



SMITH PORSBORG

Schweigert Armstrong Moldenhauer & Smith

ATTORNEYS AT LAW

February 11, 2026

Re: SB 2186 – Child Custody Task Force Recommendations

Dear Chairman Clemens and Members of the Committee:

As the Committee is aware, I serve on this committee as a member of the Court appointed mediation program for the State of North Dakota. I am also in private practice as a family law attorney. When asked to serve on this committee, I took a hard look at the statutes that were a part of SB2186's study and had a difficult time comprehending how adding criminal aspects to family court was going to improve the lives of the children in the middle of these messes. I echo Mr. McLean's comments in that adding criminal infractions for withholding a child is not going to solve the issues brought before us. Frankly, the District Court judges already have the ability through a motion for contempt to hold a party in contempt and sentence him/her to jail for up to thirty days. Thus, in some respects there is already the looming threat of jail time for individuals that are in violation of their parenting time judgments. While some may wonder if that threat is ever carried out, I have had more than one case where an individual was sent to jail when the Court found the person in contempt of court. Thus, I do believe the judiciary will impose jail time if their previous attempts to curb that parent's behavior did not work.

I also echo the comments and concerns submitted by Captain Kraft and do not believe making this behavior a criminal infraction is the way to stop the behavior or the best use of our law enforcement resources. I also believe putting law enforcement officers in the middle of these situations is not healthy for anyone. The testimony submitted by the law enforcement officers very clearly detailed how dangerous and volatile these situations are and their main objective is to de-escalate these situations rather than determine which parent is correct under the law.

The main issue we have heard about is the length of time that passes when one parent is withholding a child from the other parent and, as a result, that parent's relationship with the child significantly suffers. The question is, how do we fix it? Many good suggestions have been discussed at the committee level and

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Page 1

I think the committee needs to make recommendations to the legis to try and implement those suggestions. The following are my suggestions to the committee:

1. ***Add a Timeline for When a Hearing Must be Set.*** Part of the issue we heard about in the testimony presented was the great length of time that the withholding of visitation had occurred. Whether we amend the statute or add a section to the rules of Court, we could add a specific requirement that if a parent is alleging interference of visitation/intentional withholding of a child, the Court must set a hearing within sixty (60) days of said motion being filed. This would ensure the situation does not drag on and if one parent is unreasonably withholding a child that it is stopped in a relatively short period of time.
2. ***Educate the Judiciary and the Practicing Bar.*** N.D.C.C. § 14-09-24 and 14-09-24.1 are not being used enough by attorneys and judges. Both sections really do address a lot of the issues that were raised which resulted in this study. For example, N.D.C.C. § 14-09-24 requires the Court by using the word “shall” in it to award attorney’s fees to the other parent if the Court finds a willful and persistent denial of visitation to that parent. In addition, N.D.C.C. § 14-09-24.1 also requires the Court to award make-up parenting time to the parent that lost parenting time and also requires the Court to give deference that parents proposed additional parenting time. From my perspective, N.D.C.C. § 14-09-24.1 gives too great of an amount of time to allow the make-up parenting time to occur as the statute currently states that the make-up parenting time has to occur within two years. Two years seems like a very long time and I would hope that the judges would impose the make-up parenting time to occur much sooner than that.
3. ***Establish Parenting Time Expeditors.*** I do think that with the issues of getting into Court in a timely manner, the addition of parenting time expeditors could address these problems without the need for the Court’s involvement. The benefit of the expeditors over the way our mediation system is currently set up is that the parenting time expeditors can make a binding decision for the parties. Mediators are third party neutrals and cannot decide issues for the parties. Any mediator that is also a family law attorney could essentially fill this role for the Court system. Whether the Court system wants to create program that is funded by the State to help defray the costs of using a parenting expeditor (similar to the mediation program) or whether the Court wants to make parties pay out of pocket for these individuals is something that should be discussed. We could essentially expand the mediation program to include these individuals as long as the legislature would give the program additional funding.
4. ***Study the Creation of Family Court.*** Overall, I think reform must happen to address many of the situations that arise in divorce cases as well as residential responsibility cases. The adversarial process currently in place in our Court’ system is not the best way to address family issues. The legislature needs to take a serious look at the creation of a family Court. While the cost that was provided to the Committee seemed very high, one must actually study the situation to see how many judges and additional staff would be needed to run a family court. Currently, the Court runs a juvenile court and drug court all withing the structure of the current Court system. Is there a reason we couldn’t do the same thing with a family Court?

SMITH PORSBORG SCHWEIGERT ARMSTRONG
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Sincerely,

A handwritten signature in black ink that reads "Stacy M. Moldenhauer". The signature is written in a cursive, flowing style.

Stacy M. Moldenhauer
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