

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1420

2005 HOUSE JUDICIARY

HB 1420

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1420

House Judiciary Committee

Conference Committee

Hearing Date 1/31/05

Tape Number	Side A	Side B	Meter #
1	xx	xx	12.7-end / 0-end
2	xx		0-23.1
3	xx		20.2-23.2
Committee Clerk Signature <i>Mawn Penrose</i>			

Minutes: 12 members present, 2 members absent (Rep. Bernstein & Rep. Charging).

Chairman DeKrey: We will open the hearing on HB 1420.

Rep. James Kerzman: I am pleased to be one of the sponsors of this bill. It is a very much needed bill. I have always been a strong advocate for anything that will strengthen the family structure. When we look at the children, they are part of the family. Divorce, for whatever reason, happens in our society, and it very much affects the family. I can relate to it in our own family, we have a daughter that went through a divorce, and when we look back at it, there's a lot of things that should have been done, more information disseminated to both of the partners. There was no way to heal that division, but a lot of questions were unanswered, how to handle the two children, two little granddaughters. It affected them very much. It affected us as grandparents, and the rest of the family. What I'm saying is, when they entered into this, a lot of information wasn't available or they didn't seek it out as to how to handle the custody of the kids, they have a joint parentingship, they alternate weekends, alternate holidays, etc. It's really

tough. I think it would have been good to have attended some kind of seminar where this information is given out.

Representative Delmore: I think the intent of this bill is very good, but I think that where domestic violence is going on in the home and it might be better to get that divorce over quickly and get those people resettled before we see an example of violence. Would you agree that in some instances, 180 days might be more of a detriment to the situation, than a help.

Rep. James Kerzman: I can agree with that. I think there should be a separation in a case like that. The information still has to be delivered to both parties, how do you go from here, let's think of the children. I wouldn't say that we have to keep those people living together under conditions like that where there is domestic violence, I would agree to a separation.

Representative Delmore: Do you think there is a possibility in that type of circumstance, that it's really going to make it better, that there is any possibility of that marriage continuing.

Rep. James Kerzman: I'm not advocating that the marriage should continue, I'm advocating that the courts, or whoever, worked to the best situation of those children, which parent are those children going to reside with, who's got custody, in the case of domestic violence, the court should maybe look deeper into where you are going to place those kids, who is going to be the custodial parent, etc.

Representative Delmore: You're talking about cooperative parenting, so that means that those people are working together in raising their children. What if there already was a restraining order against one parent in place, saying that they had to stay away from the spouse and the children.

Rep. James Kerzman: You have a point.

Representative Bernstein: Is there seminars offered now, are they set up now to do this, are they available now.

Rep. James Kerzman: I'm not really familiar with seminars of this type, but I know there are seminars for Beginning Experience, and there was a whole series of get togethers, meetings, and counseling, that really helped me after the death of my wife. They offer that same program to divorced people. It is Christian-based oriented program, it's been a big part of my life. I've seen a lot of advantages to that. I hope that some faith-based program is going to step forward in cases like this and help out.

Representative Delmore: Who would be responsible for paying for this. I look at the fiscal note and it says that there is no anticipated fiscal impact.

Rep. James Kerzman: I can't answer that question.

Representative Delmore: I guess it says in the bill, that they are responsible for paying. What if they couldn't pay.

Representative Koppelman: The court may assess the fee.

Representative Delmore: So there is a cost, so this fiscal note may not be totally relevant.

Chairman DeKrey: Thank you.

Rep. Margaret Sitte: I am the prime sponsor of the bill (see written testimony).

Representative Delmore: I can appreciate where you are coming from with this bill; however, the state has been looking at a lot of mandates and we have committees that testify in front of committees that they don't like mandates. Why do you think we should mandate peoples' lives. Why do we need to get involved in a personal decision that's been made by two adults. Why is it ours to go and say you can't do this unless you go through the seminar.

Rep. Margaret Sitte: I have been doing so much reading on divorce this last weekend, I did not realize that 80% of all divorces are instigated by one person, in which the other person does not want the divorce, and very few divorces ever really involve abuse. So that's why states are finding that, in Maryland and four states, they have a two year waiting period. The longer the waiting period, they're actually finding that parents often realize that they overreacted and maybe what was a temporary blip in their marriage, was really just that, just temporary and something that they could work through. That's why we are seeing a corresponding decrease in the states that have a waiting period. I also read a statistic that talks about the number of people that later regret their divorce, and say, states with a waiting period of more than 90 days, have 25% lower divorce rates than states with shorter waiting periods.

Representative Delmore: Have you cross-referenced some of these sources, there are some people that will say to you that there are also children who suffer when people don't get a divorce, and the most common reason for divorce in this state, is irreconcilable differences. Not everybody wants to air their dirty linen in front of their children, their family, and the community. You're saying that there are very, very few times where domestic violence and those things enter into the decision. I think there might need some more digging into, because I think we have lawyers in this state that would say to you, they see a number of times where the best thing to do in that relationship might be to terminate the relationship.

Rep. Margaret Sitte: I absolutely agree in cases of abuse, that the woman needs to get out immediately. My father's advice was this, if your husband ever strikes you once, walk out the door and never go back. That's my advice to any woman who was hit in a relationship. I am totally supportive of women in abusive situations getting out. Please don't misinterpret this at

all. The statistic that I have is that less than 1/3 of divorces occur in high conflict or violent homes, and children benefit from divorce only when they are removed from violent or abusive situations. The data shows that even if there is quite a bit of other conflict in the homes, the children are resilient enough to come through it, versus those that are raised separately.

Representative Klemm: As I read this bill, the parties are supposed to certify that they attended this seminar after 10 hours. Hypothetically, at least, that seminar could be completed within the first week after the action has started, what would be the reason to wait the rest of the 180 days if they had the seminar early on.

Rep. Margaret Sitte: In talking with various judges, I find that most divorces take about 6 months anyway, which is what Judge Wefald told me, so he didn't think it would be a big conflict with what's happening currently now anyway.

Representative Klemm: What would be the reason for waiting the rest of the 180 days, if you didn't need to. Let's say, for example, the parties were all agreed upon how the child support, child custody, visitation was to be handled, and the court didn't have any problem with what they agreed on. Why would you need to wait the rest of the 180 days if you had the seminar early on.

Rep. Margaret Sitte: On the chart that Christina is going to pass out, the average divorce rates in states that have less than 60 day waiting period, is 4.8. If they have a 60-90 day waiting period, the divorce rate drops to 4.2. If they have 90-120 days, the divorce rate drops to 3.7 and if they have more than 120 days, the rate drops to 3.4. So we're seeing a direct correlation in the drop of the number of divorces. In most cases, this was data obtained in Georgia, there was a poll done, should divorce be harder or easier to obtain; 62% thought it should be harder to obtain.

There was another piece of data that I saw that many people actually regretted their divorce and

wished they had taken more time. I think the factor here is that time really does make a difference in providing a cooling off period for people.

Representative Klemin: So the 180 days is intended as the cooling off period, in hopes that they might change their mind.

Rep. Margaret Sitte: I guess that's one of the side benefits of it.

Representative Boehning: If you're married in ND and go to another state and get a divorce, is that recorded in ND. The other question, 80% of the people where one person wanted the divorce and the other didn't, what's to stop the one who doesn't want the divorce to drag their feet, we won't go to class. Is the sheriff going to drag you into class and make you sit there if you don't want to go, you're not going to go.

