

2019 HOUSE JUDICIARY

HB 1465

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1465
1/23/2019
31356

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamman
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Explanation or reason for introduction of bill/resolution:

Relating to appointment of guardian ad litem in prosecution for sex offenses and solicitation offense; and to provide a penalty.

Minutes:

1, 2

Chairman Koppelman: Opened the hearing on HB 1465.

Representative Lisa Meier: Introduced the bill. **(Attachment #1)** Read testimony.

Representative Gary Paur: In lines 9 & 10 in the first page they refer to the code. That section has quite a few things in it. Maybe that should be narrowed down?

Rep. Meier: I did look at that section. There are people behind me that will testify on that.

Christina Sambor, Coordinator of FUSE: **(Attachment #2)** read in support testimony. Stopped 0:07:30

Vice Chairman Karen Karls: Is the guardian ad litem appointed by the court?

Christina Sambor: Subject to the courts discretion, so it would be a court appointed guardian ad litem. Youth Works administers a guardian ad litem program where we are typically appointed in child depravation cases. This would apply that same access without mandating. If the court or council saw concerns and they believe there should be an independent advocate this would be available.

Chairman K. Koppelman: Explain guardian ad litem?

Christina Sambor: This is an independent person whose sole purpose in the preceding is to collect information and look at what's going on. This person advocates for the youth by upholding what is best for them. The guardian ad litem may also provide clarity of the process to the person they are advocating for.

Chairman K. Koppelman: Does the victim have a say in who it is?

Christina Sambor: There is a provision that prohibits anyone who is already involved in proceedings so it's designed to be someone who is independent. For example, a member of the bar association, practicing attorney or an existing guardian ad litem from the program.

Representative Jeffery Magrum: Is this person an officer of court?

Christina Sambor: Yes, they have a limited scope to advocate for the individual. They also need training so they fall under the Supreme Court Rule that allows them to work in this way.

Chairman K. Koppelman: No fiscal note?

Christina Sambor: We have not discussed this, nor do I foresee that conversation because of the existing program that has a budget. We do not expect a rise as we are already doing this work.

Chairman K. Koppelman: I suppose you see cases where people involved in some cases and their motivations may not align. Without divulging any confidentialities, can you provide examples?

Christina Sambor: We have had cases where someone is acquisition of a trafficking a minor. You are told you have to sit for this deposition with the defense attorney and the minor says I don't want to. Or the minor says, "I'm not interested in prosecuting this anymore." The criminal justice process is traumatizing for our clients and often times when trying to push forward for prosecution of the "bad person" the needs and feelings of the victims get lost.

Rep. Magrum: What is 12.1-29-06 line 3, 2nd page?

Christina Sambor: That is the general solicitation statute under our code. Because the solicitation statute says "when an individual solicits and individual" you could potentially have a prosecutor that could file incorrectly when it's an adult and minor in the scenario. It pulls out the victims who are minors and that is a felony.

Chairman K. Koppelman: I am looking at 12.1-41.06. There is no definition for "patronizing a minor", in the chapter that I see.

Christina Sambor: I will do more research on that definition, as it may be pulling from another area.

Chairman K. Koppelman: Further Support? Seeing none. Opposed? Seeing none

Chairman K. Koppelman closes hearing.

Chairman K. Koppelman: Opens meeting on HB 1465

Chairman K Koppelman: There is no definition of “patronizing a minor” in the Century Code however it is the commonly understood word like patronize a business, you are a customer of that business.

Wishes of the Committee?

Representative Shannon Roers Jones: Move a DO Pass

Representative Bernie Satrom: Seconded

Chairman K Koppelman: Clerk call roll

Clerk:

Votes: 12 Yes 0 NO 2 Absent

Motion Carries- Do Pass HB 1465

Rep. Magrum: Bill Carrier

REPORT OF STANDING COMMITTEE

HB 1465: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1465 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1465

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1465
3/6/2019
#33281 (10:35)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 12.1-20-16 and 12.1-29-06 of the North Dakota Century Code, relating to appointment of guardian ad litem in prosecution for sex offenses and solicitation offense; and to provide a penalty.

Minutes:

2 Attachments

Chair Larson opens the hearing on HB 1465. Senator Osland is absent.

