents taking into consideration the practical reality of two parents raising a child when they do not live together.

The amendments to **paragraphs (f) and (g)** narrow the court's inquiry to the impact on the child of the moral fitness and mental and physical health of the parents. At times this has been interpreted by the parties as a means of punishing the other parent for conduct which did not affect the child.

Under **paragraph (h)** the court looks to the child's record in the home school and community. The new language clarifies that the court should also consider the potential effect of a change.

The amendments to **paragraph (i)** deal with the preference of a child. The preference of a child has always had a place in custody decisions. A change to the language is being recommended because too many young children are dragged into court by a parent and pressured to choose between parents. The proposal would give a child's preference substantial weight, but only if the court finds the child is sufficiently mature to make a sound judgment. So important is the maturity of the child to the preference that the burden of proof must be met by clear and convincing evidence. The court also shall consider whether the preference is based on undesirable or improper influence. The proposal is not intended to bring more children into court, but rather to keep children out of a no-win situation.

Paragraphs (j) and (m) are amended by making technical changes so the language conforms to the new terminology.

SECTIONS 6 AND 7.

(Pages 10 – 11)

In these sections, §§14-09-06.3 and 14-09-06.4 are amended by making technical changes so the language conforms to the new terminology. In addition, currently if a party cannot pay for a custody investigator or guardian ad item, the court can order the county to do so, but it is not always clear which county should pay.

Under the proposal, the county in which the child resides at the time the action is commenced would pay.

SECTION 8.

(Page 12-13)

In this section, §14-09-06.6 is amended by making technical changes so the language conforms to the new terminology.

SECTION 9

(Page 14)

In this section, §14-09-07 is amended by making technical changes so the language conforms to the new terminology.

This section of the law governs parents who want to move their children out of state. To deal with parents who have equal parenting time with their children, the North Dakota Supreme Court in Maynard v. McNett, 2006 ND 36, 710 N.W.2d 369, established that these parents must also have the primary residential parenting time modified in order to move. This statute change simply codifies that decision.

SECTION 10.

(Page 14 and 15)

In light of the many instances in which “custody” and “visitation” are used in the code, and to avoid amending all those sections, this catchall section is proposed. Where the terms “custody” and “visitation” are used elsewhere in the code, they will be defined by the new terminology.

SECTION 11.

(Page 14 through 17)

Section 11 creates a new Chapter 14-09.2 which establishes a parenting coordinator program. Interpreting and applying parenting time orders is a frequent hotbed for dispute between parents. Most parents are able to work through this but some high-conflict families simply cannot without the assistance of the court. Because access to the court is not as swift as some problems need, and the high cost of the court process, the problems remain unresolved, or involves repeated court appearances. This means that the children of these families live in a nearly constant state of tension between their parents. Other states have dealt with this by the use of parenting coordinators.

§14-09.2-01 defines a parenting coordinator as a neutral person who helps to resolve parenting time disputes. The section also sets out the duties of a parenting coordinator. These include assessing whether that has been a violation of an exiting order, resolving one-time or ongoing

disputes, facilitating negotiations and if necessary making a decision to resolve the dispute.

§14-09.2-02 sets out the procedure to appoint a parenting coordinator.

§14-09.2-03 directs the Supreme Court to establish qualifications of the parenting coordinators and make a roster available to the public.

§14-09.2-04 establishes the timeframes for the work of the parenting coordinator.

§14-09.2-05 outlines the procedure for allocating the fees of the parenting coordinator between the parties. If the parties cannot pay for the coordinator, there is no provision in this proposal for the state or county to pick up the cost.

§14-09.2-06 deals with confidentiality. Just as with mediation, to encourage an open discussion by the parties trying to resolve the disputes, parties need to know that what they say will not be presented to the court. The only limitations on that arise with respect to matters which are mandated to be disclosed, such as abuse of a child. In addition, under the fee paying structure, a parenting coordinator could advise the court about bad faith of one of the parents.

§14-09.2-07. As with other arms of the court, parenting coordinators would be granted immunity from civil suit for ordinary negligence.

§14-09.2-08. This section delineates how the parenting coordinator's appointment is modified or ended.

SECTION 12

(Page 17)

This section repeals 14-09-04, 14-09-05, 14-09-06 and 14-09-06.1 because they are consolidated into subsection 1 of the new section entitled **Parental rights and responsibilities – Best interests and welfare of child** located on page 4.