Rep. Margaret Sitte: I don't know about the first question. The second question is a fascinating one. I have considered it, but I don't really have a solution. MN has a 9 hour class, I would be really curious to check that out and see what they're doing. I'll do some research.

Chairman DeKrey: Anything MN can do in 9, we can do in 8.

Representative Maragos: How many different grounds for divorce are there.

Rep. Margaret Sitte: I don't know.

Representative Maragos: If there are many different grounds for divorce, why wouldn't you just say in an action for divorce and try to save all those divorces, rather than just the ones that come in for irreconcilable differences.

Rep. Margaret Sitte: Because I don't want women in abusive situations to have any delay in their divorce. If they are being abused, they need a safety net, to be able to leave and to be free from that situation.

Representative Maragos: Not withstanding the abusive relationship, what about all the other different grounds for divorce besides abuse.

Rep. Margaret Sitte: I have had very good friends who have weathered affairs in their marriage, who have weathered economic woes, weathered innumerable obstacles where they were very, very close to divorce. I have had friends tell me, I am definitely going through with this divorce, and then I have also seen many of those marriages turnaround. Several of them are past 30 years now, that 10 years ago no one would have given any hope to. I think sometimes when people are too hasty, they overreact. What is the problem with slowing the process down a bit.

Representative Delmore: If I'm willing to go to court and air my laundry, be it adultery or whatever, then we're saying it's okay, I don't need to do anything about my children; however, if I go in and file irreconcilable differences, that I do need to follow this mandate. Aren't you creating a kind of a double standard with that.

Rep. Margaret Sitte: I don't believe I am creating a double standard at all, and I don't view it as airing one's dirty linen. As someone said earlier, if there has been a restraining order against someone, that's all that you would need to do to prove abuse.

Representative Delmore: I'm not talking about abuse here, I'm talking about other reasons for divorce that are specifically listed in code, and I believe one of them is adultery. I'm not sure what all of them are, but you're really saying that if people are willing to go through and claim one of those other reasons, because you are only holding this for irreconcilable differences, if I'm willing to go through and have another claim for why I need my divorce and the only other claim is not violence, that I can say in divorce court, this is why I'm filing for divorce. That's why this

is a double standard. Keep in mind that domestic violence can be men or women who are abused, too. Sometimes we have men in situations and need that same safety net that you are talking about.

Rep. Margaret Sitte: Thank you for clarifying that question. This is almost a second look at no-fault divorce. When no-fault divorce swept across this country 25 years ago, everyone saw that it was going to eliminate the feuding in the divorce court. By and large studies have shown that's true. It eliminated the feuding right then, but on the other hand, it was so quick and it actually transferred to those problems, to the couple and the fighting continued far longer and was never actually resolved as it was back before the no-fault divorce; when people would actually come to grips with the issues and settle them. I find that to be a fascinating bit of research.

Representative Delmore: Aren't there also people who continue to stay married, and whose situation with the fighting, may not necessarily be the best thing for children. I'm not sure where the fighting is almost constant, that this is good for the children either. I think you can look at divorce and we can say, it's wrong, but I think we also look at some people who sometimes stay together for the children, and that's not always the best thing and I think if studies were done, we'd find some situations where these statistics might also be.

Rep. Margaret Sitte: There was a study done, Paul Amato and Stacy Rogers, in 1999, in the Journal of Family Issues, wrote, do attitudes toward divorce affect marital quality and they found that studies show that children actually do better in high conflict, but nonviolent home than they do in divorced homes. So there has been a study done on that.

Representative Delmore: You're saying that many of these that are one study type of thing, and I can go into a lot of journals and find something to back up something that I really like, rather than broad studies. The one that you gave us had 131 students, that's a very, very minute population. I think sometimes we have to be aware of statistics too, they can be a double-edged sword in something like this.

Rep. Margaret Sitte: I agree, at first 131 sounds like a small sampling, but you have to realize that Judith Wallerstein went into these people's lives in depth, following them year by year and had several of her students at Berkeley, assisting in this endeavor. Berkeley is not considered a conservative think tank by any means, so when this book came out of Berkeley, people considered it, it came out in the year 2000, and it has been considered the landmark study on what happens to children of divorce. You can say that I'm just citing one picky little study. I'm telling you I have a lot of valid information to back this up.

Representative Delmore: That was not my intention to accuse you of anything. I'm just saying that sometimes when we use portions of information, there may be another equal side to the endeavor that we also need to look at.

Chairman DeKrey: Just for the committee, the 7 reasons for a divorce are: 1) adultery, 2) extreme cruelty, 3) willful desertion, 4) willful neglect, 5) abuse of alcohol or controlled substances, 6) conviction of a felony, and 7) irreconcilable differences.

Representative Koppelman: I read an article in the paper just last week, it was talking about ND being the Las Vegas of the north, in terms of how easy it is to get a divorce here. It's certainly easier to get divorced in ND than it is to get married. How long have we had that status, when did no-fault come into play in ND.

Rep. Margaret Sitte: I don't. Perhaps the intern could find out.

Representative Koppelman: Along with that, maybe we could find out how we compare to other states. Also, you talked about a seminar in the bill. Are there any alternatives to that, if a couple that would be in this situation, for example, would be under this bill, and would want to get some sort of counseling in lieu of the seminar, is that contemplated in the bill, do you think that would be a good approach or not.

Rep. Margaret Sitte: Absolutely, one on one counseling is far more effective than the seminar approach. Again, we are concerned about the cost and so the cost of the extension service classes are \$30 and that's just a 4 hour class. If there are pastors who are willing to step up to the plate, if other people are willing to get involved in this issue. As I'm hearing, there would be. I think the certification could include many different types of counseling.

Representative Boehning: One thing that appears to have been left out is the counseling for the children. The parents get counseling and the children are being left out in the cold, shouldn't they be involved with this too, so they know what is going on, what to expect, etc.

Rep. Margaret Sitte: In most cases, in most states that are doing this already, they are finding that if the parents have an adult way of dealing with their emotional stress, that they're able to foster their children through it. The big problems appear to be in the continued anger that one parent holds against the other and then uses the child in a wrong way, so that's why if the parent gets their act together, they seem to be able to guide their children through better.

Representative Onstad: In all the research, have you dealt with children of unmarried children, in a state where cohabitation is against the law.

Rep. Margaret Sitte: I did not look at specific statistics on children in ND, but we know that children who live in cohabiting homes have many of these same problems; high rate of poverty, high rate of abuse, especially if there is someone other than their father living in the home. Those statistics are borne out in ND as well as nationwide.

Representative Onstad: When it's against the law, but we don't enforce the law, so you're saying that we should extend the law to that portion and enforce it because of those children.

Rep. Margaret Sitte: I'm not dealing with cohabitation today. I'm dealing with children of divorce. I think that it would not be appropriate to comment on that in terms of this bill.

Representative Onstad: We heard testimony about children of divorced families, I'm just adding the children of unmarried parents which is quite common. Has any of your research dealt with that. It seems to be legitimate the fact that why don't we, why do we end it with just marriage and divorce, we have to deal with all children when it comes to custody dispute when there are unmarried parents and they separate. There's a custody situation there too.

Rep. Margaret Sitte: I didn't know. You mean that sometimes they go to court for custody after cohabitation.

