

2015 HOUSE JUDICIARY

HB 1029

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1029
1/7/2015
21747

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to abuse of a child; and to provide a penalty.

Minutes:

Testimony #1 & 2

Chairman K.Koppelman: Opened the hearing on HB 1029.

Patrick Bohm, Director for Transitional Planning Services, ND Corrections & Rehab.
(See attach. #1)

Rep. K. Wallman: What sort of impact may this have on custody hearings?

Patrick Bohm: (did not have mike on)

Rep. Lois Delmore: Was there a specific problem that has come up with implementing the law that drove you to decide we needed to do this? Has something come up or have there been problems to separate these two?

Patrick Bohm: There is not one distinct issue that has occurred, but there is a combination of many things that we have experienced over time where we have had problems properly identifying whether this individual has to be restored as an offender against children or not. We want to be sure they are doing what is required. We want to make sure they are properly classified for the safe operating of our facilities and making sure we are putting people back in to the public that we have determined to be at lower risk factor.

John Bjornson, Legislative Counsel: I was on the counsel for the Commission on Alternatives to Incarceration which recommended this bill. I agree with Mr. Bohm's comments and that was probably what I would have said. The bill did come to the Commission on Alternatives to Incarceration as a recommendation from the Department of Corrections and Rehabilitation and they accepted the recommendation to split the offenses into two separate offenses largely for the reasons that Mr. Bohm stated. In response to Rep. Lois Delmore's question.

Rep. L. Klemin: We are taking language that would apply to abuse and putting it into one section and language that applied to neglect and it is all the same language being applied to the appropriate place.

John Bjornson: Yes you have summarized that correctly.

Chairman K.Koppelman: There is no change in penalties here?

John Bjornson: As you see in section two the portions that were they are still a Class C felony and then it goes to a Class B if it is under the age of six years for abuse of a child. Neglect of a child is a Class C felony overall.

Rep. Brabandt: Whether it is abuse of a child or neglect of a child are they both felonies?

John Bjornson: Yes that is correct. The provisions for neglect begin on the bottom of page 2. It is a Class C felony.

Opposition:

Jennifer Cook, ACLU: (See Testimony #2) (13:07-18:27)

Rep. D. Larson: I have a comment. When I was in my former career as a youth worker at the police department I did have about five years that I was assigned to set on the child protection team. The language in this bill isn't being changed from what it currently is; it is just being separated to more clearly delineate what is something that really is violence against a child. The language that we have had has been the morality of the community standards is what at that child protection team level that is being considered. There is a variety of people from a variety of different disciplines that are involved in that team from law enforcement to school people to psychologists to a lot of people trying to look out for the best interest of the child. I don't know if you are aware of the way that this is being currently enforced in our state and if you have taken it in consideration with your testimony.

Jennifer Cook: (20:24) Discussed fact that this would be the perfect opportunity for this committee to take a look at how broad the language is. It is the responsibility of our law makers to give them the tools they need to operate. Constitutionally you need to balance the interests of the child and the interest of the innocent care givers. Ordinarily the ACLU would not take a position on this bill, but because the language is so broad in many states that you see the terms are defined.

Rep. D. Larson: Your opposition to the bill isn't going to change the language that we are currently using. I don't think your opposition is going to remedy your opposition to the language so if what you are really interested in is changing the language then perhaps you should have brought an amendment to change the language for the definition of child neglect.

Jennifer Cook: The ACLU is interested in the constitutional rights of innocent care givers and parents. The due process of the 14th amendment requires that severance in the parent child relationship causes by a state occur only with protection with individual interests at

state. I don't think the ACLU is in the best position given we have spoken about a wide array of language that includes mental and emotional health. There are many other experts in this field that could be drawn into this discussion to narrow these terms and define these terms. The ACLU is happy to participate in such a discussion.

Rep. L. Klemin: I think Rep. D. Larson has asked you the kind of questions I was thinking about and that is if we do as you proposing and we kill this bill we still have the exact same language in the existing law and we haven't corrected the difference between abuse and neglect like this bill does. I don't know if killing this bill is going to accomplish anything from the perspective you just gave us.

Jennifer Cook: I see your point. The ACLU takes no position on separating on the offenses and we understand what the committee is trying to do there. We wanted to point out the broad language and perhaps interest the committee in working further to narrow the definition. I think the opportunity is here to more closely define those terms.

