

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2330

2007 SENATE JUDICIARY

SB 2330

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2330**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2253 & 2258

Committee Clerk Signature

Maria L Solberg

Minutes: Relating to the membership of the pardon advisory board and the state parole board.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

JoNeil Bakke, Dist. #4 Introduced the bill (meter :30) and handed out Att. #1a Testimony and **Sen. Lyson** questioned (meter 3:08) are not the victim allowed to be at or submitted testimony at the hearings themselves. Yes but we want someone on the board, a voting member. Spoke how boards should be composed of people who are non biased.

Sen. Fiebiger asked what the make-up of the boards are an have there been advocates on the board? Currently there is an advocate on the board, but it is not a guarantee.

Sen. Nething asked if there was a structural support or organizational assistance for the support and counseling of the victim. Yes, many. How do you determine what group you go to? Crises Intervention Center and Mental Health Center – both are good and the Governor would have to decide where he would find a board member.

Sen. Lyson stated (meter 6:17) that a “crime victim” could be someone who a bad check was written too? Yes.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

Sen. Dekrey, Dist. #14 (meter 7:00) I am a chairman for the Board of Pardon. Reviewed the current process of the Pardon Board. In most of the cases the victims do not come. We have, in the time I have been involved, gone against a victim who has come before us. He stated how difficult it is to find people to serve and if you have too many special criteria it would be too difficult to fill these spots.

Sen. Nelson asked (meter 9:55) who currently was on the board. Discussion of the board members and the process.

John Olson, Lobbyist for the Peace Officers and a Chairman of the Parole Board. (meter 11:43) He appeared Neutral because he is for the victim. I have been a victim of a crime. Mr. Olson spoke of the boards and the intricacies of the process. Do not restrict the process. Passed around copies of Att. #1b Fair Treatment of Victims and Witnesses.

Pat Bond, Deputy Clerk of the Parole Board and Program Manager for the department of Corrections (meter 16:00) The bill is a good bill, well intended, the victim serves program is very active 12.1-34 went a long way to assure victims rights are upheld in the state of ND. There are 1,400 victims that the services have helped. Reviewed process. In the National level out of 20 states that I contacted only one state had a "victim" on board.

Sen. Nelson spoke of a personal situation (meter 18:59) discussed the DOCR and the States Hospital's communications process.

Bonnie Palecek – ND council for Abused Women (meter 23:24) Att. #2 Spoke of "Living On" program. Our experience over the years is that a victim of personal violence has caused us to be cautious from creating opportunity which require neutrality. By definition an advocate must be biased to the victim to do there job well.

The committee discussed the problems of the notification of state hospital and the release of patients to there victims.

Senator David Nething, Chairman closed the hearing.

Job Number: 2258

Senator David Nething, Chairman re-opened the hearing.

Sen. Lyson stated that the definition of "crime victim" is too loose.

The committee discussed while the heart is in the right place, the overriding testimony sounded less like "neutral". Committee discussed the above. Spoke of the representation from the board and being comfortable with the current process.

The committee, for the record, sympathize with the victim. They discussed the concern of allowing a victim to move on in life and having to relive crimes by being on the boards. The committee needs to deal with the issues with objectivity.

Sen. Lyson regretfully made the motion to Do NOT Pass SB 2330 and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
January 30, 2007 1:00 p.m.

Module No: SR-20-1529
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2330: Judiciary Committee (Sen. Nething, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2330 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

SB 2330

AH #1a

1-30-07

Chairman Nething and members of the Senate Judiciary Committee,

For the record, my name is JoNell Bakke and I am a state senator from district 43. I am here today to present SB2330 which relates to the addition of a victim advocate to the state pardon advisory board and the state parole board.

The legal right of victims' of crime is a movement that has been gaining much deserved support in our country and our state. The federal government enacted the Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victims Rights and Restitution Act, the Child Victims' Bill of Rights in 1990, and the Victim Right Clarification Act of 1997. In 1985, the United Nations adopted a Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. The federal government enacted the Violence Against Women Act of 1994 as part of a comprehensive bill affecting victims in many ways.

For those who have suffered the trauma of victimization at the hands of a predator these rights can't come soon enough. Through these documents, victims have been given the right to due process in criminal court proceedings. They have the right to be informed concerning the criminal justice process. They have the right to be protected from intimidation and harm. They have the right to be treated with dignity and compassion as well as the right to counsel. But when do those rights end?

Many would say when the predator is put behind bars. For many victims and for the families of those who have not survived, this isn't always the end. Victims of crime, violent or other wise, continue to need to have their voice heard at all phases in the criminal process including when the predator is due for parole.