NDCC 14-09-28 is repealed because it is incorporated in Section 4 - **Parental Rights and Responsibilities**, page 6, line 31 – 34 and on page 7, lines 1 - 21.

CONCLUSION

This completes my testimony about the changes that we are supporting. I want to thank you for giving us the opportunity to present these to you today. If you have any questions I am here to answer them. If any arise in the future feel free to contact SBAND through Bill Neumann at 255-1404 or bill@sband.org, or me at 222-4777 or by email to sherry@millsmoorelaw.com. Thank you.

AMENDMENT TO SENATE BILL 2042

January 20, 2009

Sherry Mills Moore
State Bar Association of North Dakota

Page 12, line 25, insert "Only" before "If" and "shall" after "established, and after
"court" delete "shall"

With this amendment the sentence will read:

*Only if a prima facie case is established, shall the court set a date for an
evidentiary hearing.*

STATE BAR ASSOCIATION OF NORTH DAKOTA

**TESTIMONY ON SENATE BILL 2042
SHERRY MILLS MOORE**

Good Morning, I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota, here today in support of this bill. I am an attorney in private practice here in Bismarck, with a focus on family law. In addition, I have most recently served as the chair of the Custody and Visitation Task Force formed by the State Bar Association of North Dakota.

The Task Force was formed because the State Bar Association of North Dakota made a commitment in the last session to study custody and visitation in this state and consider what could be improved. It was comprised of judges, legislators, lawyers, mediators and lay persons. The group overlapped in that in that that most members were also parents, one legislator is also a practitioner, many practitioners were also guardian ad litem, custody investigators and mediators.

The Task Force reviewed practices in other states with an eye towards what does and does not seem to work well in our own state. We met with proponents of the failed Initiated Measure #3. Then we tackled the issues that we thought most in need of work, or perhaps most amenable to repair. SB 2042 is the result of that work as well as the work of the Interim Committee.

Let me first give you the long view of what this bill does, and then I will lay out the specifics. And I begin that process by telling you what this bill does not do. It does not address child support. It is not intended to, this is not about money.

What the bill does do is as follows:

- Incorporates the use of **parenting plans** to help parents to be more specific in their proposed parenting;
- Uses more **parent-friendly language**, such as “parenting time” and “parenting responsibility”, and “decision-making responsibility” rather than “custody” and “visitation”.
- Fleshes out the parents’ allocation of **decision-making** responsibility.
- Changes the best interest factors:
 - Adds a factor which looks at which parent would best support a **relationship with the other parent**.
 - Narrows the moral and health factors to require consideration only as each **impacts the child**. So, for example, if a parent has a disability, but is fully able to care for the children, the health factor would not work against that parent.
 - Combining and clarifying (but not changing the meaning) of two factors -- *length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity*, and, *the permanence, as a family unit, of the existing or proposed custodial home*.
 - Elevates the **weight of the preference** of the child but only after the court determines the child of sufficient maturity, a finding which itself needs a higher level of proof. In other words, the preference of the child would have substantial weight, BUT ONLY AFTER, by clear and convincing evidence, the court finds the child to be sufficiently mature. In addition, the court can look to whether the child’s preference is the result of undesirable or improper influences.
- One of the most audible problems facing parents who are not raising their children in the same home are visitation issues. There are a variety of reasons these are the subject of complaints against the system.

- Visitation disputes often require speedier resolution than the courts are able to give – (if disagreeing about Thanksgiving arises on the weekend before Thanksgiving it is unlikely to be resolved in time for Thanksgiving)
- To some degree the system feels “done” with them -- attorneys and court having tried the case or settled the case and are reluctant to put the same energy into applying the case.
- Sometimes the only end to these problems is the aging out of the children, so while the actual initial custody placement may be done at some point, the issues of application, can go on for a long time.
- Cost of these disputes can be prohibitive, limiting access to the courts.

Parenting coordinators can be one solution to this problem. For parents who are in high conflict over post judgment scheduling issues SB 2042 adds parenting coordinators to the parent's tool chest. Also known as visitation expeditors, these individuals would be appointed after an initial custody order. Their purpose would be to resolve parenting time disputes by interpreting, clarifying and addressing circumstances not specifically addressed by an existing court order. The challenge would be to not unconstitutionally delegate judicial authority and yet to have a swifter method of resolving disputes.

