

**2013 HOUSE JUDICIARY**

**HB 1076**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1076  
Job 17223  
January 15, 2013

Conference Committee

*Carman Nichol*

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

Relating to bail as defendant's property

## Minutes:

Testimony 1,2,3

**Chairman Kim Koppelman:** Chairman Koppelman opened HB 1076.

**Frank Racek, Presiding District Court Judge East Central Judicial District:** See written testimony #1. In your packet is a copy of a bond envelope and printed information behind that. This is the status quo in North Dakota. This is a brown envelope that is used everywhere in the state, every jail and every court. Under the current law we take a waiver from these individuals that bail money that has been posted and may be applied to any monies they owe the court. Historically what would happen is people would come to the jail and post money for somebody, then it was always is it your money, your girlfriends money, your spouses, your friend? There have been disputes to reconcile that. So the Legislature many years ago tried to clear that up saying as far as the court is concerned you can apply this to any monies that the defendant owes. If the amount is refunded you refunded it to the person that claimed they posted it. If that doesn't work you refund it to the defendant. This has not been a completely perfect system, particular with the advent of our use of the computer system. We have reassessed many things we do in the court to see if there are things we can do to further condense the requirements of our staff. There are about 25,000 criminal cases in North Dakota per year. Not all of those have bail but that's the family we're working in. When bond is posted in these cases, the clerk's office in the court system has to create 2 pieces of information. The defendant and all of their information, which we need anyway to process the criminal case. Then we have bond remitter files, which are the people that posted the bond and their information. In the present system a lot of this bond is posted at jails. Sometimes not even in the jail of the county where the court is. We get this information and it is not always accurate and we have to try and reconcile it. What we are trying to

do with this bill is change whose property this is, the default choice. Right now if someone posts bail the court is required to establish two files, one for the person posting the bail, the defendant many times of not most of the times the money is applied to what that person owes the court, it's never refunded but we still have to carry that additional information. When it is refunded then we have to reconcile where to send it. Because our new computer system is person based rather than case based this requires us to program an established thousands of bond remitter files. Where we collect the unique individual identifiers of these bond remitters to make sure we have the accurate information. We are trying to eliminate the thousands of these bond remitter files which require unique identifiers storage issues, data input, and quality maintenance, improve our accuracy in the data received. Most of this money gets posted at the jail. That money is applied to disposition of the case to the defendant and we are required to keep thousands of additional files that we never use. This bill says its property of the defendant unless the 3<sup>rd</sup> party comes in and asks the court to direct otherwise. Instead of making it default that we need to process 25,000 times, we put the "unless" only when the people come in and ask us to be the "unless". Our intention is not to take anybody's money we are just trying to streamline the process to make it conform to what our actual experience is so that we are not keeping these records unnecessarily. The second issue we are trying to address with this bill is that we now have very good information and very good accounts receivable information that we are compiling on individuals statewide with unique identifiers. So in the old days we never knew if we had the right person because a name could be in the computer a hundred times. Now we know by a series of queries that the computer wants, do they have the same birthdate, do they have same social security number, do they have the same address? We are confident that we have the same people even when we have common names. In our accounts receivable we are able to tell if people owe money, not only in our own courts but anywhere else in the state. If we overcome the first hurdle that it's the defendant's property, then this bill would give us the ability to apply that money anywhere he owes the court money in the state. The ramifications of that are if this money is refunded which we already had, then the court has to use their other powers to enforce this. Either the Sheriff arrests them, we try to do tax intercepts, we issue to show to cause orders and so forth. As our population is more mobile and particular in the area of child support, where we have a fair amount of business, we are trying to apply these funds as efficiently as possible. So that we just don't refund money to this person and then at the same time have to issue a bench warrant for his arrest for not paying some other file. There is some additional information in your packet that talks in general what the judiciary is trying to focus as far as trying to type some of these policies. There is a statue

from MN so you can see that this is not the first time this issue has been confronted.

**Chairman Kim Koppelman:** Any questions for Judge Racek?

**Rep. Lois Delmore:** On line 18 of the bill defendant is struck out and I wonder if the intent of bill is to leave defendant in there rather than striking.