Lisa Meier, District 32 Representative, testifies in favor

Representative Meier: This bill aims to do two things. First it allows for the appointment for guardian at litem with individuals with developmental disabilities concerning prosecution for sex offenders and solicitation offenses. Secondly it clarifies language that already exists in law. That language relates to that if an adult solicits an adult for sexual activity that he or she is charged with a class b misdemeanor for the first offense and a class a misdemeanor for the second offense. This clears up language so an adult doesn't get charged with a felony in which is already in law for an adult soliciting minors.

Senator Bakke: Several times you cite the century code 12.1-41-06. Do you know what that chapter is on or what it says?

Representative Meier: I'm assuming that deals with sex offenders.

Chair Larson: Our legal intern will get us this information. **(see attachment #1)**

(4:15) Mark Heinert, Program Manager at YouthWorks, testifies in favor on behalf of Christina Sambor (see attachment #2)

Heinert: Our agency has provided anti-trafficking services over the last four years. We've had the opportunity to meet with many individuals who are minor victims of trafficking. It is an incredibly traumatic experience to be a trafficked individual and be forced into a life of

having sex with individuals against your will. As advocates for young people, we also know that that court system can be challenging and overwhelming when they're asked to testify in court and negotiate that system. We find that the system doesn't necessarily allow enough time for a young person to fully understand the complexities of that legal system, and we believe that it would be good to have a guardian ad litem provided for someone who's been involved in any form of trafficking, whether it be that they have a charge that's related to that and someone being prosecuted or victims and needing to testify against someone who's a trafficker. Our systems should allow the ability for a guardian ad litem to be assigned so they can have someone representing their best interests and support them. I encourage the passing of this bill.

Chair Larson: We already have the ability to have a guardian ad litem for a juvenile.

Heinert: Correct.

Chair Larson: The biggest thing is to also allow this for individuals with a developmental disability. Correct?

Heinert: It is also that if an individual who is a juvenile who's a victim can also receive that guardian ad litem service. It includes both the accused and victims.

Senator Bakke: In the bill they're asking for a class b misdemeanor and a class a misdemeanor. In century code right now it's a class a felony and a class b felony. That would be a reduced penalty. Is the penalty for the victim?

Heinert: I'm not sure; I'm here in place of Christina Sambor, so I can get back to you.

Vice Chairman Dwyer: Section 2 is if you're a minor, then there's other offenses. The current bill has class b and a misdemeanor for all situations, but we're saying except for minors.

Chair Larson: so except for the minor victim, then that's a felony.

Senator Bakke: so if it's adults involved, it would be misdemeanor where if it's a minor, it would be a felony.

Chair Larson explains the legislative process to student visitors.

Chair Larson closes the hearing on HB 1465.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1465
3/12/2019
#33576 (6:00)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 12.1-20-16 and 12.1-29-06 of the North Dakota Century Code, relating to appointment of guardian ad litem in prosecution for sex offenses and solicitation offense; and to provide a penalty.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1465. Senator Osland and Senator Myrdal were absent.

Senator Bakke: They recommended a guardian ad litem for developmentally disabled people relating to solicitation or sexual offenses.

Chair Larson: They do already for underage, but not for someone who is of age and developmentally disabled.

Senator Bakke: Joe provided us with the law, 12.1-41-06, which is patronizing of a minor for commercial sexual activity.

Vice Chairman Dwyer: If you recall, there already is a provision for guardian ad litem for developmentally disabled. What there isn't is that provision for the human trafficking victims. That's chapter 12.1-41 and missing from the code for these provisions. Then on page 2, the reason they need to say "except as provided in 12.1-41-06" is because that is the human trafficking for a minor for sexual activity. Those are different penalties than what's in just the solicitation. They need it to say "except for" so that the penalties in 06 apply. Those penalties are higher- class a and b felony.

Senator Bakke: This protects developmentally disabled instances of human trafficking?

Vice Chairman Dwyer: It's just human trafficking.

Chair Larson: Right, that wasn't a new part of the bill.

Senate Judiciary Committee

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Senator Luick: Motions for a Do Pass.

Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Taken: 4 yeas, 0 nays, 2 absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1465**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Senator Luick Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	AB				
Senator Osland	AB				

Total (Yes) 4 No 0

Absent 2

Floor Assignment Vice Chairman Dwyer

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

REPORT OF STANDING COMMITTEE

HB 1465: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1465 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

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mg!

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Good Morning Mr. Chairman and members of the House Judiciary Committee. For the record my name is Rep. Lisa Meier from District 32.

HB 1265 aims to do two things. First it allows for the appointment for a guardian ad litem for individuals with developmental disabilities concerning prosecution for sex offenders and solicitation offenses.