Many other states use parenting coordinators. They are some kind of hybrid between a special master and a mediator. Mediators try to get people to reach their own agreement. Parenting coordinators would do the same, but failing that, would make a decision. Stated perhaps simplistically, parenting coordinators are mediators with teeth.

The State Bar Association of North Dakota supports SB 2042 because we think it in fact does incorporate better solutions to the very difficult problems which arise in custody. It may seem axiomatic, but any time the

judicial system works better, our clients are work better. And any time our client's work better, their children benefit.

I just went through on overview of the changes which SB 2042 would make, here are the specifics .

SECTION 1.

(Page 1)

In this section, §14-05-22 is amended by making technical changes so the language conforms to the new terminology.

Subsections 3 and 4 and 5 (Page 2, lines 1-23). The language in these subsections is deleted from this section and moved to Section 4 (Page 5, lines 1-25).

SECTION 2.

(Page 2)

In this section, §14-05-23 is amended by making technical changes so the language conforms to the new terminology.

SECTION 3.

(Page 3)

In this section, §14-09-05.1 is amended by making technical changes so the language conforms to the new terminology.

SECTION 4.

(Page 4)

The following **five** new sections are added to chapter 14-09. These sections provide much of the substantive and procedural changes contemplated by the Task Force.

I. Definitions

(Page 4, lines 10-24).

The definitions are included to flesh out the later sections. Although seemingly self-explanatory, they serve to delineate the rights and responsibilities of parents to their children. The following explains each definition and provides examples of what falls within the definition.

Decision making responsibility is the thinking part of parenting. Currently, this would be included in the term *joint legal custody*. Examples would be to decide whether or not a child is held back to repeat a grade, to go forward with a medical procedure, or which school the child goes to. It does not involve how much child support a parent would pay, nor does it override a division of parenting time between parents.

Parental rights and responsibilities is the umbrella term in that it covers all rights and responsibilities a parent has under this chapter as related to custody.

Parenting plan is the written plan parents submit to the court outlining how they are going to go forward in the future with regard to their child. The details of what should be included in a parenting plan and the interaction between the parents and the court are included in a later section.

Parenting schedule is the time when the child would be with each parent. Under current terminology this would spell out the terms of visitation.

Parenting time is the time the child is with a parent.

Primary residential responsibility is the parent with more than 50% of the residential responsibility. This would in essence be equivalent under current terminology to the parent who has physical custody.

Residential responsibility is the obligation to provide a home for the child.

II. **Parental rights and responsibilities – Best interests and welfare of child.** (Page 5, lines 26 – 31 & Page 6, lines 1 - 16).

Subsection 1 consolidates four prior code sections, NDCC §§14-09-04, 14-09-05, 14-09-06 and 14-09-06.1. Section 12 of the bill draft repeals these sections.

The existing sections gave power to the court to allocate custody of children according to the children's best interest and recognized that with regard to custody mothers and fathers are to be treated equally. The existing sections distinguished between children of married and unmarried parents, and were duplicative and confusing. Rather than continuing to distinguish between children on the basis of their parent's marital status,

these have been consolidated and clarified. These particular changes are not substantive nor intended to modify current case law.

Subsections 2, 3, and 4 were moved from §14-05-22 and changes were made to reflect the new terminology.

III. Parenting Plans – Contents

(Page 5, lines 26 – 31 & Page 6, lines 1- 16)

This section establishes the substance and process for parenting plans. To some extent this currently this is done by proposals or agreements submitted to the court. This new section guides parents in developing **parenting plans** which delineate how they are going to handle their children in the future when they do not live together. Parenting plans explain when the children are going to be with each parent and how the parents are going to make decisions about their children.

Subsection 1 requires parents to develop and file the plan with the court. If they are unable to agree, the court will establish a plan based on the best interest of the child.

Subsection 2 establishes the minimum terms to be covered in the parenting plan. These include decision-making responsibility, information sharing and access, legal residence, residential responsibility and parenting schedule, transportation and exchange of the child, procedure for review and adjustment and methods of resolving disputes.

