

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2079

2001 SENATE JUDICIARY

SB 2079

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2079

Senate Judiciary Committee

Conference Committee

Hearing Date January 10th, 2001

Tape Number	Side A	Side B	Meter #
1	X		26.2-end
		X	0-16.2
Committee Clerk Signature <i>Mike Huber</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on SB 2079: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTIONS 4 AND 7 OF SECTION 12.31.2-01 AND SUBSECTION 3 OF SECTION 14-07.1-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO TEMPORARY PROTECTION AND DISORDERLY CONDUCT RESTRAINING ORDERS. JIM GANGE, Staff Attorney for the Office of the State Court Administrator, testified in favor of SB 2079. (Testimony attached)

SENATOR WATNE: Asked if section 14.07.1-03 dealt only with family disputes.

JIM GANGE: Answered in the negative

SENATOR BERCIER: Asked if this applied to tribal jurisdiction.

JIM GANGE: Answered in the negative.

SENATOR TRENBEATH stated that this bill has a definite termination to it and that the State Court Administrator wants to amend that to where it goes on forever unless the court takes action.

JIM GANJE replied that this was conceptually the case. However a statute is required. Then it is terminated if one is issued. Quite possible that you may have a temporary order floating forever but that is if you disregard other statutes.

SENATOR TRENBEATH stated that the existing statute, according to this bill, makes clear that 30 days is not enough. As alternative maybe you should look at the thirty days as extended time in good cause by the court requested by one party or the other.

JIM GANJE protection acts only have a window of 14 days. There is a potential hole in this bill.

SENATOR TRENBEATH the real problem in this bill is the gap between terminating the temporary order by signing the permanent order and not having service.

JIM GANJE with respect to protection orders that is true; with disorderly conduct orders it's different. However, the end result is the same. The committee may conclude that there is a more definitive and less open ended way of doing this. I would suggest that if this happens, the process would slow down if the court is involved. Folks don't want this it happen.

SENATOR TRENBEATH Once a temporary order is signed the one benefiting, namely their attorney, there is no rush to get it back to the court. But, there are reasons to postpone.

JIM GANJE I don't know how often this happens.

SENATOR TRAYNOR The respondent would still have the right to a hearing no later than fourteen days. That's not changed?

JIM GANJE correct.

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Senate Judiciary Committee

Bill/Resolution Number SB 2079

Hearing Date January 10th, 2001

BONNIE PALECEK, speaking on behalf of the ND Council on Abused Women's Services in support of SB 2079. (Written testimony attached)

(Meter #43.0 Tape 1, side A)

SUE RAU, employed as a licensed social worker at the Abused Adult Resource Center, speaks in support of SB 2079. (Meter # 45.1, side A) (Written testimony attached)

JOHN EMTER (Meter # 9.1, side B) testified against SB 2079. Stated that people tried to get restraining order on him to get to him. Doesn't believe in justice. Believes anything can be appealed. Believes there is confusion in laws.

Committee Discussion, January 10th, 2001-Tape 1, Meter # 16.2, side B

SENATOR TRAYNOR closed the hearing on SB 2079. Following the discussion, SENATOR LYSON moved to Do Pass SB 2079. SENATOR BERCIER seconded the motion. Vote indicated 7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING. SENATOR LYSON volunteered to carry the bill.

REPORT OF STANDING COMMITTEE (410)
January 10, 2001 12:34 p.m.

Module No: SR-02-0861
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2079: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2079 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2079

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2079

House Judiciary Committee

Conference Committee

Hearing Date 02-28-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 796
TAPE I	x		4308 to 5932
TAPE II	x		01 to 210
Committee Clerk Signature <i>Joan Deers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2079. Relating to temporary protection and disorderly conduct restraining orders.

Jim Ganje: staff attorney, Office of the State Court Administrator. (see attached testimony)

Chairman DeKrey: When an ex parte temporary protection order is issued, that is usually with only one side present.

Jim Ganje: That is correct.

Chairman DeKrey: Is the judge under any obligation to hear the other side after the order has been issued?

Jim Ganje: There is a statutory requirement that notice of entry and temporary order is served on the respondent and a hearing is set, they can come into the hearing and contest the order at that time.

Chairman DeKrey: Has this been a problem with the reduction of judges?

Jim Ganje: It is possible, but in this case the issue is more to how the statute operates from temporary to permanent.

Vice Chr Kretschmar: Is there a definition of disorderly conduct in this statute.

