

2011 SENATE HUMAN SERVICES

SB 2087

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2087
1-12-2011
Job number 12834

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the rights and duties of a legal custodian.

Minutes:

Testimony attached.

Senator Judy Lee opened the hearing on SB 2087.

Lisa Bjergaard, Director of the Division of Juvenile Services, presented testimony in support of SB 2087. See attached testimony #1.

Senator Tim Mathern was concerned about taking away some other notices that families get that they are becoming accustomed to. It appeared to him that parents might be left out in other situations.

Ms. Bjergaard explained that what they would like to see clarified is when the court transfers custody to the division of juvenile services. The way the section currently reads is that they need to tell everyone in the family that the kid is in trouble and now under the division of juvenile services. They don't think that is always appropriate and not necessary in some situations. The idea behind notifying the relatives when a child is going into foster care is so that if there is a fit and willing relative that can step forward and help with the care of that child, all of those relatives are properly notified. Not all of the kids that are coming under legal custody are going into foster care. For those corrections kids it isn't always appropriate to send out notice to everybody in the family about the delinquency.

Discussion followed that the parents are party in the hearing. There could be an issue of privacy.

Brian Quigley, Mountrail County Social Services, testified in favor but wanted to recognize that which was being talked about was more meeting the letter of the law. Meeting the spirit of the law means county social services and juvenile court has to be sitting down with these families and figuring out which family is an appropriate placement.

At the request of Senator Judy Lee he explained that kinship care is where they can make a TANF payment to the family and pay some other costs to a family member that takes a child that otherwise would be placed in foster care.

More discussion followed on the necessity to notify the extended family about placements in different situations. Counties should be meeting with the families if they are going to be making appropriate placements. There are confidentiality issues that need to be respected.

Shawna McFarland, Divide County Social Services, offered information that there is a big difference between a child coming into care under delinquent, deprived, under unruly. A lot of times under deprived and unruly they are in foster care which means the county has custody and are required by law to notify all the extended family to find appropriate placement. With division of juvenile services a lot of times they come under as a delinquent. The parents are part of that and usually asking for help. It's only a requirement to notify extended families for those in foster care.

Senator Dick Dever asked about a child going into residential care, parent's financial responsibility, and notification of parents.

Ms. McFarland said that biological parents are notified. If a child is going into a residential care facility underneath social services, under foster care, parents, aunts, uncles, up to grandparents and extended would have to be notified. If the child was going into residential placement from YCC the parents are obligated through the child support system. Any time a payment is being made for a placement within the residential setting a referral is made to child support and both parents are located.

Tara Muhlhauser, Dept. of Human Services, spoke to clarify the provision in place for foster care placements.

Discussion continued about the unintended consequences of this bill, about who does not get notified if this bill passes. It comes back to confidentiality. There are privacy law implications under the uniform juvenile court act and under the division of juvenile services confidentiality statutes which limits the disclosure of juvenile court information except to those parties specified in those statutes.

Ms. Bjergaard clarified that the only time she is proposing notification of relatives does not occur is when a delinquent child is placed under the custody of the division of juvenile services and they are working with that child in his/her home with his/her family.

There was no opposing or neutral testimony.

The hearing on SB 2087 was closed.

Senator Tim Mathern moved a **Do Pass**.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried**.

Carrier is **Senator Dick Dever**.

Date: 1-12-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2087

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee, Chairman | ✓ | | Sen. Tim Mathern | ✓ | |
| Sen. Gerald Uglem, V. Chair | ✓ | | | | |
| Sen. Dick Dever | ✓ | | | | |
| Sen. Spencer Berry | ✓ | | | | |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

REPORT OF STANDING COMMITTEE

SB 2087: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2087 was placed on the
Eleventh order on the calendar.

2011 HOUSE HUMAN SERVICES

SB 2087

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2087
March 2, 2011
Job #14815

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Relating to the rights and duties of a legal custodian.

Minutes:

See Testimonies 1 and 2

Chairman Weisz: Called the hearing to order on SB 2087.