Representative Onstad: There's decision about who is in charge of the children.

Rep. Margaret Sitte: I would be open to an amendment in that regard, if you believe that we should add those children here.

Representative Meyer: I think we have in ND right now, we do have mediation services that if they can't afford an attorney, or just don't want to go through a hassle and if they agree to mediation, it seems to be a very workable situation that people have taken advantage of and they do address all of the a-f issues that you have here. To me, I think we should be promoting the

mediation vs. having them attend a separate course, and then with the waiting period, because we have mediation services available and they seem to be working, if the people are informed that they have those available.

Rep. Margaret Sitte: I am not familiar that these mediation services went into that much depth and how to actually handle the children. If they would, I would be very open to counting some of those hours spent towards this. I understood mediation was that it was more separation of property than custody. These seminars will be dealing with some of the emotional baggage and how parents can better handle the stress that they feel.

Representative Meyer: That's what I was getting at. They aren't separate issues, and in a farming or ranching situation, we have to do things if there is a divorce coming on a little quicker than 6 months, because you have to address the situation of putting your crop in, depending on the time of year you are getting the divorce, and if your assets and many times in a situation like that, it's not just the children, your assets do have to be divided if you are going to continue on with your life versus having to wait the six months. That's why I mentioned the mediation services; where they go through all these steps and with the children, from my following of the mediation, and it seems like it's a situation that is working, whether people are aware of it being out there in ND I don't know that. On the states that you listed on statistics, is Las Vegas one of them. It wasn't in one of those groups when you were listing percentages of waiting periods. Was Las Vegas one of those states.

Rep. Margaret Sitte: I can find out.

Representative Charging: I admire you bringing this type of bill forward.

Chairman DeKrey: Thank you. Further testimony in support.

Christina Rondeau, ND Family Alliance: I am here in support of HB 1420 (see written testimony).

Representative Delmore: Do you have any statistics nationwide what percentage of people believe that there should be longer waiting periods, what percentage would believe that it should be harder or easier, or even more directly in ND. I'm not sure the logic of your argument follows that because people that turned out in that kind of issue was very different from divorce or what we're talking about today, I think the percentage of North Dakotans that turned out for that vote, really don't apply very much to this bill. Do you have any nationwide statistics, or statistics on ND, Georgia's nice but it's not here.

Christina Rondeau: Both of these numbers cited were national statistics. I do not have surveys of North Dakotans. Both of the statistics that I have given you today, including the sheet here compiled by Georgia, I'm sorry that I didn't attach the footnote. I could get that for you if you wish to cite it. This study here was a national survey, showing that 62% believed that divorce should be harder and 22% thought it should be easier. I don't believe that was just a study of Georgians. In addition, the very first survey I cited for you in my written testimony, the general social survey is a national survey that was conducted. I think when we look at what can we do with divorce laws, waiting period seems to be the most reasonable and logical measure that we can take, without making things overly cumbersome to people who need to look at divorce as an option.

Representative Delmore: Do you have a listing of the waiting periods state by state.

Christina Rondeau: I would be happy to provide that chart for you. I'm waiting for the chart.

Representative Klemm: The way this bill reads, it tends to involve children in some respect. If the married couple didn't have children as an issue, because they didn't have any children, or because the children are 18 or older, then the bill wouldn't apply to them. Don't you have some of the same arguments that could be made with respect to people who are getting a divorce that don't have children as an issue.

Christina Rondeau: Yes, of course we're concerned with all divorces. I think the reason, however, that in this particular bill drafting, that it specifically focuses on parents with children, is because divorce generates divorce. In our culture today, we are seeing so many broken marriages that, just take a step back and begin to look at reasonable measures we can take, to maybe that can begin to help stem some of that. We really need to take a hard look at what we as a society can be doing to help children in divorce situations or in households where divorce is about to occur, because statistics show that children of divorce are much more likely to obtain divorce themselves as adults. This is an effort to come back and under gird the institution of marriage and family. We just chose to specifically to address the situation where children are involved.

Representative Klemm: Would this apply in a situation where the woman is pregnant and the child hasn't been born yet.

Christina Rondeau: Georgia has a piece of legislation introduced right now, that is very similar to this. In this bill drafting, it does not specifically make an exception for pregnant women, Georgia's law does. In Georgia's law, they waive the waiting period, but I do believe they waive the seminar attendance requirement, if she is pregnant, but has not given birth to a child. Also, in their legislation, if you can prove the abuse, the waiting period is waived as well.

Representative Koppelman: Do you know how ND compares in terms of no-fault divorce to other states with no waiting period.

Christina Rondeau: I don't know. I'm still waiting for the specific list that cites and documents exactly how this % is come up with.

Representative Koppelman: Do you know of the neighboring states, compare to SD or MT.

Christina Rondeau: I don't know offhand.

Representative Maragos: Based on your affiliation with your group, what has been the 30 year trend in this country with divorce rates, and how does ND compare in its 30 year trend. Are they going up, going down, stable.

Christina Rondeau: As far as I know, in the research I've done on ND, I have just seen the statistics from the Dept. of Vital Statistics that our average divorce rate in ND over the last few years, is about 48%, which is pretty close to the national divorce rates. I believe the 30 year trend in the US showed a peak and then its come down just slightly and has begun to stabilize in just the last 5 or 10 years I believe.

Representative Maragos: Do they attribute that to any specific things.

Christina Rondeau: I can't tell you that offhand. I think it's just that because now divorce has caught up to us as a nation, it is so widely available. There's not the same push for it anymore like there once was.

Representative Meyer: You stated that states with longer waiting periods for divorce, have a 25% lower divorce rate, but then in the pie chart, it's 3.7% over 90 days and less than that is 4.2, where do you come up with 25% lower.

Christina Rondeau: I got the 25% lower from the sidebar. The group that conducted this research was comparing each state's waiting period with that state's divorce rate. Based on their calculations, I take it they just calculated from 3.7 to 3.4, it comes up with a 25% difference. I could be mistaken.

Chairman DeKrey: Thank you. Further testimony in support.

Brenda Kriedemann, Social Work Director, Bis/Man Salvation Army: I am here on behalf of the Army, to support the bill 1420. The Salvation Army supports this bill because we believe in families, and even through divorce, families can still, for the children, have a good solid base. Over the years we have seen the ill effects of children in our programs whose parents are divorced, therefore our organization is willing to collaborate with other community agencies to provide a curriculum for the issues in the mandatory seminar for parents. If necessary, we would be willing to do some of the instructions for the seminar. We would also be able to help those that would qualify, have a verified qualified need, to help pay for some of those seminars, if the bill would pass.

Representative Delmore: Why is ten hours a magic number and secondly, what do we do with the smaller communities who don't have access to these services like the larger towns and cities would have. Are we going to have some people who are going to fall through the cracks on this because this type of seminar would not be available to them.

Brenda Kriedemann: I actually don't have a lot of that information. I was asked on the spur of the moment to speak on this. Being from a rural area myself, knowing that the counties could possibly in hold the meeting in the county seat. I would like to see it for the children. I would hope that they wouldn't fall through the cracks. I went through a separation and during that time,

I wish I had known how to talk to the kids. Now that I've reconciled with my husband, I see the toll this took on my children in dealing with their dad now, the price they are paying. I wasn't educated. After taking the social work classes I see how important it is to talk to the children, to see in their development and where this puts them. I can see a real need for this, except for in abusive situations, you need to get out.