Jim Ganje: He reads the definition of disorderly conduct to illustrate that the definition is fairly broad.

Rep Mahoney: How long can the ex parte order continue?

Jim Ganje: It continues only until the permanent order is served or it is terminated by the court.

Rep Mahoney: Can the order go however long and the judge determines which way it is going?
There is no outside limit.

Jim Ganje: If the permanent order is never served, the temporary can continue on for a long time.
But that is not the intention of the law.

Rep Mahoney: Makes a comment about the time constraints that is put on the judges.

Jim Ganje: In a matter of speaking, yes.

Chairman DeKrey: If there are no further questions, thank you for appearing. We will take a break at this time.

Chairman DeKrey called the committee back to order.

Bonnie Palecek: ND Council on Abused women's Services (see attached testimony)

Rep Mahoney: This came up in the senate, a temporary order can continue and continue under this bill.

Bonnie Palecek: A protection order can continue until further order of the court. A disorderly conduct order has a two year cap.

Rep Mahoney: A temporary protection order with no hearing date, can be a pretty permanent.

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House Judiciary Committee
Bill/Resolution Number SB 2079
Hearing Date 02-28-01

Bonnie Palecek: Yes.

Rep Wrangham: Under current law, a temporary restraining order issued and 30 days later and has not been any further action, is there any problem with issuing another order.

Bonnie Palecek: The order can be extended, but to issue another order you have to have another hearing.

Rep Wrangham: If it can be extended after 30 days, then there is no gap.

Bonnie Palecek: I don't know.

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

Sue Rau: licensed social worker at the Abused Adult Resource center, (see testimony attached)

Chairman DeKrey: Are there any further questions, seeing none, thank you for appearing. Is there anyone else wishing to testify either in support or opposition. If not we will close the hearing on SB 2079.

COMMITTEE ACTION

Chairman DeKrey what are the wishes of the committee on SB 2079. Vice Chr Kretschmar moved a DO PASS, seconded by Rep Delmore.

DISCUSSION

Chairman DeKrey: the clerk will call the roll on a DO PASS on SB 2079. The motion passes with 13 YES, 0 NO and 2 ABSENT. Carrier Rep Disrud.

Date: 02-28-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2079

House JUDICIARY Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Wm E Kretschmar Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Giande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney					
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Disrud

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

REPORT OF STANDING COMMITTEE (410)
February 28, 2001 12:34 p.m.

Module No: HR-34-4441
Carrier: Dierud
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2079: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2079 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2079

SUMMARY OF SENATE BILL NO. 2079

Senate Bill 2079 originated as draft legislation with the Council of Presiding Judges. The Council consists of the Chief Justice, who serves as Chair, and the presiding judge of each of North Dakota's seven judicial districts. The bill is intended to address a "gap" in the protection afforded by the protection and restraining order process between when a temporary order ends and a regular or permanent order is served on the respondent.

Under NDCC Section 12.1-31.2-01, a court may issue a temporary disorderly conduct restraining order if certain conditions are met. The temporary order is in effect for not more than 30 days. The temporary order may be granted only if the court sets a hearing for not later than 14 days after issuance of the order. However, that time may be extended upon consent of the parties or a showing that the respondent has not been served with a copy of the temporary order. Consequently, there may be circumstances, either because the parties have consented to a time extension or service has not been made, in which the 30 day time limit for the temporary order expires and the protection afforded by the order is lost until a hearing is held and a regular restraining order is issued. *Section 1 of Senate Bill 2079* addresses this situation in amendments to subsection 4 of Section 12.1-31.2-01. The amendments provide that the temporary restraining order would remain in effect until the regular order is served, unless the temporary order is otherwise terminated by the court. In this manner, the temporary restraining order will continue to provide protection until a regular order is issued and served after a hearing or the court determines that a regular order is not warranted and the temporary is terminated (the "otherwise terminated" provision). *Section 1* also includes a technical amendment to subsection 7 of Section 12.1-31.2-01 to correct a reference to the fine that may be imposed for violation of a restraining order.