Paragraph a - Decision-making responsibility is defined in the definition section and has its own section which is discussed below. The parenting plan will need to identify how decisions are going to be made. This means that the parents have to state which parent is going to make decisions, or how they are going to make them together. They may allocate decision-making differently for major decisions or routine decisions, but both need to be addressed. A major decision would be whether a child gets braces. A routine decision would be what time the child goes to bed. Typically, routine decisions are left to the parent who has the child at the time the decision needs to be made. Major decisions are either allocated to one parent or shared in some fashion.

Information sharing and access refers to how each parent is going to be able to communicate with the child and learn what is going on in the child's life. Currently the parents each have specific access rights under § 14-09-28. These rights are included in the section entitled Parental Rights and Responsibilities. Certainly parents can address additional communication methods in their parenting plans.

Legal residence of a child for school attendance settles the issue of where the child will go to school.

One of the most significant terms of the parenting plan will be when the child is with each parent. Residential responsibility and parenting responsibility address this issue. Under the plan they will decide how to manage holidays, weekends, weekdays, and summers. Under existing law, this is referred to as the custody and visitation schedule.

Transportation and exchange of the child is self explanatory. The safety provision is included to address concerns of domestic violence.

Parenting plans will cover an extended time period during which life change is inevitable. Procedure for review and adjustment of the plan describes how parents will address changes that arise in the future.

Under the current system when parties have trouble agreeing to changes the most common solution is to go back to court. Under the proposed bill parents will agree to how they are going to try to resolve disputes. Those methods may include mediation or talking to a professional – counselor, minister. It does not eliminate the option of going to court.

IV. Decision-making responsibility.

(Page 6, lines 17 – 31, Page 7, lines 1-3)

This new section provides guidance to the court regarding the decision-making process. Generally, the court must accept the parent's decision-making agreement unless the court makes written findings that the agreement is not in the best interest of the children. If the parents do not agree, the court allocates the decision-making authority based on the child's best interest. Either way, if the decision-making is shared in some respect, the allocation must address a method of dispute resolution if the parent's do not agree. For example, the allocation may say if the parents do not agree, dad will decide. Or, it may say, if they do not agree, they will work with a third party to resolve the dispute.

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(Page 7 , lines 27 through Page 10, Line 12))

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CONCLUSION

SB 2042

Testimony of Sherry Mills Moore

This completes my testimony about the changes that we are supporting. I want to thank you for giving us the opportunity to present these to you today. If you have any questions I am here to answer them. If any arise in the future feel free to contact SBAND through Bill Neumann at 255-1404 or bill@sband.org, or me at 222-4777 or by email to sherry@millsmoorelaw.com. Thank you.

Testimony on SB 2042

House Judiciary Committee

Good morning Chairman Dekrey and members of the House Judiciary Committee for the record my name is Shirley Meyer and I represent District 36.

SB 2042 comes to you from the Interim Judicial Process Committee and our studies of the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. By Legislative Council directive, the scope of this study was limited to a study of the best state practices relating to child custody.

As you may recall in 2006 an initiated measure was brought forward advocating the joint custody of children. Although this measure failed, the issue of child custody continues to be on the forefront of many North Dakotans minds. With one in every two marriages ending in divorce, the amount of children affected by our custody laws is substantial.

Our committee heard testimony and received information from the ND Coalition for Families and Children (proponents of Measure 3) and many individuals. We also received extensive testimony from the State Bar Association who had formed the Custody and Visitation Task Force to study custody and visitation issues.

The one common theme was that this system is broken and is in need of repair, and we need to take away the adversarial nature of the custody proceedings.

After reviewing other states and what seemed to work, we took the recommendation of the Custody and Visitation Task Force and those are found in SB 2042.

The first recommendation included a change in some of the terminology currently used in family law. It was recommended that the term “custody” be changed to “primary residential responsibility”, and the term “visitation” be changed to “parenting time”.

The second recommendation was to develop a parenting plan that would be filed with the court. The court could not approve a parenting plan unless the plan contained a method of resolving disputes.

The third recommendation dealt with the best interest factors used by the court for determining the custody of the child. For example, it was recommended that a new factor be added to the best interest analysis which would require a court to consider the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

The fourth recommendation was the establishment of a parenting coordinator program. A parenting coordinator is a neutral person who helps to resolve visitation or “parenting time” disputes. Some high-conflict families cannot work through disputes without the assistance of the courts, and because access to the court often is not as swift as some disputes require, a parenting coordinator could resolve the disputes more quickly and cost effectively than a court proceeding.