Representative Delmore: Is 10 hours sufficient, I am always suspicious of one size fits all.

Brenda Kriedemann: I would like to see it longer. I think with 10 hours, the parents of the children would get enough insight to know that if more hours were needed, that they would be open to that and that it would be available to them, knowing where to go for more resources if I need more of this. I think the initial 10 hours would be good, and then have something available that they could move on to through one of the other agencies. We are willing to take on whatever we could to help with this bill.

Representative Delmore: How do we provide the continuity of this type of instruction, if your group is doing something, and other groups are doing their thing. Will there be a curriculum developed for this, is there anything in place.

Brenda Kriedemann: I guess I would say that there is a curriculum already with the extension office, and I think if more agencies take that on, we would have to all be on the same page.

Representative Koppelman: The Salvation Army has local groups throughout the state, how many are there.

Brenda Kriedemann: In ND, we have them in all the major cities, and in the small cities where we don't have a local chapter, we have what is called service extension that goes out into the community.

Representative Koppelman: It was noted in the bill that cost would be the responsibility of the people involved, but there is a phrase in there about the court may assess fees. If there were a couple that said they want to get a divorce, and we're required by law to take this seminar, we can't afford, would the Salvation Army offer it at no cost.

Brenda Kriedemann: Yes, I do believe that we would be able to assist them with the cost. If we ourselves do not do the seminar, we do have funding that I believe we could make available for that cost if they have a verified need and are eligible.

Representative Koppelman: Of course, if you offer it, you would offer it to them and not charge for it.

Brenda Kriedemann: Right.

Chairman DeKrey: Thank you. Further testimony in support of HB 1420.

Pastor Bob Nordvall, Charity Lutheran Church, Bismarck: We support this bill. I serve as a chaplain for the Heartview Foundation for the past 20 years, and on behalf of the children that come through that program, many of whom I work with, as low as age 13, what has been talked about here today has certainly been a characteristic of their lives, in the choices made regarding substance abuse. I wish children could be here to speak on their behalf toward what adults are debating, but they are absent. I stand ready, pastorally, to pay for these things. I started an organization 20 years ago, when I came to Bismarck, called Interfaith and this last year, we distributed \$30,000 to people with various kinds of needs. Some of those needs included the counseling and the therapy they needed, either by matching funds or by simply direct support and paying the cost that people would need for counseling and therapy. We work together well with the various religious organizations, Beginning Experience was mentioned.

They do run a program for children of divorce. We would support things that we might be able to do together, not only in this community, but in this state to foster a little greater integrity in the process of divorce considerations. I see ways within this where children could be brought into these processes a little better. Nothing works unless two people are going to be willing to come to the table. In my own pastoral experience, I already mandate on the front end of marriage, the things that would be helpful in promoting the strength of marriage to begin with, in premarital work. I don't marry people coming to me and asking to be married in two weeks or two months. On the other side, when things hit the skids, I ask people for time. It only works if two people will come to the table. This bill provides that opportunity for doors to be open, not perfectly, not completely, and in situations that are there, it probably is not preferable that a marriage continue. I come from a family of 4 kids, three of whom have been through this. The children who have been impacted would have certainly had some benefit if a few years back, there would have been some things more supportive in place for them. They are otherwise simply victims and they go forth into their adult life trying to recover, some of them still doing it at the age of 35 or 40 years old. I'd just like to see something happen where we are all moving toward the family. We all ask questions about how little can I get by with and still get something accomplished. We don't do a whole lot to prepare people for the thing of marriage but we do mandate that they have a legal license, and then their taxes are adjusted accordingly. And then we ask the question today, how do we mandate something as private as a divorce. I cannot see that in any of the seminars that the press would be available to make things public. I can see support groups coming out of it a little more strongly and people in the churches, working together to bring these about, not just

leave it entirely in the hands of the state or even the funding for it. I encourage a positive consideration for this bill.

Representative Delmore: Have you ever told two people that they aren't suited for marriage. These are personal decisions.

Pastor Bob Nordvall: Yes, I do thorough work with couples using inventories, based out of a company in Minneapolis; they are very comprehensive and very helpful. It is not a predictor of success, all it does is give a couple information about what they think about their relationship. There will be indicators in there in what direction they will be going and I have made recommendations based on that and subsequent interviews and worked with the couple, that they not proceed. Where they have proceeded, they have failed. That's the hard part of it, you can see ahead some of the things that are going to happen. Some of them have delayed, where I have recommended therapy for one or both parties and they have done it, and then proceeded into the marriage, they have done so much more successfully and much more prepared because of preexisting issues that don't relate to the couple themselves.

Representative Delmore: Maybe what we need is an entrance and exit test that we take to get married and to get divorced.

Pastor Bob Nordvall: I don't mean to imply that I have such marvelous success. Over the ages, I do have some accumulated wisdom, so maybe I have learned along the way, in my own education, in my own work to listen better and to understand better what is going on, not only with parents or couples, for instance, but with subsequent children in relationships and the youth work that plays into that along the way in the life of a congregation. I'm all for entrance

inventories, rather than tests. Tests always talk about pass/fail. Inventories give us information that we can productively work with. Entrance and exit, I'm all for that.

Representative Boehning: Do you have any statistics where you have classes or counseling ahead of time, of the failure rate of marriage after that type of counseling.

Pastor Bob Nordvall: I probably do, I haven't done it. Every inventory that I've ever given over the last 20 years, I have in my files. I can go back and tell you the status of every one of those relationships and I can say that there has been failure, but the failure rate is a lot less than a ND statistic or the national statistic and it's because of the work the couple is asked to do. When they get to the point of dealing with stuff that they haven't been confronted with yet, that some of the lights go on. The failure rate tends to happen when one or both parties is going through the motions of the inventory process and the premarital work, rather than being in that for the serious concerns for the health of their relationship. Those people are going to struggle.

Chairman DeKrey: Thank you. Further testimony in support of HB 1420.

Keith Ritchie, Pastor of Cornerstone Community Church: Instead of having hundreds of ministers here, you have a couple. I'll deal with this on the other end. We do, in this town, require premarital counseling. There's not a minister in town that does not require it. It does make a difference and we can get you those statistics. I have them in my office. It is a shame that the children can't be here to tell you the difference that it would make with counseling going through the other way. I have told people that I won't marry them. Please support this bill.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Sherry Mills Moore, State Bar Association of ND: Neutral (see written testimony). There were a couple of questions that came up today. There was a statistic that somebody brought up

today that 80% of the divorces are filed by one person. It is true, I would say that 100% of the cases are started by one person and then the other party is the responding party. That doesn't mean 80% of them are in a situation where one wants it and one doesn't. I would say that's unusual. Probably 80-90% of my cases are settled, so I would say that's mutual consent by the point. As to ND being a Las Vegas style divorce mill, I'm not sure how that could happen. We have a six month residency requirement. You have to have been a resident for six months prior to commencing an action. The abusive situation, I have many clients come in and say they are abuse victims or perhaps they are perpetrators of abuse in a divorce situation. I have never gone to court on the basis except irreconcilable differences. A person, even an abused victim, who wants and needs to get divorced, should not and does not have to prove the extent of that abuse in order to get divorced. I think that to suggest that because it is only required for irreconcilable differences, that abuse victims will not have to meet the waiting requirement. I think they would. As for the other grounds of divorce as Chairman DeKrey cited earlier, there may be adultery in a marriage, but we don't plead that, we don't make them air their dirty linen, it doesn't go there unless it has to go there. I would hate to see us return to that.