**Judge Racek:** Line 18 should be defendant unless otherwise ordered by the court prior to the disposition of the case. If money is posted for defendant Jones and the money is ultimately refunded it will be refunded to defendant Jones and we won't have to reconcile did the girlfriend put up the money, did the spouse put up the money, did the good friend put up the money in the middle of the night. That is the records we keep and that is the process we follow unless the spouse, good friend, or whoever comes to court before the conclusion of the case and says that's my money and we all agree I should get it back.

**Rep. Lois Delmore:** What would be the scenario if it was a bail bonds man that had given that money? Or is that something that's accepted in most of these cases?

**Judge Racek:** This has absolutely no effect on bail bonds. In this brief summary number 5, I tried to make that clear. This only deals what we refer to as the common amounts of cash, it only deals with cash.

**Rep. Lois Delmore:** Are the court cost that are associated taken out of the bail money before the money is returned to the defendant?

**Judge Racek :** If the defendant is convicted, the court collects what is owed and we refund the difference. If there is an old child support problem or problem in another county then the remaining money would be applied to that.

**Vice Chairman Larry Klemin:** If we change this statute does this also change what is stated on the bond envelope?

**Judge Racek :** This underlined language which states is otherwise supported by the court, I think would be clarified to say this money is the property of the defendant, this money will be refunded to the defendant or applied to what he owes the court unless you ask the court for a different disposition prior to the end of the case. That is what we try to make clear in the bill. Any time before the end of the case you can come in and ask the court for a different disposition. Our

purpose in doing that is instead of collecting information on 25,000 cases we are now going to collect 3<sup>rd</sup> party information on what experience tells us will be a much smaller amount of cases. We don't want people who can be released on bail in jail. In the clerk's office we keep files on a handful of cases. In some respects probably offers greater insurance to the 3<sup>rd</sup> party because then those conditions can be set by the court as opposed to now where you basically leave it to fate. If the person is convicted the monies are automatically get applied under the current law.

**Vice Chairman Larry Klemin:** Looking at the bill on page 1 line 22 and 23, the balance if any must be paid to the defendant unless otherwise ordered by the court before disposition of the case. I think I heard you say the money could be returned to someone other than the defendant, the person who might have posted it. Is that correct?

**Judge Racek :**Correct.

**Vice Chairman Larry Klemin:** I don't see anything in here that says that the person or the defendant could request that the court order the money returned to the person posting it who might be other than the defendant.

**Judge Racek :**That is certainly our intention. This is what we understand that to mean. I appreciate you concern. How we would view this operating is the 3<sup>rd</sup> person requests the court I would like to post bail but I would like to make sure it gets refunded. We could make those provisions but then it's a Judge deciding on a small number of case verses the default of 25, 000 that we have now.

**Vice Chairman Larry Klemin:** To clarify this for me, we may have a person who is willing to post the bail on condition that any surplus leftover be return to that person.

**Judge Racek:** Under this bill it is our intention to accommodate that. That person has to let us know that that's all we are asking, as opposed to the system now.

**Vice Chairman Larry Klemin:** My concern is that it doesn't say that anywhere in here.

**Judge Racek:** All I can say is from someone on the inside that's how I construed what we are trying to convey. But if that needs to be more clearly expressed we are open to that.

**Rep. Randy Boehning:** The last time I had to bail out a good friend of mine it was \$400, I went to court with him, and we get done with that we go to the Clerk of Court. They ask who gets the remainder of the fine after the court fees and the fine and all the other stuff that was handed down. I was the one that actually got it back so in other words under this scenario in this bill it would be too late to do that process then, because it wasn't done prior to?

**Judge Racek:** If you went to court with him we would like you to speak up in court and say I would like the money refunded to me. You have what to us is the optimal situation because you came in with your friend. There's no problems as everybody is there and in agreement.

**Rep. Randy Boehning:** Would the Judge ask does the bail money go to the defendant or to a 3<sup>rd</sup> party or how would you approach that as being on the bench that day?

**Judge Racek:** It would not be difficult of the Judge to say are there any exceptions to applying the bail? That would be a rather simple process. Most often at the end of the case if I sentence someone I will say apply the bail if there is still money owed or I would work out the time payments. If there's exception to applying the bail I deal with them there. I don't think it would be a difficult matter to incorporate into tying the case up in court.

**Rep. Randy Boehning:** The day I said things went really fast. You were nervous in front of us today; people sitting in the audience probably wouldn't want to get up to say anything.