The Supreme Court would be responsible for establishing the qualifications of parenting coordinators, and maintaining a public roster of individuals eligible to serve as a parenting coordinator. There is a fiscal note attached to SB 2042 that reflects a general fund appropriation of \$52,040 for the 2009-11 biennium and \$42,000 for the 2011-13 biennium to implement the parenting coordinators’ program.

STATE BAR ASSOCIATION OF NORTH DAKOTA

TESTIMONY ON SENATE BILL 2042 SHERRY MILLS MOORE

Good Morning, I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota, here today in support of this bill. I am an attorney in private practice in Bismarck, with a focus on family law. In addition, I have most recently served as the chair of the Custody and Visitation Task Force formed by the State Bar Association of North Dakota.

The Task Force was formed because the State Bar Association of North Dakota made a commitment in the last session to study custody and visitation in this state and consider what could be improved. It was comprised of judges, legislators, lawyers, mediators and lay persons. The group overlapped in that most members were also parents, one legislator is also a practitioner, many practitioners were also guardian ad litem, custody investigators and mediators.

The Task Force reviewed practices in other states with an eye towards what does and does not seem to work well in our own state. We met with proponents of the failed Initiated Measure #3. Then we tackled the issues that we thought most in need of work, or perhaps most amenable to repair. SB 2042 is the result of that work as well as the work of the Interim Committee.

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- Uses more **parent-friendly language**, such as "parenting time" and "parenting responsibility", and "decision-making responsibility" rather than "custody" and "visitation".

- Fleshes out the parents' allocation of **decision-making** responsibility.
- Changes the best interest factors:
 - Adds a factor which looks at which parent would best support a **relationship with the other parent**.
 - Narrows the moral and health factors to require consideration only as each **impacts the child**. So, for example, if a parent has a disability, but is fully able to care for the children, the health factor would not work against that parent.
 - Combining and clarifying (but not changing the meaning) of two factors -- *length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity*; and, *the permanence, as a family unit, of the existing or proposed custodial home*.
 - Elevates the **weight of the preference** of the child but only after the court determines the child of sufficient maturity, a finding which itself needs a higher level of proof. In other words, the preference of the child would have substantial weight, BUT ONLY AFTER, by clear and convincing evidence, the court finds the child to be sufficiently mature. In addition, the court can look to whether the child's preference is the result of undesirable or improper influences.
- One of the most audible problems facing parents who are not raising their children in the same home are visitation issues. For a variety of reasons these are the subject of complaints about the system.
 - Visitation disputes often require speedier resolution than the courts are able to give – (if disagreeing about Thanksgiving arises on the weekend before Thanksgiving it is unlikely to be resolved in time for Thanksgiving)
 - Sometimes the only end to these problems is the aging out of the children, so while the actual initial custody placement may be done at some point, the issues of application, can go on for a long time.

- o Cost of these disputes can be prohibitive, limiting access to the courts.

Parenting coordinators can be one solution to this problem. For **parents who are in high conflict** over post judgment scheduling issues SB 2042 adds parenting coordinators to the parent's tool chest. Also known as visitation expeditors, these individuals would be appointed after an initial custody order. Their purpose would be to resolve parenting time disputes by interpreting, clarifying and addressing circumstances not specifically addressed by an existing court order. The challenge would be to not unconstitutionally delegate judicial authority and yet to have a swifter method of resolving disputes.

Many other states use parenting coordinators. They are some kind of hybrid between a special master and a mediator. Mediators try to get people to reach their own agreement. Parenting coordinators would do the same, but failing that, would make a decision. Stated perhaps simplistically, parenting coordinators are mediators with teeth. Also, parenting coordinators work with families after the divorce. Mediators are primarily involved before the divorce is final. If a parent does not agree to use a parenting coordinator and cannot afford one, the parenting coordinator will not be appointed.

Studies indicate that the biggest cause of damage to children of divorce comes from ongoing conflict between their parents. If a parenting coordinator can help parents work through or avoid those conflicts, we go a far way down the road towards mitigating that damage.

The State Bar Association of North Dakota supports SB 2042 because we think it in fact does incorporate better solutions to the very difficult problems which arise in custody. It may seem axiomatic, but any time the judicial system works better, our clients are work better. And any time our client's work better, their children benefit.