Similar to temporary disorderly conduct restraining orders, a temporary domestic violence protection order under current law (NDCC Section 14-07.1-03) remains in effect for 30 days from issuance unless otherwise terminated by the court. When the temporary order is issued, a hearing must be scheduled for purposes of determining whether a permanent protection order should be

issued. There is general concern, because the temporary order terminates upon issuance of a permanent order and violations of a permanent order cannot be prosecuted unless the order has been served on the respondent, that a "window of vulnerability" may occur between the time the temporary is terminated and the permanent served. *Section 2 of Senate Bill 2079* amends subsection 3 of Section 14-07 1-03 to provide that the temporary order remains in effect until a permanent order, if issued, is served on the respondent. A court would be able to terminate the temporary order at some other point if that were considered necessary, for example, if the court determined after a hearing that a permanent order should not be issued.

Submitted by:

Jim Ganje, Staff Attorney

Office of State Court Administrator

BISMARCK
Abused Adult Resource Center
222-8370
BOTTINEAU
Family Crisis Center
2028

Alternatives for
Abused Families
1-888-662-7378
DICKINSON
Domestic Violence and
Rape Crisis Center
225-4506

ELLEDALE
Kedish House
349-4729
FARGO
Rape and Abuse Crisis Center
800-344-7273
FORT BERTHOLD RESERVATION
Coalition Against
Domestic Violence
627-4171

FORT YATES
Tender Heart Against
Domestic Violence
854-3402
GRAFTON
Tri-County Crisis
Intervention Center
352-4242

GRAND FORKS
Community Violence
Prevention Center
JANESVILLE
S.A.F.E. Shelter
888-353-7233

MCLEAN COUNTY
McLean Family
Resource Center
800-657-8643
MERCER COUNTY
Women's Action and
Resource Center
873-2274

MINOT
Domestic Violence Crisis
Center
352-2258
RANSOM COUNTY
Abuse Resource Network
683-5061

STANLEY
Domestic Violence Program,
NW, ND
628-3233
VALLEY CITY
Abused Persons Outreach
Center
P.O. 0078

WILLISTON
Family Crisis Center
542-2115
HILLISTON
Family Crisis Shelter
572-0757

Senator John Traynor
Chair, Senate Judiciary
SB2079
January 10, 2001

SB 2079

Senator Traynor and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services in support of SB2079.

In general the processes involved with Protection Orders and, more recently, the Disorderly Conduct Restraining Orders have gone very smoothly since the statute establishing the process for Protection Orders was initiated in 1979.

Therefore, it is always somewhat surprising when a "glitch" appears some 20 years down the road. Nonetheless, we have learned that when questions are raised it is best to address them and provide clarification, even if only a couple of jurisdictions are involved.

Such is the case with SB2079. Certainly the "assumption" has been that temporary orders are good until permanent orders have been served. Indeed, it has been interpreted that way by many judges. However, one particularly troubling case in the South Central Judicial District forced the issue into focus. We know of several similar scenarios across the state. Thus, the issue was brought before the Council of Presiding Judges, resulting in SB2079.

In the case in point there was a lapse of time in which a temporary order was superceded by a permanent order once a hearing on the permanent order was held. However, the permanent order had not yet been served when the respondent violated it. Therefore, it was interpreted that there was no protection for the victim from the time of the signing of the permanent order to the time that that order was served.

Other states are evidently closing similar loopholes. In particular, the state of Florida has recently addressed the issue at the request of a law enforcement officer who recognized the problem as a serious gap.

Ms. Sue Rau from the Abused Adult Resource Center will provide more details about one case which pointedly illustrates why we need this law change. For the record, ND Council on Abused Women's Services fully supports the clarification in SB2079. Although it may be perceived by some as a "technicality," we continue to guard the integrity of the Protection Order process as vigilantly as we can, because it touches people at risk in very serious ways. Anything we can do to make the process clearer for all concerned, petitioners and respondents alike, needs to be done.

We urge the committee's favorable consideration of SB2079. Thank you

Sincerely,


Bonnie Palecek
Executive Director
NDCAWS/CASAND

North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-800-472-2911 • Fax: 255-1904



Senator John Traynor
Chair, Senate Judiciary
SB2079
January 10, 2001

Senator Traynor and Members of the Committee:

My name is Sue Rau. I am employed as a licensed social worker at the Abused Adult Resource Center. I am here to speak in support of SB2079.

I work with victims of domestic violence and sexual assault. My responsibilities include assisting victims of domestic violence and/or sexual assault with the application for Domestic Violence Protection Orders. These orders have helped protect victims from further harm and have helped them leave potentially violent situations with the impression that a protection order could provide them with legal protection.

I am here to give a case example of a "glitch" in the order.