Lisa Bjergaard: Director of Division of Juvenile Services testified in support. (See Testimony #1.)

Rep. Holman: Why do you have to notify all of the relatives?

Lisa: The federal language and perhaps the child welfare representative can better answer that. The federal language specifies a wide range of relatives. The idea is if a youth needs to be placed out of their home there may be a fit and willing relative who is able to take that child and not have to use a foster care placement. That is not situation that exists when a delinquent child is being committed to the Department of Corrections.

Chairman Weisz: We have received some concerns from some for example, the child is committed to a psychiatric facility and now the parent wouldn't have to be notified of that. Can you address that issue?

Lisa: My role is with the Dept. of Corrections, so I will speak for youth that are placed with the division of juvenile services. Any youth that would be placed into a psychiatric residential facility or a residential child care facility or a path treatment home or a county foster home would go back for that second set of hearings. Where it would be determined that they needed to be removed from their home and placed into foster care and all of the due process considerations that go into effect. Including the reasonable efforts would kick in at that time.

Chairman Weisz: When I look at the section of code that this is in, are saying this applies only to juvenile services?

Lisa: The definition of duties of the legal custodian would apply to myself within the division of juvenile services as well as county social services.

Chairman Weisz: It is covering all areas, not just you?

Lisa: I can't speak for them, but my assumption is they would not have custody if they weren't going to be using foster care placement and then they will use all of those other provisions. This would strictly just exempt the custody kids that are under corrections.

Tara Muhlhauser: Director of Children and Family Services. I have no comments, but I am available for any questions or clarifications.

Chairman Weisz: For example, if you get somebody in your system and looking at putting them in foster care. Currently if you were going to have them put into a psychiatric facility, what would be the process and where would notification come into play there?

Tara: If the court gave us custody of a child and we placed the child in foster care and used a psychiatric residential treatment facility to meet that child's needs; the custodian would provide information to the parent. I know you have the letter from John Ford in front of you and I will have to say Mr. Ford's interpretation is incorrect. Kids would be placed in psychiatric residential facilities in two different ways. Through foster care placement involving a court and information would be provided to the parent or parents can use medical assistance resources and do a private placement. I assume if the parent did a private placement the parent would have access to the information. If we made a placement through the foster care placement process, absolutely we would have the mandate under this law. Not only to notify the parents, but also those close relatives to find out again if there was anybody available for a placement resource.

Chairman Weisz: You don't see that this bill will not affect you in anyway shape or form?

Tara: No. We are in support of our DJS partners in regard to it and we understand why they want the exemption and it changes nothing for us for kids in foster care. To offer clarity, we do not have contracts with any facilities. We have six licensed psychiatric residential treatment facilities in ND and work with six out of state facilities. We have one other facility that MA has authorized in Georgia. We don't use it for foster care placement, but is available as an MA placement in a psychiatric category for kids.

Rep. Holman: When there is court action with a juvenile, every custodial person would have to be notified right?

Tara: You are correct. They would be notified of the hearing and provided with an opportunity for counsel for that hearing and they have due process rights.

Opposition

Handed in Testimony

John Ford: (See Testimony #2.)

Chairman Weisz: Closed the hearing on SB 2087.

Chairman Weisz: What are the committee's wishes?

Rep. Porter: I move a Do Pass.

Rep. Holman: Second.

Vote: 10 y 0 n 3 absent – Rep. Paur, Louser, Devlin

Bill Carrier: Rep. Hofstad

Date: 3-2-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2087

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. PORTER Seconded By Rep. Holman

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------|-----|----|------------------|-----|----|
| CHAIRMAN WEISZ | ✓ | | REP. CONKLIN | ✓ | |
| VICE-CHAIR PIETSCH | ✓ | | REP. HOLMAN | ✓ | |
| REP. ANDERSON | ✓ | | REP. KILICHOWSKI | ✓ | |
| REP. DAMSCHEN | ✓ | | | | |
| REP. DEVLIN | A | | | | |
| REP. HOFSTAD | ✓ | | | | |
| REP. LOUSER | A | | | | |
| REP. PAUR | A | | | | |
| REP. PORTER | ✓ | | | | |
| REP. SCHMIDT | ✓ | | | | |
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Total (Yes) 10 No 0