I just went through an overview of the changes which SB 2042 would make, here are the specifics .

SECTION 1.
(Page 1)

In this section, §14-05-22 is amended by making technical changes so the language conforms to the new terminology.

Subsections 3 and 4 and 5 (Page 2, lines 1-23). The language in these subsections is deleted from this section and moved to Section 4 (Page 5, lines 1-25).

SECTION 2.
(Page 2)

In this section, §14-05-23 is amended by making technical changes so the language conforms to the new terminology.

SECTION 3.
(Page 3)

In this section, §14-09-05.1 is amended by making technical changes so the language conforms to the new terminology.

SECTION 4.
(Page 4)

The following **five** new sections are added to chapter 14-09. These sections provide much of the substantive and procedural changes contemplated by the Task Force.

I. Definitions
(Page 4, lines 10-24).

The definitions are included to flesh out the later sections. Although seemingly self-explanatory, they serve to delineate the rights and responsibilities of parents to their children. The following explains each definition and provides examples of what falls within the definition.

Decision making responsibility is the thinking part of parenting. Currently, this would be included in the term *joint legal custody*. Examples would be to decide whether or not a child is held back to repeat a grade, to go forward with a medical procedure, or which school the child goes to. It does not involve how much child support a parent would pay, nor does it override a division of parenting time between parents.

Parental rights and responsibilities is the umbrella term in that it covers all rights and responsibilities a parent has under this chapter as related to custody.

Parenting plan is the written plan parents submit to the court outlining how they are going to go forward in the future with regard to their child. The details of what should be included in a parenting plan and the interaction between the parents and the court are included in a later section.

Parenting schedule is the time when the child would be with each parent. Under current terminology this would spell out the terms of visitation.

Parenting time is the time the child is with a parent.

Primary residential responsibility is the parent with more than 50% of the residential responsibility. This would in essence be equivalent under current terminology to the parent who has physical custody.

Residential responsibility is the obligation to provide a home for the child.

II. Parental rights and responsibilities – Best interests and welfare of child. (Page 5, lines 26 – 31 & Page 6, lines 1 - 16).

Subsection 1 consolidates four prior code sections, NDCC §§14-09-04, 14-09-05, 14-09-06 and 14-09-06.1. Section 12 of the bill draft repeals these sections.

The existing sections gave power to the court to allocate custody of children according to the children's best interest and recognized that with regard to custody mothers and fathers are to be treated equally. The existing sections distinguished between children of married and unmarried parents, and were duplicative and confusing. Rather than continuing to distinguish between children on the basis of their parent's marital status, these have been consolidated and clarified. These particular changes are not substantive nor intended to modify current case law.

Subsections 2, 3, and 4 were moved from §14-05-22 and changes were made to reflect the new terminology.

III. Parenting Plans – Contents
(Page 5, lines 26 – 31 & Page 6, lines 1- 16)

This section establishes the substance and process for parenting plans. To some extent this currently ~~the~~ is done by proposals or agreements submitted to the court. This new section guides parents in developing **parenting plans** which delineate how they are going to handle their children in the future when they do not live together. Parenting plans explain when the children are going to be with each parent and how the parents are going to make decisions about their children.

Subsection 1 requires parents to develop and file the plan with the court. If they are unable to agree, the court will establish a plan based on the best interest of the child.

Subsection 2 establishes the minimum terms to be covered in the parenting plan. These include decision-making responsibility, information sharing and access, legal residence, residential responsibility and parenting schedule, transportation and exchange of the child, procedure for review and adjustment and methods of resolving disputes.

Paragraph a - Decision-making responsibility is defined in the definition section and has its own section which is discussed below. The parenting plan will need to identify how decisions are going to be made. This means that the parents have to state which parent is going to make decisions, or how they are going to make them together. They may allocate decision-making differently for major decisions or routine decisions, but both need to be addressed. A major decision would be whether a child gets braces. A routine decision would be what time the child goes to bed. Typically, routine decisions are left to the parent who has the child at the time the decision needs to be made. Major decisions are either allocated to one parent or shared in some fashion.

Information sharing and access refers to how each parent is going to be able to communicate with the child and learn what is going on in the child's life. Currently the parents each have specific access rights under § 14-09-28. These rights are included in the section entitled Parental Rights and Responsibilities. Certainly parents can address additional communication methods in their parenting plans.