This case was opened in October of 1998 with the victim requesting information about domestic violence. During the weekend of December 20, 1999 the victim called the hotline in reference to an incident of her abuser scaring her. The incident happened at 0200 hours (2:00 am) with the abuser pounding on the victim's apartment door and demanding to see his daughter. When this attempt failed he jumped up to her balcony and started pounding on the sliding door. The victim called 911 and the police arrived and spoke with the suspect. They told him to leave the area and not return or he would be arrested. He did not return but started the next day with harassing phone calls.

The victim came to the office on Monday morning to speak with an advocate. A safety plan was discussed with the victim and a dangerousness assessment was done, to which 5 out of the 8 indicators were prevalent (see supplement). The victim applied for a temporary protection order and the order was granted. The victim was very concerned about her safety because the abuser's behavior was becoming more and more aggressive since their separation one year ago.

The order was served on the respondent that same day December 20th. On December 21st the respondent called the victim's home and left a message on her mother's answering machine. Both are violations of the protection order.

The permanent protection order hearing was held January 4, 2000. The order was granted and the judge ordered that the victim's attorney draw up the papers. The respondent's attorney then volunteered to serve his client the permanent protection order. The papers were sent to the respondent's attorney and were not delivered as promised to the respondent by the attorney.

This is where our problem begins. On the 6th of January, 2000 the respondent was at the same restaurant as the victim and her family, he left without incident. A police report was done but no charges filed as the respondent had left the premises promptly.

On January 9, 2000 a violation of the order occurred at the Radisson Inn. The respondent showed up at a Christmas party that he knew the victim would be attending. The security guards were summoned to have the respondent removed from the premises. The security guards reviewed the victim's order and stated that he would have to leave or be in violation of the order. The respondent became belligerent and refused to leave as the order stated he had to remain 100 feet from the victim. The respondent claimed if he remained at the far side of the room and the victim on the other side he would not be in violation of the order. The Bismarck Police were then called to the scene. The officers obtained the dimensions of the room and stated he will have to leave Radisson or be arrested. By chance the respondent's attorney was at another party that was also being held at the Radisson and told the police he would take care of his client. The police left the scene, as did the respondent and his attorney. The respondent did return to the Radisson but remained outside the room the victim was in until she left the party. She stated she left so there wouldn't be any trouble.

The police report was sent to the State's Attorney's Office for review and possible charges. The assistant states attorney refused to charge out the violation. The assistant states attorney stated that when a permanent protection order has been awarded by the court, the temporary order is then voided by the permanent order and is no longer valid. The permanent order then becomes the valid order but is not enforceable until this order is served upon the respondent. That means unless the order is served, law enforcement cannot enforce the permanent protection order and they can't use the temporary protection order to arrest or charge out because it was voided by the issuance of the permanent order. This means that the victim has no protection from her abuser during the period between the issuance of the permanent order and the service of the permanent order.

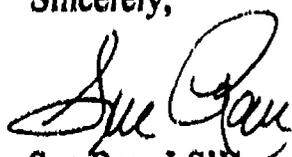
Unfortunately, in this case the victim dismissed her order and chose not to pursue the issue further as she felt let down by the system. She did everything that she was supposed to do to protect herself but she felt the system let her down.

This "glitch" in the process can be potentially dangerous for victims. The respondents will not be held accountable for violations because there is not an order to enforce. The respondents can then return to the homes of the victims and inflict harm or harass victims without consequences. This can be a dangerous time for victims and their families.

We urge the committee's favorable consideration of SB2079.

Thank you for hearing our testimony.

Sincerely,



Sue Rau, LSW

Abused Adult Resource Center

Appendix B DANGEROUSNESS ASSESSMENT

EVALUATING WHETHER BATTERERS WILL KILL

Some batterers are life-endangering. You may want to carefully evaluate whether your partner is likely to kill you, other family members and/or himself. While it is true that all batterers are dangerous, some are more likely to kill than others and some are more likely to kill at specific times. We hope that your batterer will obey the protection order, but the order is no guarantee of your safety. You should evaluate whether you need to take further protective measures beyond the protection order to assure the well-being of yourself and your children.

The following list is not fool-proof. Once you have thought about all of the indicators listed, you may conclude that your batterer is not life-threatening. You may be right or you may be wrong. You probably are the best evaluator, but you may want to discuss this with a trusted friend or a battered women's advocate at the local domestic violence program. Your batterer may not be life-threatening now, but may become so. Therefore, it is important to continue on-going assessment of his dangerousness.* Contact your local battered women's program to make a safety plan.