**Judge Racek:** I think that is a very good point, but I am basing it on the status quo most people don't get their money back. I am trying to think of what the practical distinction is and on the small money case most of it gets applied. If you look at the MN example in their statute saying unless the defendant signs a form that says send it back to someone else it is refunded to the defendant. There are various safeguards that we could try and put in. What we are trying to accomplish is not setting up up to 25,000 units of information very few of which we use. That is what we are trying to do and part of that is because of our personnel issues and everything else we are trying to confront. We're not trying to take anyone's money unwittingly we are trying to do the best we can. We are just trying to be relieved from that task that most of the time isn't necessary that we are using our personnel to do.

**Rep. Gary Paur:** Could you possibly explain that last sentence that says moneys deposited with the court or clerk as bail are exempt from garnishment and etc. Can you correlate that to the court may order monies applied to any child support?

**Judge Racek:** The last language is consistent in the present statute as it exists today. The simplest terms that language is to make sure the court gets first shot at it. The other language on the child support matter is we are trying to make clear that if you post bond on a criminal case and you owe child support the court can apply if for child support rather than refund it.

**Rep. Gary Paur:** That's not garnishment?

**Judge Racek:** No that's a statutory application. Garnishment is some 3<sup>rd</sup> party creditor, somebody the Farmer's Union money and they had a judgment against you and they heard you posted some bail at the courthouse they come in and garnish it because the court may someday owe you the money. That's an outside party.

**Vice Chairman Larry Klemin:** In the situation where a 3<sup>rd</sup> party has posted bail and there is a balance left over. Can the court order that balance be applied to child support obligation owed by the defendant rather than returning it to the 3<sup>rd</sup> party that posted it?

**Judge Racek:** My best answer is there is a little split of authority as it exists right now. That's what our bond envelope says, that's what in practice may or may not happen. I don't think the present statute is real clear on that. We would want to make it as clear as possible.

**Vice Chairman Larry Klemin:** So it's not real clear in this bill either then. Maybe there is some clarifying language we can put on that subject. It should go back to the party that posted it and not to pay some other obligations of the defendant. Is that the intent so you think?

**Judge Racek:** I think as drafted what was happening is unless we hear otherwise it's the defendant's property. It's the defendant's property and we will apply it to that particular case if he owes money. We will apply it to other cases if he owes money. We will apply it to child support if he owes money. The default decision will be it's the defendant's money. If a 3<sup>rd</sup> party comes in and says it's their money and wants to post it then the court is flexible in taking that under whatever terms. We are not trying to change what's actually happens in the world

today. We are just trying to be relieved from keeping all of these unnecessary records.

**Rep. Diane Larson:** Say somebody's 18 year old son gets picked up and dad goes down and posts bail. Then he goes to court, how much does the court take of dad's money for court costs?

**Judge Racek:** We have set by the Legislature a very complex system of 7 different areas that we are supposed to go through in assessing court costs. It varies by the grade of the offense. There are a number of other fees that we can add on.

**Rep. Diane Larson:** Is this \$100 from the previous bill 1074 for the court facilities improvement part of the fees?

**Judge Racek:** That is part of a graduated fee that the Legislature requires and it is in 2 components. One is the court facility improvement fund and the other is to go indigent defense and distributed on some formula that I would have to study to give you a good answer. In court we can combine these two.

**Rep. Diane Larson:** To clarify this then is taken out of bail money? I thought bail money was just to make sure they got there. I didn't know that became part of the courts money.

**Judge Racek:** Yes, under the current law that is how it's done. That was addressed in the Legislature several sessions ago. Because as a practical matter what would happen not only do we have the arguments that somebody comes into the jail in the middle of the night, somebody posts their bail we would refund that persons money and we would expend state and county resources to try and collect the money we already had.

**Rep. Diane Larson:** Since you have been on the bench long enough to be able to see that transition have you noticed fewer people showing up for court because they are going to lose the money anyway?

**Judge Racek:** No. It's a very complicated balancing act in Fargo because of our proximity to the board and our inability to get certain defendants back across the border. Out west theirs is a transit population. A good percentage of what's in the local county jail is a pre-trial detainee's. Which are people whose cases haven't been disposed of yet. We have to strike a balance between how big of a number that can be because that's finite resource versus how many resources we use to

go out and look for people who didn't show up. You have to be careful how this is done because you can overload the jail real quickly. It takes about 14 weeks in our county from the 1<sup>st</sup> appearance to get someone to trial. If they can't make bail that's 3 ½ months to occupy the jail.