Chairman DeKrey: We've seen this bill before, do you remember how this is different from what we've dealt with before.

Sherry Mills Moore: I don't remember what the differences are, but I believe we have seen it before.

Representative Maragos: What worries me about this bill is the idea that they're only taking the irreconcilable differences rather than all of them. I assume that irreconcilable differences requires the lowest standard of proof, if any at all in a divorce, and the others, since they are

narrowly defined probably require a little higher standard of proof. If somebody wanted to avoid the 180 days, all they would have to do is file under one of the other six, and then they could avoid it.

Sherry Mills Moore: Yes, I think if they wanted to avoid the six months, and play the system, and trying to dance around the six months, they would have to agree that one of them would admit to being extremely cruel, admit to being an adulterer, etc. I don't know why you would put this in place for only one class of divorce. It's a policy decision, I think, for policy makers to decide if you're in the best position to determine who should get divorced when. But if you're going to decide that people can't get divorced for six months, no matter what, I don't know why it would only apply to one group.

Representative Kingsbury: In divorce cases, what is the percentage of time did the courts order classes.

Sherry Mills Moore: Not often enough. I think if it is a contentious divorce that is sitting before them, and they've watched the people wrangle and they've had custody investigations, in those cases they are far more likely to do so. If parties are sending in documents that say they've agreed on everything, we agree on how to handle our children, they're less likely to interfere and require them to do that. Many attorneys, including myself, recommend it, not just because it's the right thing to do for people's children, but because it looks good to the judge. But I don't have statistics on how many of them do.

Representative Koppelman: It is my guess that irreconcilable differences is kind of what equals no-fault divorce, the whole idea of coming into court as you described very well, and saying, we've already worked this out and we all agree, we agree on the settlement, etc. Doesn't

that equal no fault divorce, so if that's true, doesn't it make sense then that this might be dealing with that particular reason.

Sherry Mills Moore: I believe that irreconcilable differences is the equivalent of no-fault. It is a relatively low amount of recitation that a client has to make to get divorced on the basis of irreconcilable differences. They can say whatever the reason is, and that's the basis for the divorce. So it strikes me, when you have a situation where the heat is ratcheted to the point where you are alleging and proving adultery, extreme cruelty, and the like, that for the children of the divorce class, those are the people who most need it. Those are the people who are the least balanced in their approach to each other. As to the waiting period, I would be pretty comfortable in telling you that if a case is going to go to court, on one of the other grounds, six months will have passed. People will have had plenty of time to think about, do I or do I not want to reconcile with this person. If they aren't able to get passed that level of antagonism, why make them wait. They know what's best for their family.

Representative Koppelman: Then in effect the waiting period would exist, because as you say, with one of these other grounds it would probably take that long, with this reason, no-fault idea, typically would make it that way whether you like it or not. In effect, that would establish a waiting period. In your practice, you deal with people, you help facilitate divorce. The other folks are coming at it from a different perspective. When you talked about all the concerns about how the waiting period could result in worse situations and fewer people wanting to think about reconciling, it seems to fly in the face of the other statistics we heard from other states.

Sherry Mills Moore: I actually love when my clients reconcile and I love it when they settle. I also don't want them coming back. I don't like post judgment matters, I deal with them, but I

don't want to deal with visitation that's gone awry or a custody that's gone awry. I can't speak to those statistics that say that divorce goes down if you have a waiting period. I don't even know how to assess that within my own practice. I think people have time to think about it before they've come to see me. People come to see me only after they've thought about it, it is a difficult decision to come to. I don't think we are going to help families by making people who have resolved their issues sit and wait.

Representative Koppelman: I think everyone agrees that in a situation of abuse, people need protection and need access to divorce. If you had a client who had an abusive situation, and right now you might counsel them to name irreconcilable differences as the grounds for divorce, rather than use another reason, but if this bill were law, I assume you would probably do the other, you would probably say you don't have to do the waiting period if you do abuse, let's go there and, abuse is typically a crime, it wouldn't be hard to prove, I assume there's a police report, or a situation showing there was abuse.

Sherry Mills Moore: No, I think abuse is hard to prove. There's a lot of ongoing cruelty that can go on in a relationship that doesn't rise to the level of police reports and doesn't rise to the level of sometimes physical abuse. I would still be hoping that I could do a divorce on the basis of irreconcilable differences even in the abuse situation. There's another aspect to the abuse situation, because abuse has an impact on what's to happen with custody. You have a much more contentious debate if you have an abuser over here who is using the custody issue to get at the victim one more time. Now you are going to make her prove at a level she wouldn't have to prove in order to get out of the situation. Extreme cruelty and what Rep. Sitte's father

recommended, if you are ever hit by a man, you walk out, may be different things. It's still good advice.

Chairman DeKrey: We hear so many times that ND is quick to give divorces. In cases where both parties agree, isn't that just more of a comment on our courts aren't as plugged up as a lot of other states are.

Sherry Mills Moore: I think people agree in other states too. I think that the statistics are probably skewed by not knowing what is going on behind the scenes before it gets to the courthouse, as to how quick it was. I have what probably looks to the court like a quick divorce sometimes, but they've been in my office for four or five months, or four or five weeks or at a mediator working out issues there before the court's aware of them. So people's awareness of divorce may not be correct. You really don't know how long things were shuffling around in the background. I don't know where the notion comes from that we're a quick divorce state, except perhaps that our courts are less clogged.

Representative Boehning: Could you prepare the paperwork and send it to an attorney in another state and bypass the six month waiting period.

Sherry Mills Moore: There are residential waiting requirements in most other states, as well. You would have to wait six months in ND for this to get accomplished because of the residency requirement. I can't do a divorce for somebody in another state, because they have different rules, different child support, different property rules, MN has different rules. It wouldn't work for me to do it in ND and shuffle it out there. You could move to another state, where you have to be a resident, but the residency requirements may be a lot less time.

Representative Klemm: This bill seems to assume that this divorce is going to be contested, and it seems to me that there are probably some divorces that are filed that aren't contested, where the defendant is in default and doesn't answer and doesn't respond. Do you see any difficulty in the requirement here that the defaulting defendant is required to participate in the seminar, how do you enforce that.

Sherry Mills Moore: That is one issue, if both parents have to go through the class in order to get the divorce, and you've got someone out there who is absent or who's ornery, they could hold the whole process up. I looked in the bill to see if this would only affect disputed custody cases, which would narrow the field a little, as opposed to where it's an issue. But it says, on line 10, that irreconcilable differences and which involved the issue of child custody. To me, every summons and complaint that is sent out with children, it says in the best of the interest of the children would be for them to be with me, or almost all of them with the person who is filing and the other side says no, it's me. Then they work out that issue. I think it's going to apply to nearly every divorce in which there are children.

Representative Klemm: Even when the other side is not contesting anything.

Sherry Mills Moore: Yes, if the complaint is the defining document, and the complaint says I want custody, even if they're not disputing that, it is at issue until it is over.

Representative Klemm: How does the court enforce the seminar requirement on the person who is not contesting.

Sherry Mills Moore: After the fact, if the divorce is granted.