In making your assessment, use all of the information you have about the batterer, as well as your intuition. The greater the number of primary indicators that the batterer demonstrates or the greater the intensity of indicators, the greater the likelihood of a life-threatening attack. It is better to make a mistake in over-estimating the dangerousness of a batterer than underestimating it. No matter what is written in this paper, if you conclude that the batterer is becoming more dangerous and may very well try to kill you, act on your assessment.

* We have assumed that the victim is a woman and the abuser is a man in this tool. It may be that the victim is a man and the abuser a woman or that the abuser and the victim are of the same sex. Assessment is basically the same despite these gender differences.

The only additional indicator to be assessed by a gay or lesbian person is whether their abuser has been firmly closeted and is now risking exposure as a gay or lesbian person in order to facilitate their severe, life-endangering attacks. When a person has been desperately closeted, losing the protection of invisibility in order to abuse potentially suggests great desperation and should be included in the indicators above.



PRIMARY INDICATORS

1. **Batterer's "ownership" of the battered partner.** The batterer who says "Death before divorce!" or "You belong to me and will never belong to another!" may be stating his fundamental belief that you have absolutely no right to life separate from him.
2. **Threats of homicide or suicide.** The batterer who has threatened to kill you, himself, the children or your relatives must be considered extremely dangerous.
3. **Fantasies of homicide or suicide.** The more the batterer has developed a fantasy about who, how, when and/or where to kill, the more dangerous he may be. The batterer who has previously acted out part of a homicide or suicide fantasy may be invested in killing as a "solution" to his problems.
4. **Obsessiveness about partner or family.** A batterer who is obsessive about his female partner, who either idolizes you and feels that he cannot live without you or believes he is entitled to you, your services, loyalty and obedience, no matter what, is likely to be life-endangering.
5. **Centrality of battered woman.** If losing you represents or precipitates a total loss of hope for a positive future, your batterer may choose to kill.
6. **Depression.** Where a batterer has been acutely depressed and sees little hope for moving beyond the depression, he may be a candidate for homicide and suicide. Research shows that many people who are hospitalized for depression have killing fantasies.
7. **Weapons.** Where a batterer possesses weapons and has used them or has threatened to use them in the past in his assaults on you, the children or himself, his access to those weapons increases his potential for lethal assault. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.
8. **Timing.** When a desperate batterer believes that he is about to lose you or when he concludes that you are permanently leaving him, if he cannot envision life without you, this may be when he chooses to kill. That is not to say that all batterers kill when they conclude that the battered woman is separating from them. Some kill long before they have any inkling that the battered woman may be thinking about leaving. So, it is not safe to assume that because you haven't made plans to leave, that the batterer will not be dangerous.

SECONDARY CONSIDERATIONS

1. **Rage.** The most life-endangering rage often erupts when a batterer believes the battered woman is leaving him.
2. **Drug or alcohol consumption.** Consumption of drugs or alcohol when in a state of despair or fury can elevate the risk of lethality.
3. **Acute mental health problems.** Very few batterers are mentally ill. And many mentally ill batterers are not homicidal. However, when a batterer is having an acute psychotic episode, he may be more dangerous and the effect of the mental illness must be considered in evaluating the risk.
4. **Pet abuse.** Those batterers who mutilate or kill pets are more likely to kill or maim family members.
5. **Access to the battered woman and/or to family members.** If the batterer cannot find you, he cannot kill you. If he does not have access to your children, he cannot use them as a means of access to you. Therefore, careful safety planning should occur for those times when you predict you will have contact with the batterer.

The presence of these Primary Indicators may mean that the batterer is contemplating homicide. You should immediately take action to protect yourself and your children. Contact the local battered women's program to further assess lethality and make safety plans.

This is not a formula for certain prediction of dangerousness. Completing this assessment is no guarantee of safety. If you conclude that your batterer is not likely to make a life-threatening attack on you at the present time, you might want to keep this form and use it for comparison at some later date when you assess the dangerousness of your batterer.

Even if you conclude that your batterer is not likely to try to kill you or members of your family, you should consider developing a safety plan. You can do this yourself or with the assistance of advocates at the local domestic violence program. Court staff can refer you to the domestic violence program.

Remember to trust your own assessment. However, when family, friends, and law enforcement conclude that he is more dangerous than you have assessed, be open to hearing their evaluations and using information they give you in a re-assessment of the batterer.