**Chairman Kim Koppelman:** Asked for further testimony in favor of the bill.

**Jim Fleming, Child Support Division Director with the Dept. of Human Services:** See written testimony #2. In support of changes in the current law that is proposed in this bill line 12 and line 22 there are references to child support. As the Judge mentioned there is a lack of clarity whether these bonds may be forfeited for child support. Line 12 and line 22 clarify that bail can indeed be applied in child support obligations owed by the defendant. On average in North Dakota our parents tend to honor their obligations. Our current support rate is above 75% the last federal fiscal year. But there are some obligors who successfully hide their money from child support of their other assets. Posting bail is one of those opportunities when otherwise hidden assets come to the courts attention. That is why we support this clarification as a way to help collect child support. We don't try and collect child support through relatives or 3<sup>rd</sup> parties. Child support is a special debt. It's not something that my staff negotiations with an obligor that they owe. Child support is much like restitution it is ordered by a court, it is collectable through unique ways that are not available to creditors and I think that is why you see the last sentence of the bill talking about garnishment, attachment or execution. Those are general tools that other creditors have at their disposal. Those are not common child support tools. We use income withholding and liens and in this case it's actually the court ordering it be turned over.

**Rep. Randy Boehning:** If I'm' the 3<sup>rd</sup> party and bail my friend out and I'm due \$175 are you able to look at or is the court allowing you to look and say if I owe child support? Is that going to be information to you?

**Jim Fleming:** I'm not sure how we would find that. I guess it's possible but one of the core parts of the bill or the existing law is that the person posting it has to have a notice that this is going to happen. To follow the spirit of that requirement they would have to say if you are a 3<sup>rd</sup> party bond poster and your money might be ceased for child support there would have to be something on the bond envelope to say that would happen. As a practical matter I'm not sure how our investigators would learn that you are the bond poster.

**Rep. Randy Boehning:** Once you sign a document it seems like the government always gets a hold of your name. When you post the bond you are filling out your name and address, are you guys going to look for it as it will be in a court record? It takes approximately 5 days to get the cash back from the court.

**Jim Fleming:** I wish government record keeping would be as seamless as you described. Then we wouldn't owe \$233 million in child support in our program. If the data base is there we could explore it but a core part of what we do is put people on fair notice of what's going to happen. Every obligor who puts money in a bank account knows those bank accounts are regular matched and can be intercepted for child support. If a bond poster for a friend posts a bond to help him out of jail, due process says they have to be notified that the part that goes back to 3<sup>rd</sup> party might get intercepted. In that case the person is okay that a debt they owe it is a special debt. Is that out of bounds for a 3<sup>rd</sup> party to have their money taken back instead of refunded to them?

**Rep. Lois Delmore:** How much do you recovered through the courts right now in this system for child support?

**Jim Fleming:** I don't think we capture that as source information. I don't think it is very common.

**Rep. Lois Delmore:** Do you see some people that may use people to make that bail payment because if they make their own and are responsible for other debts to pay, the 3<sup>rd</sup> party would get the money back?

**Jim Fleming:** That is entirely possible. We see cases where obligors title a vehicle in a girlfriends name or a friends name because they trust them and because if it's titled in their name it can be ceased for child support.

**Vice Chairman Larry Klemin:** Did you see the packet information from Judge Racek that had a bond envelope?

**Jim Fleming:** No I haven't but I have seen bond envelopes.

**Vice Chairman Larry Klemin:** It's got new underlined language unless ordered by the court to be applied to any fines, fees, costs, restitution or approved child support. I request that the bond money be returned to the person posting it. The person posting it is going to know in advance that it might go to pay child support because that's been added to the language that the person signs. It is contrary to what Judge Racek said that the person posting it might tell the court on condition

posting that he wants the balance returned to them. At the same time they are being asked to sign something saying no it could go to child support. I don't have a problem with any money posted by the defendant to be used for child support. But are we going to be in a situation where it's going to be harder to find somebody to post the bond for a defendant if they know they are not going to get the money back because it's going to go to child support if anything is left over?

