

2011 HOUSE JUDICIARY

HB 1078

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1078  
January 10, 2011  
12675

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1078.

Rep. Shirley Meyer: Sponsor (see attached testimony). This was given to us and as I stated, it was outside the purview of our committee; yet she feels like this is becoming a very serious problem in the Minot area and other areas around the state. Lay guardians do a wonderful job for us, but they are nervous that they don't have the immunity within the course of work, that others have. It is my understanding that there are going to be friendly amendments offered to this. We understand what we are trying to do here, but we do want a piece of legislation that's very correct and right. There are going to be people bringing forward friendly amendments.

Chairman DeKrey: I was told this morning that Sherry Mills Moore will be doing that. Is the State Bar Association involved in that.

Bill Newmann, State Bar Association: We are, yes (from the audience).

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

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1078  
January 24, 2011  
13281

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will take a look at HB 1078.

Rep. Delmore: The Supreme Court and all the others have approved the amendments that are there; it allows anybody that is appointed guardian ad litem, whether they're an attorney, whatever, to have the immunity. Everyone likes it as far as I know. I move the amendment.

Rep. Onstad: Second the motion.

Chairman DeKrey: Voice vote; motion carried. We now have the bill before us as amended. What are the committee's wishes?

Rep. Delmore: I move a Do Pass as amended.

Rep. Onstad: Second.

**12 YES 0 NO 2 ABSENT DO PASS CARRIER: Rep. Onstad**

January 24, 2011

VR  
1/25/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1078

Page 1, line 2, remove "lay"

Page 1, line 8, overstrike "lay"

Page 1, line 11, remove "lay"

Page 1, line 12, remove "acts"

Page 1, line 13, replace "or omissions of ordinary negligence" with "any act or omission"

Page 1, line 14, remove "lay"

Page 1, line 14, after "item" insert ", unless the act or omission constitutes gross or willful negligence or gross or willful misconduct"

Renumber accordingly

Date: 1/24/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1078

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11. 0109. 01001 . 02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Onstad

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle			Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner					

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Onstad

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

**REPORT OF STANDING COMMITTEE**

**HB 1078: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1078 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "lay"

Page 1, line 8, overstrike "lay"

Page 1, line 11, remove "lay"

Page 1, line 12, remove "acts"

Page 1, line 13, replace "or omissions of ordinary negligence" with "any act or omission"

Page 1, line 14, remove "lay"

Page 1, line 14, after "item" insert ", unless the act or omission constitutes gross or willful negligence or gross or willful misconduct"

Renumber accordingly

**2011 SENATE JUDICIARY**

**HB 1078**

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1078  
2/15/11  
Job #14540

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the immunity of a guardian ad litem.

## **Minutes:**

There is attached written testimony

## **Senator Nething – Chairman**

**Representative S. Meyer** – Introduces the bill – See written testimony.

**Lanny Serrano** – Coordinator for the Lay Guardian Ad Litem Program for Western ND. – Supports this bill and says it will help in recruitment and retention of lay guardian ad litem. He says most are part time people who have an interest in children and families.

Opposition – 0

Neutral – 0

Close the hearing on HB1078



# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1078  
3/9/11  
Job #15184

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the immunity of a guardian ad litem

**Minutes:**

**Senator Nething – Chairman**

## **Discussion**

Committee discusses whether to wait for the study or to act on it now. Senator Nething says the western part of the state has a hard time finding guardians. The committee asks for the definition of ad litem.

**Senator Olafson** moves do pass

**Senator Sitte** seconds

Motion passes

**Senator Olafson** will carry

Date: 3/9  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1098

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Olafson

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

**REPORT OF STANDING COMMITTEE**

**HB 1078, as engrossed: Judiciary Committee (Sen. Nething, Chairman)** recommends  
**DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1078  
was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1078

## HOUSE JUDICIARY COMMITTEE

### DUANE DEKREY, CHAIRMAN

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

HB 1078 is a bill to provide for granting immunity to individuals who are appointed by the court as lay guardians ad litem.

Lay guardians ad litem, who are appointed by a judge in cases of child abuse and neglect, deprivation, permanency hearings, and termination of parental rights, do not have immunity from civil suits when acting in their official capacity.

Section 14-09-06.4 provides immunity for guardians ad litem in custody and visitation cases and Section 14-09.2-07 provides for immunity for parenting coordinators. Section 27-20-48, which provides for the appointment of lay guardians ad litem, does not have a comparable immunity provision.

It is becoming increasingly more difficult to find people to serve in positions of lay guardians ad litem especially when they know they do not have immunity. HB 1078 is an attempt to alleviate their concerns and encourage more participation as guardians ad litem.

has not been established by a court of competent jurisdiction, the child must be returned to the court issuing the original termination order for entry of further orders for the care, custody, and control of the child.

**27-20-48. Guardian ad litem.** The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed.

**27-20-48.1. Appointment of legal guardian.** The court may establish a guardianship as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

**27-20-48.2. Powers and duties of guardian of child.** A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

1. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
2. The guardian may receive money payable for the support of the ward to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums so received must be applied to the child's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the child's future needs unless a conservator has been appointed for the estate of the child, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
3. The guardian is empowered to facilitate the child's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the child.
4. A guardian shall file an annual report with the court informing the court of the status or condition of the child and provide a copy of the report to the child. The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate. The guardian shall report whether the child has resided in an institution, whether the child continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements.

**27-20-48.3. Termination of appointment of guardian - General.** A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or

person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.

4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

**14-09-06.4. Appointment of guardian ad litem or investigator for child in proceedings involving parental rights and responsibilities - Immunity.** In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor child, and in any action when the parenting rights and responsibilities concerning the child is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the child concerning parenting rights and responsibilities. The court may appoint a guardian ad litem or investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the child's best interests. If appointed, the investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county where the child resided at the time the action was commenced. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or investigator is a disputable presumption.