Rep. L. Klemin: Just to continue the language that could be used instead of the language that has been used; are there any court cases that would be something we could look at to do that? Have you done any research to see what courts have said about the kind of language that is actually used in this statute?

Jennifer Cook: I have had a limited amount of time to review this bill. I would be willing to do the research and work with the committee to find a way to revise the language and make the definition narrower. I have looked at other statutes in other states like Missouri statute on abuse and neglect is more narrowly defined. They do have definitions for some of the terms we are talking about with this bill defined in the statute. I am not aware of any instances or prosecutions in this state under this language with respect to neglect. I have been made aware of prosecutors using the broad language and the charge of neglect as a threat or a motivation in some circumstances to change habits or behaviors.

Rep. L. Klemin: Did you say we don't have a definition of abused child and neglected child?

Jennifer Cook: No I am speaking more to the conduct that is described in this bill. The ACLU is concerned with the conduct described in Section 3 that would fall under the category of neglect.

Rep. L. Klemin: We still have time to put in new bills if you have some other language that you want to put in.

Rep. D. Larson: Reason and Law was one of the best books I have read on this law. We certainly don't want to become over broad and overly vague in law; however, I guarantee you a detailed definition would fill the century code would fill this building. If we tried to define proper parental control under every region and family, every culture or religion, race and everything we would be a full time legislature. Secondly with regard to your comment about prosecutors using the terms to cohere there are disciplinary actions regarding that and rules of professional conduct that address that situation.

Jennifer Cook: I agree. These words are very hard to define. Urged the committee to make this bill better.

Rep. D. Larson: Can you site instances in North Dakota where somebody has been charged with neglect.

Jennifer Cook: No, I am a licensed attorney in North Dakota, but I have not practiced and I am fairly new; however, I do not know if that has happened. I have spoken with certain groups how may have interest in the bill and they do have concerns that it has been used as a tool to influence behavior.

Rep. Maragos: Looking at this bill as opposed to what is already in statue I would like your opinion if this improves the current statue or makes it worse. I say that because if we don't amend it and try to make it better is it still better than the current law.

Jennifer Cook: The ACLU has no position on the bills intent to separate the abuse and neglect provisions and substantially I think there is no change. We have concerns the bill as it is today has those terms in there. I think this law and the proposed law is equal.

Rep. K. Wallman: We have an opportunity to amend the language in this bill if this committee would see fit. When I read this bill and spoke with others that language actually jumped out at me. I do know of cases where custody during divorce proceedings where a parent has been accused of immoral behavior based on that individual or attorney's definition of what that might be. That broad language is dangerous in some cases. The husband may not be the best housekeeper, but he may be the best parent to be awarded custody of children and if the mother or whichever parent it might be may accuse and fine that language to be the broad that it can do harm if it is in fact the best interest of the kids. I would like to look at this and see if we can do something better.

Rep. L. Klemin: You mentioned several times in your testimony that it is the ACLU's position this and that. How did the ACLU arrive at its position on this particular bill?

Jennifer Cook: I started with the ACLU December 1, 2014 and I am their policy director. This is the first opportunity the ACLU North Dakota chapter has had to have a lobbyist at the legislature. I have taken a look at any and all bills for this session and am monitoring them for any activity that we believe that we would support as far as civil liberties go and those we would oppose. This bill struck me because the language was so broad that it borders on if an innocent parent or a caregiver were to be charged with neglect under this statue or the one proposed here that it could potentially violate a parents due process rights under the constitution.

Rep. L. Klemin: So we have a national chapter of the ACLU that said that. How did the North Dakota chapter of the ACLU arrive at its position on this bill?

Jennifer Cook: As I said I am an attorney by training and not so much by practice and I reviewed the bill and I had our staff attorney who works for the ACLU of North Dakota, but he is located in South Dakota review the bill as well. They decided that this bills language was too encompassing.

Rep. L. Klemin: Does the ND Chapter have members and if so how many?

Jennifer Cook: That is a great question. I don't know. Nationwide we have more than a million numbers and a small portion is ND members.

Rep. L. Klemin: How were these ND members presented with the question of whether they should take a position on the bill or was this something that was determined by you and the attorney?