**Jim Fleming:** I haven't seen the packet and I haven't reviewed any bond envelope language. As I said earlier we believe fairness to the payers and they should make a knowing decision. I don't know that you will see people come in and hesitant to post bond for others. If a 3<sup>rd</sup> party has the money available to post bond for a friend, why haven't they put that money towards the children and meeting their child support arrears? As long as the envelope says that is going to happen I don't think that is an unfair situation because their children need that money.

**Vice Chairman Larry Klemin:** My perspective, we don't want to make it more difficult to find somebody to post bond for a defendant because we don't want that person sitting in jail where it's going to cost a lot more to house them and keep them for 3 or 4 months waiting for a trial. We would rather have them out on bail. I'm concerned that if there is any balance leftover that a 3<sup>rd</sup> party has posted that's going to go to some other obligation of the defendant like child support then we may end up having more people sitting in jail.

**Jim Fleming:** The Judge has talked about the frequency that this arises and what the practical sense of the situation is. I would urge you to consider the value of getting child support collected as you decide the best direction to take with this bill.

**Rep. Roger Brabandt:** Child support is the only allowable garnishment after court costs and fines have been paid, correct?

**Jim Fleming:** That's true, although I wouldn't call it garnishment. Garnishment is a separate section of the Century Code with special documents and special procedures. That's not what would happen for child support, you have a straight forward court order that says give it to child support. But otherwise I agree with you it is the only one.

**Rep. Roger Brabandt:** But court costs and fines are paid first?

**Jim Fleming:** That's how I understand it, yes.

**Chairman Kim Koppelman:** asked for additional testimony.

**Judge Racek:** Clarified the bond envelope. The bond envelope is what currently exists. So there is no confusion on the child support it makes reference in that bond envelope because we only have one envelope. We do issue warrants of attachment and bench warrants for unpaid child support now, which is why the reference is in there for child support. We have people who owe child support that didn't show up for their show cause hearing, or they're held in contempt, there's outstanding warrants for nonpayment, there is bail set and once that bail is posted we make it clear that money can be applied to the amount they owe. What's new in this bill is crossing to other cases. Once we are done with this case then we can look into other debts you owe the court. The present envelope that is used today the Sheriff's use that one also so it has a multitude of purposes.

**Vice Chairman Larry Klemin:** This language that is on there now that's underlined is current language?

**Judge Racek:** We do it for emphasis when people sign for this, this is their notice.

**Rep. Roger Brabandt:** 3<sup>rd</sup> party money has precedence over child support? Brother gets arrested bail is \$500; sister gives him \$500 but lets the court know upfront that the \$500 is hers. The brother it's discovered owes \$150 in child support. The balance of that money after court costs and fines are assessed would go to the sister, it would not go to the brother? So that the child support from the brother could not be levied?

**Judge Racek:** Under the scenario you described that would be my understanding.

**Rep. Gary Paur:** You can't do garnishment but the exempt also includes attachment or execution. That exemption does not preclude child support?

**Judge Racek:** My understating of that language was so the court did not have to reconcile any disputes of the funds, they were to be applied to the court obligations.

**Chairman Kim Koppelman:** The committee has been handed written testimony for the State Bar Association from Bill Newman opposing this bill.

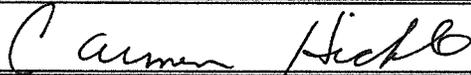
**Chairman Kim Koppelman:** Closed the hearing on 1076.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1076  
Job 17254  
DATE January 16, 2013

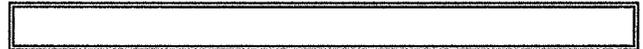
Conference Committee



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

Relating to the scheduling of controlled substances

## Minutes:



**Chairman Kim Koppelman:** Re-opened HB 1076 for discussion.

**Rep. Lois Delmore:** There are 2 printings of this bill. On some of them defendant was crossed out on Line 18. We need to make sure that we send the one down that is done correctly.

**Vice Chairman Larry Klemin:** I am having a difficult time in this bill where they do address the issue of all of these 25, 000 files they have to set up across the state. They don't want to set up all those files. When I read this bill I don't see anything in there that says this directly. Instead it covers a whole lot of other stuff there might be opposition to. I am not convinced it does what it purports to do. I have version one of the bill, so I don't know if that is the only change.