As I did some research on the rights of victims, I found that they are entitled to information, notification, and consultations on case status, decision-making, and implementation of decisions. These rights should be applied and implemented in all phases of the criminal justice proceedings and effective remedies should be available should rights fail to be enforced.

I think when a victim's voice is silent during the pardon or parole board hearing, we as a state have failed to protect the rights of the victim. For these reasons, I have submitted SB2330. This bill asks that one of the governor's appointees to the pardon advisory board and the state parole board be a crime victim or an advocate for crime victims' rights. This would assure that their voice is not silent but heard at all levels of our court proceedings.

Thank you for your attention and I will stand for questions at this time.

HH #16
1-30-07

**CHAPTER 12.1-34
FAIR TREATMENT OF VICTIMS AND WITNESSES**

12.1-34-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no-account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.
4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, legal guardian, or custodian of a victim.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Victim" means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
9. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

12.1-34-02. Fair treatment standards for victims and witnesses. Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed.
2. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.

3. Notice of pretrial release. Victims must be given prompt notice by the law enforcement agency that has made an arrest in any case involving a crime of violence of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released prior to an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, that shall provide the notice. Victims and witnesses of crimes of violence must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
4. Notice as to victims' and witnesses' participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses must be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses shall provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.
5. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hot lines, social service agencies, and domestic violence programs. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.
6. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
7. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.
8. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.

9. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.
10. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court.
11. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.
12. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
13. Notice as to scheduling of hearing. Victims must be informed by the prosecuting attorney of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
14. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.
15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.
16. Prompt notice of custodial release. Victims and witnesses must be informed by the appropriate custodial authority whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Notification must include the transfer of the defendant to a work-release program, a community residential program, or transfer to a mental health facility. All

notices to the victim and witnesses concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.

17. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. If the offender will make a personal appearance, notice must be given by the parole board or pardon clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.
18. Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

12.1-34-03. Responsibilities of victims and witnesses. Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of address. The address information provided to these persons must be kept confidential.

12.1-34-04. Victim and witness services. Each prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in this chapter. Those services include all of the following:

1. Court appearance notification services, including cancellations of appearances.
2. Informational services relative to the availability of the collection of witness fees, victim compensation, or restitution.
3. Escort and other transportation services related to the investigation or prosecution of the case, if necessary.
4. Case process notification services.

5. Employer intercession services.
6. Expedited return of property services.
7. Protection services.
8. Family support services, including child and other dependent care services.
9. Waiting facilities.
10. Social service and other public or private agency referrals.

12.1-34-05. Cause of action for damages or injunctive relief. Nothing in this chapter may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a victim under this chapter is not grounds for the defendant to seek to have the conviction or sentence set aside. This chapter does not limit any rights to which victims and witnesses of crime are otherwise entitled.

Att # 2
1-30-07

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

st Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Senator David Nething
Chair, Senate Judiciary Committee
January 30, 2007
Re: Testimony on SB2330

Senator Nething and Members of the Committee:

My name is Bonnie Palecek and I am providing informational testimony on SB2330 on behalf of the North Dakota Council on Abused Women's Services.

The North Dakota Council on Abused Women's Services has advocated for the rights of victims and their participation in the criminal justice system for well over 25 years. We have in fact developed specific victim assistance projects, such as "Living On," a support network for the families and friends of domestic violence homicide victims. This project provides financial and advocacy services to those trying to recover from losing a loved one to violent crime. Often this recovery involves participating in proceedings in the criminal justice system.

Clearly we are supportive of victims' participation in the justice system wherever feasible and appropriate. Therefore, we were immediately drawn to SB2330 and its implications for victim participation on the parole and pardon advisory boards.

We are somewhat hesitant to fully embrace this concept, however. Our experience with many, many victims of personal violence over the years has caused us to be cautious about creating opportunities which require neutrality but imply drawing on specific victimization trauma. The same holds true to a lesser extent for victim advocates. By definition, they must be biased toward the victim in order to do their jobs well.

It is our understanding that victims presently participate in parole and probation hearings by giving victim impact statements. They are also routinely assisted by the Victim Advocate who works for the prison system. Although well intentioned, it seems that SB2330 creates a vehicle for victim participation in this phase of the criminal justice system which is actually less powerful than what we have now. It would take a very unique victim of crime or advocate to be able to balance the inherent mandate of objectivity with an innate empathy for victims. We think that might just be too much to ask.

Thank you.