**14-09-06.5. Allegation of harm to child - Effect.** If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

**14-09-06.6. Limitations on postjudgment modifications of primary residential responsibility.**

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify primary residential responsibility may be made earlier than two years after the date of entry of an order establishing primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
  - a. The persistent and willful denial or interference with parenting time;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The primary residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or

there is not a court order that provides for apportionment of the fees of a parenting coordinator, the court may require the party requesting the appointment of a parenting coordinator to pay the fees of the coordinator in advance. Neither party may be required to submit a dispute to a parenting coordinator if the party cannot afford to pay the fees of a parenting coordinator or an affordable coordinator is not available, unless the other party agrees to pay the fees. After the fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. Notwithstanding the provisions of section 14-09.2-06, the court may consider information from the parenting coordinator in determining bad faith.

**14-09.2-06. (Effective through June 30, 2013) Confidentiality.** Statements made and documents produced as part of the parenting coordinator process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment. Parenting coordinators and lawyers for the parties, to the extent of their participation in the parenting coordinator process, may not be subpoenaed or called as witnesses in court proceedings. Notes, records, and recollections of parenting coordinators are confidential and may not be disclosed unless:

1. The parties and the parenting coordinator agree in writing to the disclosure; or
2. Disclosure is required by law or other applicable professional codes. Notes and records of parenting coordinators may not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Unless the court determines that the notes and records contain information regarding acts that may be a violation of a state or federal criminal law, the notes and records may not be released.

**14-09.2-07. (Effective through June 30, 2013) Immunity.** A parenting coordinator is immune from civil liability for damages for acts or omissions of ordinary negligence arising out of that individual's duties and responsibilities as a parenting coordinator.

**14-09.2-08. (Effective through June 30, 2013) Modification or termination of appointment.** The court may terminate or modify the parenting coordinator appointment upon agreement of the parties, upon motion of either party, at the request of the parenting coordinator, or by the court on its own motion for good cause shown. Good cause includes:

1. Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the parenting coordinator;
2. A determination that the parties no longer need the assistance of a parenting coordinator;
3. Impairment on the part of a party that significantly interferes with the party's participation in the process; or
4. The parenting coordinator is unwilling or unable to serve.



Sixty-second  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1078

Introduced by

Representatives S. Meyer, Weisz, Delmore

Senators J. Lee, Mathern

Amendments  
from Sherry  
Mills Moore  
Behalf of STATE  
Bar Association  
of ND

- 1 A BILL for an Act to amend and reenact section 27-20-48 of the North Dakota Century Code,  
2 relating to the immunity of a lay guardian ad litem.

1/24/11

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 4 SECTION 1. AMENDMENT. Section 27-20-48 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 27-20-48. Guardian ad litem - Immunity.

- 7 The court at any stage of a proceeding under this chapter, on application of a party or on its  
8 own motion, shall appoint a ~~lay~~ guardian ad litem for a child who is a party to the proceeding if  
9 the child has no parent, guardian, or custodian appearing on the child's behalf or their interests  
10 conflict with the child's or in any other case in which the interests of the child require a guardian.

- 11 A party to the proceeding or that party's employee or representative may not be appointed. A lay  
12 guardian ad litem appointed under this section is immune from civil liability for damages for acts  
13 or omissions of ordinary negligence arising out of that individual's duties and responsibilities as  
14 a lay guardian ad litem, unless the act or omission constitutes gross or willful

negligence or gross or willful misconduct.

AMENDMENT TO HOUSE BILL 1078

Line 8: Delete "lay"

Line 11: Delete "lay"

Line 12: Insert "any" before "acts", delete "s" from "acts";

Line 13: Delete "s" from omission; delete "of ordinary negligence"

Line 14: Delete "lay", replace the period with a comma; insert "unless the act or omission constitutes gross or willful negligence or gross or willful misconduct."

## SENATE JUDICIARY COMMITTEE

### DAVE NETHING, CHAIRMAN

Mr. Chairman and members of the Senate Judiciary Committee for the record my name is Shirley Meyer and I represent District 36.


During last interim it was brought to the Judicial Process Committee's attention that there was a need for immunity in state law for individuals who are appointed by the court as lay guardians ad litem. Being as this was outside our scope of study, I agreed to sponsor legislation.

HB 1078 is a bill to provide for granting immunity to individuals who are appointed by the court as lay guardians ad litem.

Lay guardians ad litem, who are appointed by a judge in cases of child abuse and neglect, deprivation, permanency hearings, and termination of parental rights, do not have immunity from civil suits when acting in their official capacity.

Section 14-09-06.4 provides immunity for guardians ad litem in custody and visitation cases and Section 14-09.2-07 provides for immunity for parenting coordinators. Section 27-20-48, which provides for the appointment of lay guardians ad litem, does not have a comparable immunity provision.


It is becoming increasingly more difficult to find people to serve in positions of lay guardians ad litem especially when they know they do not have immunity. HB 1078 is an attempt to alleviate their concerns and encourage more participation as guardians ad litem.



HB 1078 has been amended since it was first introduced in the house, because there were two bills that were seeking to give a guardian ad litem immunity in juvenile court proceedings.

SB 2106 gave immunity only for the GAL's report. The guardian ad litem should also be protected from liability for work done in investigating and testifying.

HB 1078 as was originally introduced only protected lay guardian ad litem. While nearly all GAL's in juvenile court proceedings are lay persons, there wasn't any reason not to extend the protection to professionals who serve in that capacity. (social worker, psychologist, mental health professional, lawyer).



For those reasons HB 1070 was amended to accomplish those goals and I would respectfully request a "Do Pass" from the Senate Judiciary Committee.