**Chairman Kim Koppelman:** The other issue discussed was the third party issue with payment to child support issue. There is a lot things mixing around in this bill. I wanted to bring to your attention that this one may need a little time. Let's let this one percolate for a while.

**Rep. Gary Paur:** The Bar Association has stated they are against this.

**Chairman Kim Koppelman:** Mr. Newman is in the halls on occasion. I would be interested to know what they're thoughts are but I think it was the third party concern by the brief statement we received. We have closed the hearing but could reopen it as Mr. Newman would be willing to come in if we request.  
Hearing closed.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1076  
January 23, 2013  
Job 17626

Conference Committee

*Kristi Hetzler*

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

Relating to the scheduling of Controlled substances.

## Minutes:

**Chairman Koppelman:** Opens. No over strike on the first word in line 18 which is the word defendant, just need to make sure that is the copy that gets turned in.

**Rep Klemin:** Vote no, this bill basically sends the bail money back to the defendant regardless of who posted it. State Bar Association opposed the bill and we have written testimony.

**Rep Brabandt:** I think they can get the money back instead of the defendant as long as the court is notified up front.

**Rep Boehning:** My understanding is that they need to get in front of the judge and request their money back. I am also against the bill.

**Rep Klemin:** If you posted bail money and there is outstanding child support, I believe it goes there instead of back to the individual that posted it.

**Rep Toman:** Adding to Rep Boehning, what are the chances the individual will know to go to court to request their money back? I am also going to vote no.

**Rep Hanson:** Is it worth it to even amend it? I don't particular like the bill as is either.

**Chairman Koppelman:** Is current law sufficient enough to ensure that the person paying bail will get their money back or do we need to do something to ensure that?

**Rep Klemin:** When the judge was in here, he spoke about having to have two files, one the bond file and the other the case file. This would eliminate that but when I read this bill I do not see anything in there about that.

**Rep Boehning:** When you pay bond for someone, you slip cash through a window and your name is on a piece of paper, there really is no discussion. I don't think this bill is not needed.

**Chairman Koppelman:** Rep Boehning, I have a question, in your personal experience what was the process? Did you get your money back?

**Rep Boehning:** I went to court with this individual so I was there to collect the money back.

**Chairman Koppelman:** And if you were not there?

**Rep Boehning:** They were going to give it to the defendant but I was standing there and gave my information to have the money sent back to me.

**Chairman Koppelman:** So under the current system it worked for you because you were there physically. I wonder if the intent of the bill is to ensure that the individual paying bail money is the one that gets it back.

**Rep ?:** There is really nothing in here stating that specifically.

**Chairman Koppelman:** I agree so we need to decide if we will just kill the bill or try to amend it to fit the intention?

**Rep ?:** Why are we making the rules to what the envelope says, why is the Supreme Court?

**Chairman Koppelman:** Because they asked us to.

**Rep ?:** They should be able to do that in rule.

**Chairman Koppelman:** The disconnect could be that most of these people are being held in a County jail.

**Rep Steiner:** Is it because we may be saving some state dollars with it going to child support. Maybe they are not as motivated as we might be?

**Rep Kretschmar:** I move to Do Not Pass.

**Rep Boehning:** Second.

**Yes:** 11

**No:** 1

**Absent:** 2

**Carried by:** Rep Boehning

Date: 1-23-13  
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1076**

House 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 \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt		/			
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Boehning

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

**REPORT OF STANDING COMMITTEE**

**HB 1076: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1076 was placed on the Eleventh order on the calendar.**

**2013 TESTIMONY**

**HB 1076**

1-15-13

HB 1076

1



**Frank L. Racek**  
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East Central Judicial District

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## Odyssey User Group Charter

### Statement of Purpose

The purpose of the Odyssey User Group is to provide a forum to receive and act on issues and requests related to the Odyssey case management system in a timely manner that furthers the goals established by the judiciary.

### II. Goals

In carrying out its purpose, the Odyssey User Group will be guided by these goals:

- a. To minimize duplication of effort;
- b. To minimize the need for use and retention of paper documents;
- c. To use computer processing for standard decision-making; and
- d. To identify and implement best practices in business processes.

Best Practices are defined as those business practices best utilizing Odyssey and court personnel to reach the stated goals.

