

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2045

2001 SENATE JUDICIARY

SB 2045

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2045

Senate Judiciary Committee

Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
	X		0-21.1
Committee Clerk Signature			

Minutes: Senator Traynor opened the hearing on SB 2045: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 14-09-06.4 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO IMMUNITY FOR GUARDIANS AD LITEM AND CHILD CUSTODY INVESTIGATORS.

Vonette Richter, staff attorney for the legislative council, testifies neither against or for SB 2045. (Testimony Attached of the interim committee's final report)

Senator Traynor, could you distinguish for the committee the difference between guardian ad litem and a child custody investigator.

Vonette Richter, a guardian ad litem is now required to be an attorney and they are looking out for the legal interest of the child. A child custody investigator is probably someone who was known as a guardian ad litem. The court appoints this person to do investigations, interviews and too make a report to the court.

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Senate Judiciary Committee

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Senator Traynor the guardian ad litem is used to protect the child? Does the guardian ad litem have an attorney as well?

Sherry Moore a guardian ad litem is the attorney, I can't see why he would need one?

Senator Trenbeath, term "disputable presumption," is that a new term?

Vonette Richter in a court that is the term that is used. It means the same thing as rebuttable.

Senator Devour is it rebuttable or disputable?

Vonette Richter there would be a presumption there that the person is acting in good faith. If it is a disputable there would have to be rebuttable evidence that they didn't act in good faith.

Sherry Moore, representing the bar association, supports the bill. Guardian ad litem need protection from court. Which can be overcome by evidence of a lack of good faith. If there is no protection for them, they will not get involved. It helps the process.

Senator Traynor, these are contentious matters and that is why immunity is important.

Sherry Moore they are, and they are very heart felt matters. There is a need to protect these persons. They are subject to cross examination and impeachment on how they behave and the judge does not rubber stamp them. This bill will not give them license to do as they will and they have a reputation to hold.

Susan Beehler, represents R-Kids, opposed to SB 2045. Couldn't find the training requirements for guardian ad litem or child custody investigators in the bill. Did go to the supreme court rule, didn't find much regarding either. Went to the library to find out about them. The concern is what are the requirements to become either an ad litem or a child custody investigator. Is that person knowledgeable enough to qualify for these positions. I found ad litem to be very negative. Should not give ad litem immunity.

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Senate Judiciary Committee

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Senator Lyson do you realize there was no such thing as a custody investigator until this bill is passed. We're all guardian ad litem. Do you realize that?

Susan Beelher, no and that is why I tried to do research on it to find the definition.

Senator Lyson another question regards the janitor who was an investigator. There was no investigator, that could not happen.

Susan Beelher, in Hendrikson v. Hendrikson they went to the supreme court and that is what he said, unless he is lying to us. We believe our membership.

Senator Lyson, that is exactly why the committee decided to separate the two. The ad litem is there to protect the child. The investigator is supposed to be neutral. There are a lot of regulations which states that ad litem need to be an attorney and the court is very specific on what kind of attorney that should be. This is a win win for the children.

Susan Beelher, I agree with you, but as a lay person I found no qualifications for an ad litem. What is the criteria for a child investigator.

Senator Lyson I agree that not everything can be put in law, and that some of the rules must be established by the courts.

Sherry Moore in North Dakota rule of court 8.6 to 8.7 it was adopted by the North Dakota supreme court which makes the rules for court appointed people and in there it has rules for education criteria. Listed is the hours of training that is required.

Senator Traynor, this bill doesn't require the guardian ad litem to be an attorney, do the rules provide that?

Sherry Moore, yes. Rules do now provide that the guardian ad litem be an attorney. Problem with nomenclature. Separated functions: Guardian ad litem = attorney. Custody investigator could be a lay person. They both still need training.

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Senator Traynor, if a minor got a claim for a car accident. The guardian ad litem would be an attorney.

Sherry Moore those are different issues.

Senator Watne, I've served as a guardian ad litem. We knew more was needed to protect the child. Your group (R-Kids) should be enthused about this bill.

Susan Beehler, we didn't know about any clarifications. Our experience hasn't been positive. I have caution about immunity. I could support this bill if it is well intended.

Senator Lyson when I sat on this as a parol officer. I think this investigator is exactly what is needed here so the judge can see what is going on in black and white. We want to do the right thing for the child.

Susan Beehler, I agree with you. I wasn't clear for us. And the immunity thing still bothers us.

Senator Traynor, we hope this will be an improvement and the things you have told us will not happen.

Dan Beeshold, former president of R-Kids, still has reservations with the term immunity and good faith.

Senator Traynor closed the hearing on SB 2045.

SENATOR WATNE MOTIONED TO DO PASS, SECONDED BY SENATOR LYSON.

VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR

LYSON VOLUNTEERED TO CARRY THE BILL.

REPORT OF STANDING COMMITTEE (410)
January 30, 2001 11:20 a.m.

Module No: SR-16-1902
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2045: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2045 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2045

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2045

House Judiciary Committee

Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	01 to 3562
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2045. Relating to immunity for guardians ad litem and child custody investigators.

Yonette Richter: Attorney for Legislative Council, Interim Judiciary Committee. This bill was introduced by the Legislative council. It would allow the court to appoint a guardian ad litem or an investigator. The second thing this bill does is beginning with line 19, would provide immunity from civil liability, anyone of those that acts in good faith.

Rep Fairfield: What is good faith?

Yonette Richter: Whatever is done is not done maliciously or negligent

Rep Fairfield: I understand, I thought that you might give an example.

Chairman DeKrey: Your investigation may show one is a lousy person, that person ; may not like the result of the report, and that may lead to civil action against you the investigator.

Rep Klemin: That might be a case for slander.

Chairman DeKrey: Any more questions for Yonette, if not thank you for appearing.

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House Judiciary Committee
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Sharon Mills Moore: lawyer for Family Law appeared in support of SB 2045.

Chairman DeKrey: Anyone else wishing to testify in support or opposition of SB 2045.

Margaret Kottre: R-KIDS lobbyist (see attached testimony)

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

Susan Beehler: R-KIDS, volunteer lobbyist. Spoke in opposition to the bill. She thought that the investigator needs to be accountable for their actions. They are a paid investigator and should be acting in good faith. She questioned the qualifications of the investigator (associate degree in child care). Investigators need more training. We should demand more from these people not granting them immunity. She gave examples of her concerns.

Rep Delmore: Our intent was to protect children.

Susan Beehler: The Supreme Court Rules states the instances for a guardian ad litem. The criteria for a guardian ad litem is stated there. There needs to be training and it needs to be required and the Supreme Court could require that or you as the Legislature could require that training.

Rep Delmore: I would be interested in seeing the information on training, salary and qualifications.

Susan Beehler: I only know what the Supreme Court Rules are. As far as what has been done in the past, I don't know. You need to look at qualifications before granting a blanket immunity.

Rep Klemin: The case you are talking about, the guardian ad litem is an attorney.

Susan Beehler: Yes.

Rep Klemin: Most guardian ad litem are attorneys.

Susan Beehler: They are required to be an attorney by law.