Legal residence of a child for school attendance settles the issue of where the child will go to school.

One of the most significant terms of the parenting plan will be when the child is with each parent. Residential responsibility and parenting responsibility address this issue. Under the plan they will decide how to manage holidays, weekends, weekdays, and summers. Under existing law, this is referred to as the custody and visitation schedule.

Transportation and exchange of the child is self explanatory. The safety provision is included to address concerns of domestic violence.

Parenting plans will cover an extended time period during which life change is inevitable. Procedure for review and adjustment of the plan describes how parents will address changes that arise in the future.

Under the current system when parties have trouble agreeing to changes the most common solution is to go back to court. Under the proposed bill parents will agree to how they are going to try to resolve disputes. Those methods may include mediation or talking to a professional – counselor, minister. It does not eliminate the option of going to court.

IV. Decision-making responsibility.

(Page 6, lines 17 – 31, Page 7, lines 1-3)

This new section provides guidance to the court regarding the decision-making process. Generally, the court must accept the parent's decision-making agreement unless the court makes written findings that the agreement is not in the best interest of the children. If the parents do not agree, the court allocates the decision-making authority based on the child's best interest. Either way, if the decision-making is shared in some respect, the allocation must address a method of dispute resolution if the parent's do not agree. For example, the allocation may say if the parents do not agree, dad will decide. Or, it may say, if they do not agree, they will work with a third party to resolve the dispute.

Existing law specifically addresses issues of domestic violence and custody. Nothing in this proposed new law is meant to in any way change the way present law deals with domestic violence. The new section requires that domestic violence be considered in the allocation of decision-making responsibility. Because domestic violence can impact the dynamic of parental interaction, this new provision requires specific findings to support a joint-decision making order. This section also requires the court to consider the child's best interest as well as safety of the parents and children.

V. Parental Rights and Responsibilities

(Page 7, lines 4-26)

Currently NDCC §14-09-28 addresses parental rights and responsibilities. Those provisions have been moved to this section. Section 12 repeals the current statute.

SECTION 5.

(Page 7, lines 27 through Page 10, Line 12))

This section amends §14-09-06.2 which deals with the best interest of the children. While maintaining the general structure of the best interest analysis and most of the substance, several factors were clarified and new factors were added. In addition, changes were made so the language conforms to the new terminology.

In **paragraph (1) subsection (a)** language was added at the end to focus the court's inquiry on the ability of the parents to provide nurture, love, affection and guidance.

Paragraph (b) language was re-written to focus the court's inquiry on the ability of the parents to provide adequate food, clothing, shelter, medical care and a safe environment.

Paragraph (c) language was re-written to focus the court's inquiry on the ability of the parents to provide for the child's present and future developmental needs.

Existing factors in **paragraphs (d) and (e)** deal with the stability of the child's environment both from a historical perspective, as well as projecting into the future. The language in the two existing paragraphs is confusing.

The proposed language in paragraph (d) combines and clarifies the concepts embodied in existing paragraphs (d) and (e). Proposed paragraph (d) requires the court to look at the sufficiency and stability of each parent's home environment, the length of time the child has lived in each home and the desirability of maintaining continuity in the child's home and community. The amendments are not intended to eliminate the court's ability to consider the permanence of the family unit, a consideration embodied in existing paragraph (e). This factor also now codifies the impact of the extended family, something the court has long done in considering a child's best interest.

New **paragraph (e)** adds a factor to best interest analysis dealing with the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. This factor was added because both parents are important to a child. This is language used by many other states and recognizes the need of a child to be close to both parents taking into consideration the practical reality of two parents raising a child when they do not live together.

The amendments to **paragraphs (f) and (g)** narrow the court's inquiry to the impact on the child of the moral fitness and mental and physical health of the parents. At times this has been interpreted by the parties as a means of punishing the other parent for conduct which did not affect the child.

Under **paragraph (h)** the court looks to the child's record in the home, school and community. The new language clarifies that the court should also consider the potential effect of a change.