### III. Make-Up of Group

#### A. Members:

- a. One assistant trial court administrator;
- b. Two trial court judges;
- c. One court reporter or recorder;
- d. One juvenile court officer;
- e. Four clerks of court, one of whom must be the current president of the North Dakota Clerk's Association, one contract clerk, one state-employed clerk I, and one state-employed clerk II;
- f. One justice or staff member of the Supreme Court, and
- g. Clerk of the Supreme Court or the clerk's designee.

Members of Odyssey User Group will be appointed by the Chair of the Court Technology Committee in consultation with committee members.

#### B. Ex-Officio:

- a. One staff attorney; and
- b. One trial court administrator.

Ex-officio members of Odyssey User Group will be appointed by the state court administrator.

## Court Tech Priorities 2013-2015

1. Employment Priorities:

Stable IT workforce.
2. High Yield IT Projects:
  - A. E-Filing. Move to mandatory for all civil. (21% of case initiations - 36,500 cases) (see attached MN item)
  - B. Expand E-Citations to all law enforcement. (56% of case initiations - 97,700 cases)
  - C. Work on CJIS integration to include transfer of items currently sent by court (jail discharges, judgments, orders, etc.) (impacts 13.9% of cases plus higher percentage of workload) 24,000 cases.
  - D. Improve clerk sessions works - current projects include judgments and note sheets - need to develop notes and money solutions. Significant staff time saved by not having to re-enter data in Odyssey.
  - E. E-Signatures of outside documents (would eliminate printing, signing and rescanning of orders on entire caseload).
  - F. Criminal Case Initiation Solution - 24,000 case initiations and necessity of scanning all of these documents.
3. Important Accuracy Upgrades:
  - A. Proper restriction of files if not all counts deferred.
  - B. Accuracy of level of offense (see attached).
  - C. Other.
4. Priority Studies:
  - A. Continuation of court if Odyssey failure.
  - B. Juvenile case management system.
5. High Yield Legislation:
  - A. Bail property of defendant - end requirement of bond remitter files on approximately 24,000 criminal files per year.
  - B. Consolidate current seven fees into one (court administrative fee, indigent defense and facility improvement, public defender application, victim, community service, indigent defense recoup, check collection). Legislature set percentage of each to receive from single fee. Eliminates manual calculations in session works, and significantly simplifies bookkeeping
  - C. Consolidation of non-criminal traffic payments - reduces equipment and training. Provides single spot to resolve issues
6. Education and Advancement:
  - A. Expand clerk and judge training
  - B. Explore contact with other judicial systems

EXH 4

## JUDICIARY COMMITTEES CONSULTED ON BILL

Odyssey User Group

Court Tech. Committee

Admin. Council

Judicial Conf.

Supreme Court



**CONTINUANCE OF BOND  
AND UNDERTAKING**

The defendant agrees to appear before the Court as required, remain a law abiding citizen, and advise the Court of any change of address or telephone number. If the defendant violates any of these conditions, the bond may be forfeited and a warrant immediately issued for the defendant's arrest.

I understand the bond is posted to guarantee the attendance of the defendant at all scheduled Court appearances and that in the case of a conviction the bond may be applied to any fines, fees, costs, restitution, accrued child support, or refunded to the defendant if exonerated.

Unless ordered by the court to be applied to any fines, fees, costs, restitution, or accrued child support, I request that the bond money be returned to the person posting it.

I agree if the clerk attempts to refund the bond and it is not deliverable to the person posting the bond at the listed address, the bond may be refunded to the defendant or used to pay the defendant's fines, fees, costs, restitution, and accrued child support, if any.

Date: \_\_\_\_\_

\_\_\_\_\_  
Person Posting Bond

\_\_\_\_\_  
Defendant

**BOND TRANSFERRED:**

To: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Council of Presiding Judges 09/07/01