Representative Klemm: No, I mean one party files for divorce, the other side doesn't contest, in order to get this divorce, both sides whether you are contesting or not, apparently have to certify that they've gone through this seminar.

Sherry Mills Moore: I don't think this bill is drafted to deal with that situation, and again it could be held up, unless you could get a court to somehow walk around it, or refile on willful desertion I guess. But in the ordinary, typical divorce situation, even if the person is just plain not responding because they aren't contesting it, I think it's still at issue until the judge has finalized it.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1420.

Carol Two Eagles: Opposed, marriage should be harder to get.

Chairman DeKrey: Thank you. Further testimony in opposition.

Bonnie Palecek, ND Council on Abused Women's Services Coalition Against Sexual

Assault in North Dakota: Opposed (see written testimony).

Representative Delmore: Are you aware, anywhere, where someone could pick up these mandatory 10 hrs to meet what is in HB 1420. We don't have anything in place that's for 10 hrs.

Bonnie Palecek: No, we are not aware of any. The extension service is developing a course for kids, we are paying more attention to children. We see that as a positive development because clearly even in abusive situations, there is a relationship with that parent, and there are issue to work through for kids.

Representative Charging: Of the 73% that you saw that were married, how many do you know ended in divorce, all of them.

Bonnie Palecek: I'm sorry, we don't follow the families that far.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1420.

Representative Koppelman: I move a Do Pass.

Chairman DeKrey: Motion died due to a lack of a second.

Representative Maragos: I move a Do Not Pass.

Representative Delmore: Seconded.

10 YES 2 NO 2 ABSENT

DO NOT PASS

CARRIER: Rep. Maragos

FISCAL NOTE
 Requested by Legislative Council
 01/18/2005

Bill/Resolution No.: HB 1420

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There is no anticipated fiscal impact to the courts.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Ted Gladden	Agency:	Office of State Court Administrator
Phone Number:	3284216	Date Prepared:	01/19/2005

Date: 1/31/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1420

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	A		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	A				
Representative Galvin		/			
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman		✓			
Representative Kretschmar	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2005 7:49 a.m.

Module No: HR-21-1513
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1420: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1420 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

HB 1420

Mr. Chairman and members of the committee, I am Margaret Sitte, State Representative from District 35 in Bismarck. Children of divorce face many serious issues.

According to Judith Wallerstein's book *The Unexpected Legacy of Divorce: A 25-year Landmark Study*, these children are more likely to experience depression, drop out of school, end up in prison, give birth out of wedlock, live in poverty, abuse drugs and alcohol, commit suicide, engage in sex at an early age and have failing marriages themselves.

To complicate situations are the negative attitudes between divorced parents. In her book *The Good Divorce* Constance Ahrons found that just 12 percent of divorced parents are able to create friendly, low-conflict relationships after divorce. Fifty percent of middle-class divorced couples engage in bitter, open conflict as "angry associates," or "fiery foes." Five years later, most of these angry divorced remain hostile. Even nearly a third of friendly divorces degenerate into open, angry conflict.

In recent years, many family therapists who acknowledge that divorce is often a damaging experience for children have developed new methods and skills-building techniques to help couples communicate and resolve differences. Follow-up studies show positive results as adults learn ways to handle their emotional stress.

House Bill 1420 applies only in cases of divorce on the grounds of irreconcilable differences, so divorces involving abuse would not be affected by this law. Subsection 1 states that in divorces involving children, there must be a 180-day waiting period and adults will participate in a seminar on the effects of divorce on children. Subsection 2 outlines the seminar content.

Subsection 3 says that parents do not need to attend the same course, and each parent is responsible for the costs of the course. Subsection 4 withholds the final decree until after each party submits certification of having finished the course.

Who would lead the seminars? The Extension Service offers a course, "Children of Divorce" on a regular basis. The Salvation Army conducts these classes in other states, and it is interested in starting them in North Dakota as well. Other community groups and churches have also expressed interest.

Last April researcher Barbara Defoe Whitehead testified before Congress on the state of marriage in America. She said the following:

“Though not all married people are parents, the institution of marriage reliably creates the social, economic and affective conditions for effective parenting. Of course, in fulfilling the task of rearing competent, healthy children, some married parents fail miserably while some single parents succeed brilliantly. Yet in general, marriage promotes parental investment and mother/father cooperation during what has become an increasingly prolonged period of youthful dependency. When marriages break up or fail to form, the task of rearing children becomes harder, lonelier and more stressful for parents, especially for those who are lone parents. When parents divorce or never marry, the state becomes more involved in requiring and regulating childrearing obligations that married parents assume voluntarily. Paternity establishment, child support, child custody, children’s living arrangements, and even their school, sports and religious activities become matters for government oversight and enforcement. Moreover, from a child’s standpoint, publicly sponsored alternatives for childrearing such as foster care, group homes or child support enforcement cannot easily replicate the advantages of growing up in a home with one’s own married mother and father.

“Given these advantages, it makes good sense for the public and private sector to explore ways to reduce the barriers to healthy marriage and to make it possible for more parents to form strong and lasting marital unions. Even a relatively modest increase in healthy marriage formation and duration could reduce levels of child poverty, increase parental income and promote higher levels of child wellbeing among families with children.”

Since children are more likely to suffer when their parents divorce, the state has a compelling interest in lowering the divorce rate. If North Dakota had healthier marriages and fewer divorces, many of the other social burdens in our state would diminish. Research shows a direct correlation between the length of a state’s waiting period and a corresponding drop in the divorce rate. Because of the proposed longer waiting period, House Bill 1420 may save some marriages. The seminars will help those who decide to divorce to consider the needs of their children. I ask for your support to strengthen North Dakota’s families.

TO: Member of House Judiciary Committee
FROM: Christina Rondeau, North Dakota Family Alliance
RE: HB 1420
DATE: January 31, 2005

Mr. Chairman, committee members, thank you for hearing my testimony today. For the record, my name is Christina Rondeau, and I represent the North Dakota Family Alliance.

I am here today in SUPPORT of HB 1420.

On February 1, 2004, the Washington Times published a special report by Cheryl Wetzstein, which summarized 19 General Social Surveys (GSS) spanning almost 30 years (from 1974 to 2002), where the question had been asked, "Should divorce in this country be easier or more difficult to obtain than it is now?" Surprisingly, every GSS survey, from 1974 through 2002, showed that a "majority or plurality of Americans think divorce should be made 'more difficult,'" with as many as 49 percent of survey respondents wanting divorce to be more difficult by 2002. Additionally, another survey as seen on the attachment you have, shows 62 percent of respondents answered that divorce should be harder to obtain than it is now, while only 22 percent supported easier divorce laws. Both these statistics reveal perhaps surprising, but certainly positive, public support for the legislation before you today, HB 1420, which proposes a waiting period of six months for couples with minor children pursuing a divorce on the grounds of "irreconcilable differences." In addition, HB 1420 would also require divorcing parents of minor children to attend a seminar providing instruction on the effects of divorce on children. Currently, at least four states have a similar requirement. Today, my testimony is going to center primarily on the waiting period factor, although I support both portions of the bill.