Jennifer Cook: It was a position taken by myself and the attorney in SD after reviewing the bill.

Rep. Maragos: (mike not on).

Jennifer Cook: I believe that any competent or skilled defense attorney would take this language if their client was charged under neglect under the statute and they would poke holes through it.

Hearing closed.

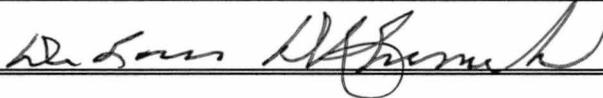
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1029
1/12/2015
21832

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to abuse of a child; and to provide a penalty.

Minutes:

Chairman K.Koppelman: Committee discussion on HB 1029.

Motion made to Do Pass by Rep. D. Larson: Seconded by Rep. Mary Johnson:

Discussion:

Rep. K. Wallman: I would like to move an amendment to strike the morality language. A bill recommended out of the Human Services Committee which would amend the language from individuals with developmental disabilities from the current language. They voted to remove the language of a facility caring for an individual with disabilities. The facilities were supposed to prevent immoral or monitor the morality. They removed that language and it passed in the House yesterday. I think this would help us be consistent. The language is in Section 3, #3.

Chairman K.Koppelman: I will allow a discussion to go forward, but to actually have a motion for an amendment we have a motion on the floor for a do pass so we would have to withdraw that motion and second would have to withdraw and then we would have to allow that amendment.

Rep. D. Larson: I would resist that amendment. I do not resist the whole idea, but because then we are getting into rewriting the standards for child neglect that have been long standing and what this bill simply does it separate the two definitions out and doesn't redefine what that statute says. I we are going to get into a situation where we are redefining or changing the definition I think that should be under a separate bill and topic.

Rep. L. Klemin: I would agree with Rep. Larson. The intent of this bill is not to make those kinds of substantive changes so that type of amendment is a substantive change and would require a lot more discussion than what we have here. You still have time to put another bill in.

Chairman K.Koppelman: I believe that discussion did come up during the interim and that the decision was not to go there; that that wasn't the purpose of this legislation.

Rep. K. Wallman: Does this never happen. We see a bill for something and it turns out we want to update language or be consistent. I think this has come up before.

Chairman K.Koppelman: It is within your authority as a member of the legislature to ask for a change like that. No one is implying that. The question is what the purpose of this bill is. It did come interim committee and they did look at it in more detail than we have time to do during our hearings and the purpose of the bill was to separate the two. Could we change and revisit the definition sure we have the authority to do that. Whether it is wise to do so but this bill is intended to do something else is what is being discussed here. We all have an opportunity to introduce new bills so this may be what you want to do. I would recommend you visit with the Legislative Counsel about introducing a bill.

Rep. K. Wallman: My interest was mainly efficiency because it is before us now. It was struck from code yesterday and all they would have to do remove the word where we find it in the bill.

Rep. D. Larson: If we are going to be changing child neglect or abuse then the bill would have to almost be re-referred to Human Services because that part of the bill would be more under their preview. Ours is just for the purpose of reporting.

Rep. K. Wallman: I respectfully disagree with Rep. D. Larson. We are the judiciary committee and when these go to the courtroom the language is really what matters when you interpret the law. How do you decide in a courtroom if someone has exposed their child to something is so subjective. Maybe all of us can agree in this room what morality is, but perhaps there is a custody case involving children where one spouse acquires the other immoral behavior. What does a judge or attorney do with that? I don't think it is necessary to write a separate bill when it is already here.

Rep. L. Klemin: This is a significant change in the bill you are discussing. That was not brought up by the hearing by anyone. There is no testimony by anyone relating to a substantive like this. That would have been the appropriate time to make it rather than in the committee discussion. The hearing has been adjourned and we are over with this. It could be brought up in the Senate when they have a hearing on this bill. We have another rule relating to amendments and that is the bill can't be so amended as to change its original intent. I am not sure how that would follow the rulings, but we would have to probably get a ruling on it. So there are some other ways to do it.

Chairman K.Koppelman: In North Dakota law you will be many references to subjective terms like morality etc.