Rev. 04/05

## Appendix D: North Dakota District Court Clerks' Statewide Staff Needs Assessment Model

GROUP	Case Type	Case Weight	Cases Filed	Workload (in minutes)
CRIMINAL	1. Criminal - Major	398.94	4,257.0	1,698,275
	2. Criminal - Minor	160.00	21,132.5	3,381,200
	3. Criminal - Summary	8.17	98,317.5	803,383
CIVIL	4. Civil - Major	360.00	482.5	173,700
	5. Civil - Minor	85.09	21,551.5	1,833,901
	6. Civil - Summary	58.83	2,812.5	165,469
DOMESTIC	7. Family - Major	282.60	5,712.5	1,614,353
	8. Family - Minor	282.60	1,542.5	435,911
	9. Family - Summary	27.00	339.0	9,153
PROBATE	10. Probate - Major	209.06	1,575.5	329,374
	11. Probate - Minor	120.67	3,651.5	440,625
	12. Probate - Summary	79.94	424.5	33,936
JUVENILE	13. Juvenile - Delinquency	136.08	1,681.5	228,816
	14. Juvenile - Dependency	175.75	825.5	145,082
	15. Juvenile - Other	10.00	40.0	400
Workload (cases filed * case weight)				11,293,577
Court Staff Annual Availability 218.75 days				98,438
Non-case specific time 90 minutes/day				19,688
Availability for Case Specific Work				78,750
<b>Court Clerk Staff Demand</b>				143.41
Court Clerk Staff Availability				119.88
<b>Court Clerk Staff Need</b>				23.53

## I.

1. New computer "person" based versus "case" based.
2. Thousands of "bond remitter" files. Files required with unique identifiers, storage issues, data input, and quality maintenance requirements.
3. Oftentimes data received from third-parties - Court not able to control accuracy.
4. Third-parties can still request refunds prior to end of case - even before bail posted.
5. Not affect bail bonds - only cash bail.

## II.

1. Now collecting statewide information on individual defendants with unique ID's.
2. Ability to apply money anywhere owed.
3. Otherwise - bench warrants, tax intercepts, OTSC, etc.
4. Important as population more mobile.

Minnesota Statutes Annotated  
Criminal Procedure (Ch. 625-634)  
Chapter 629. Extradition, Detainers, Arrest, Bail  
Warrants; Bail Bonds

M.S.A. § 629.53

629.53. Providing release on bail; commitment

Currentness

A person charged with a criminal offense may be released with or without bail in accordance with rule 6.02 of the Rules of Criminal Procedure. Money bail is the property of the accused, whether deposited by that person or by a third person on the accused's behalf. When money bail is accepted by a judge, that judge shall order it to be deposited with the court administrator. The court administrator shall retain it until the final disposition of the case and the final order of the court disposing of the case. Upon release, the amount released must be paid to the accused personally or upon that person's written order. In case of conviction, the judge may order the money bail deposit to be applied to any fine or restitution imposed on the defendant by the court and, if the fine or restitution is less than the deposit, order the balance to be paid to the defendant. Money bail deposited with the court or any officer of it is exempt from garnishment or levy under attachment or execution.

**Credits**

Amended by Laws 1983, c. 359, § 138; Laws 1985, c. 265, art. 10, § 1; Laws 1986, c. 444; Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1988, c. 669, § 2.

Notes of Decisions (35)

Current with laws of the 2012 Regular Session through Chapters 142 and 144 to 154

End of Document

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**Testimony**  
**House Bill 1076 – Department Of Human Services**  
**House Judiciary Committee**  
**Kim Koppelman, Chairman**  
**January 15, 2013**

Chairman Koppelman, members of the House Judiciary Committee, I am Jim Fleming, Director of the Child Support Enforcement Division of the Department of Human Services (Child Support). I am here in support of one of the changes to current law that is proposed in House Bill 1076.

Line 12 of the bill clarifies that bail may be applied to any child support obligation owed by the defendant. On average, North Dakota parents tend to honor their court-ordered child support obligations. However, there are some obligors who successfully conceal their money or other assets from Child Support. Posting bail is one of those opportunities when otherwise hidden assets may come to the court's attention, so we support the clarification as a way to help collect child support.

Since Child Support does not attempt to collect an obligor's child support through relatives or other third parties who may post bail, we have no position on the remainder of the bill.

I would be glad to answer any questions the Committee may have.

January 15, 2013

House Judiciary Committee

House Bill No. 1076

**CHAIRMAN KOPPELMAN AND COMMITTEE MEMBERS:**

My name is Bill Neumann, Executive Director of the State Bar Association of North Dakota. I am here because the Bar Association opposes HB 1076. The Bar Association believes fairness requires that posted bail should be returned to the party who posted the bail. Grandma's money should be returned to Grandma, and not to the defendant.

If you have any questions, I will try to answer them.