Currently, North Dakota is one of the few states in the United States that has no waiting period pertaining to divorce whatsoever. A divorce in North Dakota can be obtained in as little as thirty days, or as fast as the decree can be handled by our legal system. According to the Georgia Family Council, which produced the attachment you have before you today, most states have a divorce waiting period of at least sixty days, while the average waiting period for divorce in the

United States is ninety days. Interestingly, there are at least six states that currently have waiting periods of one to two years, unless mutual consent is given for the divorce. In those cases the waiting period is drastically reduced – but still only down to three to six months. Additionally, some recent studies have shown that there is a correlation between the length of a state's waiting period, and the rate of divorce for that state. In fact, research shows that on average, states with a waiting period of less than ninety days have a 25 percent greater divorce rate than states with a waiting period of 90 days or more (see attachment).

Many people will contend that marriage and divorce is and always has been a purely private matter, and that you and I would do well to keep the state out of regulating either. To a certain degree, I beg to differ. Like you, I certainly abhor the idea of the state telling me exactly to whom, when, or in what church I must marry. However, it is certainly clear that every state has a very compelling interest in both marriage and divorce, and to the extent that 74% of North Dakota voters last fall chose to add to our state constitution an amendment defining marriage, it is obvious that the citizens of North Dakota agree on that point. Every state outlines the legal parameters by which you must be married, or divorced. Research shows that divorce costs the United States, in both direct and indirect costs, an average of \$33.3 billion per year, at approximately \$30,000 per divorce, and \$312 per U.S. household.

On the other hand, marriage continues to consistently provide the best environment for raising our next generation by producing society's most responsible, healthy, and productive citizens. Studies that have found that children actually do better in moderately-conflicted marriages than in divorced homes, and that the only time children are truly benefited by a divorce is when they are removed from highly conflicted situations, where abuse or violence is more likely. However, studies also show that highly-conflicted marriages make up less than one-third of all marriages.

I am asking you to give a strong DO-PASS recommendation to HB 1420, in order to help slow down the divorce train, at least where children are concerned. Our state's youngest and most innocent victims of divorce deserve that much of our support. Current studies have shown that increased waiting periods *are* effective at deterring divorce at certain levels, that most Americans believe divorce should be harder to obtain, that less than one-third of all divorces occur in high-

conflict and potentially violent situation, and that eighty percent of divorced Georgians believe that longer waiting periods would be effective at strengthening marriages (see attachment). Given these facts, I would propose that it is not a huge stretch for North Dakota to adopt simple and reasonable measures, such as this one. Passage of HB 1420 would help send the positive message that we believe in marriage. We believe it's good for kids, it's good for adults, it's good for the economy, and it's good for government. Thank you.

DIVORCE REFORM

FAST FACTS

- Almost one million children are affected by divorce annually.¹
- About three-fourths of divorcing couples have children.²
- Eighty percent of divorces are the result of one-sided decisions made by one spouse rather than both.³
- Less than one-third of divorces occur in high-conflict or violent homes, and children benefit from divorce *only* when they are removed from violent or abusive situations.⁴
- Studies show that children actually do better in high-conflict, non-violent homes than in divorced homes.⁵

According to a 2003 study, divorce costs U.S. taxpayers \$39.3 billion annually in direct and indirect costs.⁶

- Fifty percent of Georgia divorcees say they wish they had tried harder to reconcile their marriages.⁷
- States with longer waiting periods for divorce (more than 90 days) have a 25% lower divorce rate than states with shorter waiting periods.⁸
- In Georgia, only 48 counties offer divorce seminars for couples with children; 119 counties require divorcing couples to attend the course, often in another county.

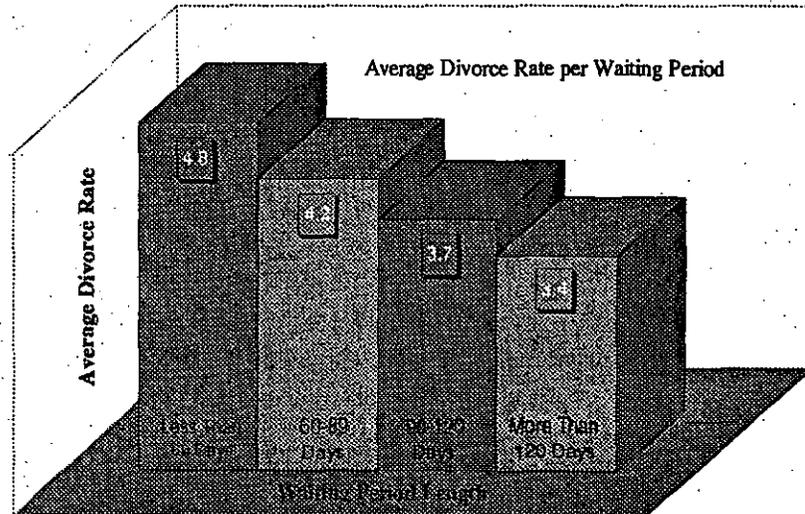
BOTTOM LINE

Children are more likely to suffer when their parents divorce. The state has a compelling interest in lowering the divorce rate.

The Issue

Nearly every social problem we face today is tied to family breakdown. Children of divorce, the number one cause of family breakdown, are more likely to experience depression, drop out of school, end up in prison, give birth out of wedlock, live in poverty, abuse drugs and alcohol, commit suicide, engage in sex at an early age and have failing marriages themselves.

Government policies that foster an environment where marriages are healthier and divorce is less likely will go a long way in alleviating many of the other social burdens the legislature is forced to address each day. Additionally, a 25% reduction in the divorce rate is likely to save the state more than \$256 million per year.⁹



• Research shows direct correlation between the length of a state's waiting period and its rate of divorce.

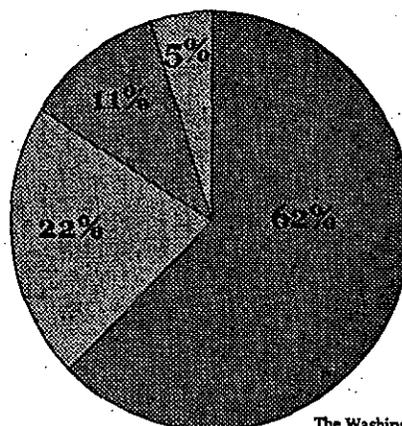
• States with a waiting period of more than 90 days have a 25% lower divorce rate than states with a waiting period of 90 days or less.¹⁰

The Solutions

- Enact legislation that would lengthen the waiting period in Georgia from 30 days to at least 90 days for couples with children.
- Require divorcing parents to attend a pre-divorce seminar focusing on the effects of divorce on children.

The Support

"Should divorce be easier or harder to obtain than it is now?"



62% Harder

22% Easier

11% Stay as is

5% Unsure

The Washington Post/Harvard University/Kaiser Family Foundation

POINTS & POLICIES

POINTS AND POLICIES TO CONSIDER IN REFORMING DIVORCE LAW

Points

Isn't it true that by the time people file for divorce, their minds are made up? How will extending the waiting period achieve the desired results of reducing overall divorce rates?

A recent study of California divorce rates sought to determine how the advent of no-fault divorce laws contributed to the increased rates of divorce in that state. The study concluded that the increases in the divorce rate were not due to the introduction of no-fault laws, but rather to the reduction of the waiting period between filing and decree from 1 year to 6 months.¹¹

Additionally, 80 percent of Georgians who've divorced feel that longer waiting periods would be effective at strengthening marriages.¹² If those who have experienced divorce first-hand believe this policy would be helpful, it seems it should be considered favorably.