The amendments to **paragraph (i)** deal with the preference of a child. The preference of a child has always had a place in custody decisions. A change to the language is being recommended because too many young children are dragged into court by a parent and pressured to choose between parents. The proposal would give a child's preference substantial weight, but only if the court finds the child is sufficiently mature to make a sound judgment. So important is the maturity of the child to the preference that the burden of proof must be met by clear and convincing evidence. The court also shall consider whether the preference is based on undesirable or improper influence. The proposal is not intended to bring more children into court, but rather to keep children out of a no-win situation.

Paragraphs (j) and (m) are amended by making technical changes so the language conforms to the new terminology.

SECTIONS 6 AND 7.

(Pages 10 – 11)

In these sections, §§14-09-06.3 and 14-09-06.4 are amended by making technical changes so the language conforms to the new terminology. In addition, currently if a party cannot pay for a custody investigator or guardian ad item, the court can order the county to do so, but it is not always clear which county should pay.

Under the proposal, the county in which the child resides at the time the action is commenced would pay.

SECTION 8.

(Page 12-13)

In this section, §14-09-06.6 is amended by making technical changes so the language conforms to the new terminology.

SECTION 9

(Page 14)

In this section, §14-09-07 is amended by making technical changes so the language conforms to the new terminology.

This section of the law governs parents who want to move their children out of state. To deal with parents who have equal parenting time with their children, the North Dakota Supreme Court in Maynard v. McNett, 2006 ND 36, 710 N.W.2d 369, established that these parents must also have the primary residential parenting time modified in order to move. This statute change simply codifies that decision.

SECTION 10.

(Page 14 and 15)

In light of the many instances in which “*custody*” and “*visitation*” are used in the code, and to avoid amending all those sections, this catchall section is proposed. Where the terms “*custody*” and “*visitation*” are used elsewhere in the code, they will be defined by the new terminology.

SECTION 11.

(Page 14 through 17)

Section 11 creates a new Chapter 14-09.2 which establishes a parenting coordinator program for use by high conflict parents after the divorce is final. Interpreting and applying parenting time orders is a frequent hotbed for dispute between parents. Most parents are able to work through this but some high-conflict families simply cannot without the assistance of the court. Because access to the court is not as swift as some problems need, and the high cost of the court process, the problems remain unresolved, or involves repeated court appearances. This means that the children of these families live in a nearly constant state of tension between their parents. Other states have dealt with this by the use of parenting coordinators.

§14-09-.2-01 defines a parenting coordinator as a neutral person who helps to resolve parenting time disputes. The section also sets out the duties of a parenting coordinator. These include assessing whether that has been a violation of an existing order, resolving one-time or ongoing disputes, facilitating negotiations and if necessary making a decision to resolve the dispute.

§14-09.2-02 sets out the procedure to appoint a parenting coordinator.

§14-09.2-03 directs the Supreme Court to establish qualifications of the parenting coordinators and make a roster available to the public.

§14-09.2-04 establishes the timeframes for the work of the parenting coordinator.

§14-09.2-05 outlines the procedure for allocating the fees of the parenting coordinator between the parties. If the parties cannot pay for the coordinator, there is no provision in this proposal for the state or county to pick up the cost.

§14-09.2-06 deals with confidentiality. Just as with mediation, to encourage an open discussion by the parties trying to resolve the disputes, parties need to know that what they say will not be presented to the court. The only limitations on that arise with respect to matters which are mandated to be disclosed, such as abuse of a child. In addition, under the fee paying structure, a parenting coordinator could advise the court about bad faith of one of the parents.

§14-09.2-07. As with other arms of the court, parenting coordinators would be granted immunity from civil suit for ordinary negligence.

§14-09.2-08. This section delineates how the parenting coordinator's appointment is modified or ended.

SECTION 12

(Page 17)

This section repeals 14-09-04, 14-09-05, 14-09-06 and 14-09-06.1 because they are consolidated into subsection 1 of the new section entitled **Parental rights and responsibilities – Best interests and welfare of child** located on page 4.

NDCC 14-09-28 is repealed because it is incorporated in Section 4 - **Parental Rights and Responsibilities**, page 6, line 31 – 34 and on page 7, lines 1 - 21.

CONCLUSION

This completes my testimony about the changes that we are supporting. I want to thank you for giving us the opportunity to present these to you today. If you have any questions I am here to answer them. If any arise in the future feel free to contact SBAND through Bill Neumann at 255-1404 or bill@sband.org, or me at 222-4777 or by email to sherry@millsmoorelaw.com. Thank you.