Roll Vote: 9 Yes 1 No 3 Absent **Carrier: Rep. D. Larson:**

Date: 1-12-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1029

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. Larson Seconded By Rep. M. Johnson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	—	
Rep. Brabandt	✓		Rep. K. Wallman		✓
Rep. Hawken	—				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 9 No 1

Absent 3

Floor Assignment Rep. Larson

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

REPORT OF STANDING COMMITTEE

HB 1029: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(9 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING). HB 1029 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1029

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1029
3/11/2015
24628

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on HB 1029.

Pat Bohn, Dir. Transitional Planning Services, ND Dept of Corrections & Rehab: Support (see attached #1).

Ch. Hogue: Can you give us a case where it would be a case of child neglect as distinguishable from abuse.

Pat Bohn: An example would be a mom, is home with two children, walks across the street to the bar and spends the evening in the bar. Either law enforcement is notified or law officer comes and finds the children unattended or on occasion where the children have gotten outside of the house and wandering in the street the neighbors call law enforcement. That would be an example of where we've seen child neglect.

Sen. Luick: Do you know if the requirements of what you're asking for here, are they compatible with the state of MN has. I have a constituent that is having problems with a law that is on the MN side. If he lives there, he's under that jurisdiction. If he moves to ND it is labeled differently than it was on the MN side. Is this compatible with MN law, what we're changing here, are we making it better.

Pat Bohn: I'm not sure how compatible it is with MN law. In MN law, they have a violent offender registry. So not just sex offenders, but you commit an assault, child abuse, terrorizing, they have a whole list of offenses for which he must register as a violent offender. I think this could help with registration issues like in MN, because it would be clearer: this is child abuse vs. child neglect.

Sen. Luick: Thinking about this, I believe that on the MN side it was a neglect case. Once he moved to ND it became a sexual abuse case. So he now lives in MN because of that particular matter, but there was no sexual abuse at all. It was a neglect case.

Pat Bohn: I am familiar with some of those situations that arise, and the way it works in our state, is the AG, SORAC (Sex Offender Risk Assessment Committee) do all the registration through the AG's office. They will look at the elements of the offense that they were convicted of in the other state, if it is similar to the elements of the offense that need to be registered in ND, then that individual is required to register. If they are not similar or the same, then they don't require the registration. It's complicated because of the different laws, different elements of offenses throughout the country.

Sen. Armstrong: On page 3, sections 1, 2 and 3. They used the word "moral" and "immoral" a lot. I know there is some consternation about that, but essentially we're taking the language which has been in code forever and just moving it into the other section. It is struck from page 2 and moved to page 3.

Pat Bohn: Correct. We didn't change any of the language or elements; it merely copied the same language and separated it into two sections.

Sen. Armstrong: So if you didn't have a problem with the old law, you won't have a problem with the new law.

Pat Bohn: Correct.

Sen. Nelson: Latch key kids, is there a different reading in the law between "natural born children" and "guardians" of a child.

Pat Bohn: I'm not versed enough to respond to that question.

Sen. Nelson: Many years ago, I had a class and the kids came home from school and they were alone for a short time. The requirements were more strictly enforced for the guardian child than for my own child. There is a fine line in there about how they interpret the law as to whether your children and children you are responsible for because of a court order.

Ch. Hogue: Thank you. Further testimony in support.

John Bjornson, Legislative Council: Support. Mr. Bohn covered everything I would have gone through.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are the committee's wishes in regard to HB 1029.

Sen. Grabinger: I move a Do Pass.

Sen. Nelson: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Nelson

Date: 3/11/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1029

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Nelson

REPORT OF STANDING COMMITTEE

HB 1029: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1029 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

HB 1029

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
JANUARY 7, 2015

HB 1029
1-7-15
#1

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1029**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of House Bill 1029.

House Bill 1029 proposes to separate abuse or neglect of a child into two distinct offenses:
1. Abuse of a Child 2. Neglect of a Child with the intent of retaining the full litany of criminal penalties available under the current statute.

The reason behind the proposed separation is to add greater clarity to the offense and the associated records:

1. Registration as an offender against children: Elements of abuse require registration whereas neglect does not.
2. Criminal histories that can affect:
 - a. Sentencing: presentence investigations.
 - b. Classification and custody levels for correctional facilities.
 - c. Release decisions made by corrections officials and parole boards.