Aren't the problems associated with children of divorce a result, not of the divorce itself, but of the parental conflict that accompanied it? Wouldn't kids be better off in a divorced, but low-conflict home rather than a two-parent home riddled with conflict?

Less than one-third of parental divorces occur because of high conflict.¹³ Studies have shown that children benefit from divorce only when they are removed from violent or abusive situations.¹⁴ In fact, studies have further shown that children actually do better in high conflict, non-violent homes than in divorced homes.¹⁵

Policies

Consider the following:

- ◆ Most states have a divorce waiting period that is at least twice that of Georgia's. Georgia has a mere 30 day period, which is essentially the shortest waiting period in the nation.

- ◆ The average waiting period for divorce in the United States is 90 days.

- ◆ At least four states have introduced legislation in the last year that would increase the state's waiting period.

- ◆ At least four other states currently require pre-divorce education or counseling for divorcing parents with children under 18.

**STATE BAR ASSOCIATION OF NORTH DAKOTA
TESTIMONY ON HB 1420
SHERRY MILLS MOORE**

I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota. The Association wants to point out the concerns this bill creates.

Before doing so, however, I think it would be helpful for you to know that I am and have been an attorney in private practice in Bismarck for the last 26 years. While my practice is varied, the vast majority of my time is spent handling family law cases, and I do so by preference. Family law is an extremely important area of the law that allows me the opportunity to work with all kinds of people, with all kinds of problems, and to influence a branch of the law that deals with that which is most dear to us all – our families. I am also the Past President of the Family Law Section of the Bar Association, chair of the Family Law Task Force, served with Senator Fisher and Representative Devlin on the child support guideline advisory committee to the Department of Human Services resulting in the most recent proposed changes to the guidelines as well as in 2000 and in 1995. Currently I serve as the President of the State Bar Association of North Dakota.

My concerns with HB1420 are with the unintended consequences for families. Parents who are divorcing, have worked all of the issues and signed an agreement will have to wait for six months for it to be finalized. Reaching agreement on all issues is sometimes a very delicate balance and until it is signed by the court, may be subject to change. Both parties begin to feel buyer's remorse, not at the divorce but on the terms. The peaceful resolution they have reached begins to unravel. Rather than to allow this family the dignity and respect of their choices, we are leaving it open for continued disagreement. Many times the agreement involves transfers of money, buying out the others interest in the home, selling a family home that is too big and too expensive for either party to maintain, dividing up pensions, and dividing up debt. None of this can happen while it waits for six months for finalization.

If the purpose of this is to help children, for the vast majority of cases it will have the opposite effect. One of the truly difficult parts of a divorce for children is the waiting. Once they have absorbed the fact of their parents divorcing, they just want it over with. They want to know what is going to happen and they want their parents to be at peace. This bill does not promote that peace because it makes it linger.

I will grant you that in the contested nasty divorce, this bill will have little effect because trials rarely happen within six months, for many reasons. This bill will effect the "good" divorces, those where the parents have gone through mediation or in some other way come to resolution.

The other thing this bill would do is to make people file their divorce action at the first possible minute to start the clock running. Many people do not want to have their divorce action filed immediately because they want to protect their privacy and that of

their children for as long as possible. Once they have gone "public" so to speak, it is much more difficult to step back and reconcile. That certainly seems counterproductive to the stated purpose of the bill.

Not to get too technical, but early filing runs contrary to a good resolution because of the litigation court ordered timeframes which are placed on a case. Let me explain. Someone comes in to me to see about a divorce. There is then a discourse either between the parties directly, in mediation, or through attorneys, directed at resolution. Resolution involves gathering of information often times in an informal process so the parties are informed. Sometimes that also involves efforts at reconciliation. Once this is filed, however, the courts, with information provided by the parties, establish a timetable to take it towards trial. The path to litigation is not always conducive to reconciliation. For this reason, the attorneys may simply work on settling the case and then present the entire package to the court. If the parties decide to reconcile they can do so with ease and less expense. If they decide they need a judge to decide their differences, then they file and seek the timeframes the court imposes. To sum up, if we have to file the case to get the six months time period running, we jumpstart the family to litigation rather than settlement.

As to mandating that all parents attend the Children of Divorce type classes, if there is sufficient supply to meet the demand you will create, this may work, but I don't think that there is. In the past we have dealt with this by having the court order it. If the divorce cannot proceed without certification of attendance, you hand the ornery parent the ability to block the divorce by not attending himself or herself. Also, it has to be available on a sliding fee scale. Even here, classes are held once a month and not every month, both parents cannot attend the same class, and it is a three hour class, not the ten hours the bill requires.

For all these reasons, we believe HB 1420 to be problematic. I thank you for the opportunity to speak to this bill. If you have any questions, I would be happy to try to answer them. If any arise in the future you may contact me by telephone at 222-4777 or e-mail address of _____ Thank you.

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

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Testimony on HB 1420
House Judiciary Committee
January 31, 2005

Chair DeKrey and Members of the Committee:

My name is Bonnie Palecek and I am speaking this morning for the ND Council on Abused Women's services in a neutral position on HB 1420.

NDCWS has taken positions in the past preserving the ability of spouses to file for divorce immediately upon entering the state even though divorce cannot be finalized for six months because it is not unusual for victims of personal violence to come home for family support and protection while sorting out more permanent resolutions to their situation. Immediate filing establishes some parameters, particularly around custody and interim protection which we think are crucial. As we read this bill, those parameters would not change.

We do not object to the parenting class aspect of the bill either. It is reality that even in cases in which there is significant violence, most often judges order visitation. This is a primary reason several of our member agencies have established safe visitation centers as part of their programming, thus providing a safe, neutral setting for visitation.

One of these centers, Wishing Well at Community Violence Intervention Center in Grand Forks, actually has a parenting class as a component of their Batterer Intervention Program. At Rape and Abuse in Fargo, a counselor participates in the "Parents Forever" (formally "Children of Divorce") program in Moorehead, teaching about the impact of parental violence on children. Both of these centers have positive feelings about the program as a whole and the importance for children who have witnessed violence in particular.

It is our understanding that most of the parenting programs in the state which are offered to divorcing parents are facilitated by the NDSU Extension Service. The counties currently offering this training are: Cass, Cavalier, Ramsey, Walsh, Grand Forks, Barnes, Stutsman, Burleigh and Morton, Stark/Billings, Williams, Ward. There may be other county Extension Offices offering this training too but these are the counties we know about right now. The cost for a 4 hour session is \$30.

It appears that Extension is doing an excellent job, drawing their curriculum from current research on parenting and assuring qualified trainers. We understand they would be interested in being designated as providers for the 10 hours of training. Our network would support that choice.

We do have some concerns not addressed by the bill in its current format.

- How would accessibility to the classes be assured while maintaining quality and consistency of programming?

- If the hours were extended from 4 to 10, would the cost be prohibitive? (In Minnesota it evidently costs \$135 for 9 hours)
- Would there be any qualifications required for trainers?

We also have some concerns about the lack of recourse for one party if the other party chose to stonewall a divorce by not attending the class.

Related to this, from our perspective as domestic violence advocates, is the inherent danger of being required to access the same class by virtue of accessibility limitations.

We do believe the concept is workable if the above questions are resolved. Children are a concern for all of us.

Bonnie Palecek