Absent 3

Floor Assignment Rep. HOFSTAD

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

REPORT OF STANDING COMMITTEE

SB 2087: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS**
(10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2087 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2087

1

SENATE HUMAN SERVICES COMMITTEE
Senator Judy Lee, Chair
January 12, 2011

North Dakota Department of Corrections and Rehabilitation
Division of Juvenile Services
Lisa Bjergaard, Director

TESTIMONY IN SUPPORT OF SENATE BILL 2087

For the record, I am Lisa Bjergaard, Director of the Division of Juvenile Services and I present this testimony in support of Senate Bill 2087.

N.D.C.C. Section 27-20-38 relates to the rights and duties of a legal custodian when legal custody has been given by the Juvenile Court under the Juvenile Court Act, N.D.C.C. ch. 27-20.

The 61st Legislative Assembly amended Section 27-20-38 to require the legal custodian to provide notice parents, grandparents, and any other adult relative suggested by the parent or grandparents after removal of custody.

Language requiring the notification of relatives is necessary to comply with federal foster care rules when there is a foster care placement; however, not all children who have a legal custodian will use the foster care system.

The Juvenile Courts frequently place children who have been adjudicated delinquent into the legal custody of the North Dakota Division of Juvenile Services. The 2009 amendments, while intended to comply with federal foster care requirements, are overbroad and require the Division to undertake relative notification for foster care placement when the Juvenile Courts issues an order of disposition, even though the child may not ever enter the foster care system.

Senate Bill 2087 amends subsection 3 of Section 27-20-38 to include the language, "for the purpose of placement into foster care". The amendment clarifies the specific circumstance under which the notification of relatives becomes a duty of the legal custodian, namely when the legal custodian proposes foster care placement.

The Division of Juvenile Services therefore requests a "do pass" for Senate Bill 2087.

#1

HOUSE HUMAN SERVICES COMMITTEE
Representative Robin Weisz, Chair
March 2, 2011

North Dakota Department of Corrections and Rehabilitation
Division of Juvenile Services
Lisa Bjergaard, Director

TESTIMONY IN SUPPORT OF SENATE BILL 2087

For the record, I am Lisa Bjergaard, Director of the Division of Juvenile Services and I present this testimony in support of Senate Bill 2087.

N.D.C.C. Section 27-20-38 relates to the rights and duties of a legal custodian when legal custody has been given by the Juvenile Court under the Juvenile Court Act, N.D.C.C. ch. 27-20.

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The Division of Juvenile Services therefore requests a "do pass" for Senate Bill 2087.

Testimony of John Ford on SB 2087

Opp
2

Chairman Weisz and Committee Members,

For the record I am John Ford, Executive Director of the North Dakota Coalition for CPS and Foster Care Reform. I regret I am unable to provide this testimony in person.

SB 2087 is a bill that will limit the duty of a custodian in notifying parents if their child is being removed to that of placement into foster care only. While the change this bill would make seems innocuous and harmless, I hope the committee will consider that it will further limit parent's rights to know what is happening to their children when the state inserts itself into their lives.

I hope the committee will consider that often times, a deprived or unruly child requires psychiatric placement. The last time I reviewed the number of psychiatric residential treatment facilities (PRTF) that North Dakota has contracts with, it topped 70 facilities in approximately 9 states. This bill would eliminate the requirement and a parent's right to know when their child is being placed in any setting other than a foster care home or Residential Child Care Facility. This bill will, in fact, allow the state to send a child out of state without notifying the parents. The time for halting the whittling away of parental rights is now. We urge this committee to give a do not pass recommendation for this bill.

Thank you for the opportunity to offer testimony against this bill.

John Ford
Executive Director
North Dakota Coalition for
CPS and Foster Care Reform
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