In closing, the DOCR supports the passing of House Bill 1029.

test #2
HB 1029
Pg 1

Statement of the American Civil Liberties Union of North Dakota

In Opposition to HB 1029 – Abuse and Neglect of Child

House Judiciary Committee

January 7, 2015

The American Civil Liberties Union (ACLU) of North Dakota is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all North Dakotans under the United States and North Dakota constitutions.

The ACLU of North Dakota opposes HB 1029. The proposed language contained in Section 3, paragraphs 1 through 3 which describes conduct that constitutes child neglect are particularly concerning to the ACLU. Generally, an overarching theme among the three paragraphs appears to be that all contain vague, ambiguous, and broad descriptions of conduct.

Specifically, as to Section 3, paragraph 1, the phrase “proper parental care or control” is broad and is not well-defined in the statute. This is troublesome because the definition of “proper parental care or control” is left open to the interpretation of prosecutors and child protection advocates alike. It is conceivable that what one person may view as proper parental care or control varies widely from another’s and yet both views may be acceptable forms of parenting necessary to maintain a child’s physical, mental, or emotional health or morals. Indeed, what constitutes proper parental control can and often does vary from region to region and family to family and culture to culture.

Additionally, in paragraph 1 the phrase “physical, mental, or emotional health, or morals. . . .” is not adequately defined. How will these be measured? Particularly concerning is the fact that the “morals or morality” of one person or group can vary widely from another. Morality is a subjective intangible that differs depending on the individuals involved, their particular background, and their life experience. There are many standards of morality, many of which do not subject a child to neglect.

As to paragraph 2 of Section 3, the language “disreputable place or associating with vagrants or vicious or immoral persons. . . .” is also broad and not well-defined in the statute. The questions beg to be asked, “what is a disreputable place?”; “who are vagrants or vicious persons?”; and more importantly “who are immoral persons?” Again, the potential scope of this language is far reaching, the interpretations are widely varied, and the implications on morality are substantial.

And finally, in paragraph 3 of Section 3, the language “engaging in an occupation injurious to the child’s health or morals or the health or morals of others. . . .” is also broad and not well-defined in the statute. For example, it is not outside the realm of possibility that a teenager working the family farm injures herself during the course of her work and under this statute her parents could be charged with criminal neglect for allowing her to engage in an occupation injurious to her health. And again returning to the phrase “morals,” how are “morals” defined and by whose morals should they be defined?

The ACLU acknowledges the bill contains the “willfully” intent language that could potentially limit the scope of prosecution under Section 3. However, given the vagueness of the language addressing conduct that is neglectful and the scope of innocent conduct that could potentially be classified as criminal under this statute, the ACLU does not believe the “willfully” intent language sufficiently protects the rights of innocent parents and other custodians of a child from unwarranted prosecution.

This legislation as written could have a chilling effect on the traditional role of parents in our society. Our laws and tradition has long held that parents are in the best position to know how to properly raise their children. By creating the potential for criminal prosecution based on vague notions of what constitutes “proper parenting” this bill runs the risk of improperly ^{replacing} usurping the traditional parental role.

While the ACLU believes the children of North Dakota should be protected from abuse or neglect, the ACLU also believes HB 1029’s overbroad language may do more harm than good because of its potential to sweep a wide array of conduct into its clutches at the expense of the rights of innocent parents and caregivers. It is a basic principle of American constitutional law that statutes cannot be overbroad or vague, so as to avoid their proscribing innocent behavior or behavior that was not intended to be within their reach. HB 1029 contains language that involves notions whose meanings are constantly changing and unclear.

From a practical perspective, this committee should consider the effect overbroad and vague language could have on this bill, as such a construction leaves this legislation open to attack by any competent defense attorney. If the aim of HB 1029 is to protect children from abuse or neglect by their parents or guardians, more specific and clearly defined terminology should be employed.

For these reasons the ACLU of North Dakota urges this committee to oppose HB 1029.

SENATE JUDICIARY COMMITTEE
SENATOR DAVID HOGUE, CHAIRMAN
MARCH 11, 2015

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1029**

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 - b. Classification and custody levels for correctional facilities.
 - c. Release decisions made by corrections officials and parole boards.

In closing, the DOCR supports the passing of House Bill 1029.