The second thing that this bill does is clarify language that already exists in law. That language relates to that if an adult solicits an adult for sexual activity that he or she is charged with a class B misdemeanor for the first offense and a class A misdemeanor for the second offense.

This clears up language so an adult doesn't get charged with a felony in which is already in law for an adult soliciting minors.

This concludes my testimony.

Thank you!

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Testimony from Christina Sambor, Youthworks

North Dakota House Judiciary Committee

HB 1465

January 23, 2019

Chairman Koppelman and Members of the Committee:

My name is Christina Sambor and I have been involved with the statewide effort to combat human trafficking for the last 5 years. I served as the founding coordinator of FUSE, North Dakota's grassroots anti-trafficking coalition, as the founding Director of the North Dakota Human Trafficking Task Force, and as the co-chair of the Attorney General's Human Trafficking Commission. In each of these roles, I have been heavily involved in evaluating and developing public policy and direct service programming in our state.

I am here in support of HB 1465. This bill was drafted in consultation with the Attorney General's Office. Section one of the bill would amend Section 12.1-20-16 allows for the court, in its discretion, to appoint a guardian ad litem in cases where the prosecuting witness is a minor or developmentally disabled person. This bill would amend that statute to include human trafficking offenses. In our work with survivors of human trafficking, we are often working with an extremely traumatized person who has suffered greatly at the hands of their exploiter. We have the good fortune of often working with prosecutors and law enforcement who are very careful to consider the needs and perspective of the victim, who is also often the only witness providing a firsthand account of what happened. However, in our experience, there can at times be conflict between the feelings and needs of a

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victim, and those of the parties prosecuting and defending the case. Victims of sexual violence are often questioned about their backgrounds and behaviors in a way that is designed to call into question their reliability or moral character. They often have questions about the process as it evolves, and should have access, where appropriate in the court's discretion, to have access to an advocate who is independently concerned only with the well-being of the victim/witness.

Section 2 of the bill is a simple "clean up" amendment. The Century Code contains most of the human trafficking-specific laws in Chapter 12.1-41. Included in that Chapter is Section 12.1-41-06, which criminalizes the act of patronizing a minor for commercial sex. This section is designed to prosecute adults who intentionally seek out children or minors to purchase them for commercial sex. Appropriately, that code section contains higher penalties than the general solicitation statute found at Section 12.1-29-06. This amendment clarifies that the offenses prohibited by Section 12.1-41-06 are not appropriate for prosecution under the general solicitation statute, which carries a B misdemeanor penalty. Without this amendment, there are two different code sections, with two different penalties, that could arguably criminalize the same behavior.

In the view of our organization, who is the primary service provider for trafficked youth in North Dakota, and of the Attorney General's office, both of these amendments are reasonable and necessary to best serve victims of commercial sexual exploitation, and to carry out the intent of this legislature in enacting Section 12.1-41-06.

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1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:
 - a. Forced labor in violation of section 12.1-41-03; or
 - b. Sexual servitude in violation of section 12.1-41-04.
2. Trafficking an individual who is an adult is a class A felony.
3. Trafficking an individual who is a minor is a class AA felony.

12.1-41-03. Forced labor.

1. A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when that conduct is permissible under federal law or law of this state other than this chapter.
2. Forced labor of an individual who is an adult is a class A felony.
3. Forced labor of an individual who is a minor is a class AA felony.

12.1-41-04. Sexual servitude.

1. A person commits the offense of sexual servitude if the person knowingly:
 - a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
 - b. Uses coercion or deception to compel an adult to engage in commercial sexual activity.
2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.
3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.
4. Sexual servitude under subdivision b of subsection 1 is a class A felony.

12.1-41-05. Patronizing a victim of sexual servitude.

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.
2. Patronizing a victim of sexual servitude who is an adult is a class B felony.
3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

12.1-41-06. Patronizing a minor for commercial sexual activity.

1. A person commits the offense of patronizing a minor for commercial sexual activity if:
 - a. With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
 - b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.
2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.
3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony.

12.1-41-07. Business entity liability.

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 as provided by chapter 12.1-03.
2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's

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Testimony from Christina Sambor, Youthworks

North Dakota Senate Judiciary Committee

HB 1465

March 6, 2019

Chairwoman Larson and Members of the Committee:

My name is Christina Sambor and I am offering support for HB 1465 on behalf of Youthworks, the statewide runaway and homeless youth provider in North Dakota. I am sorry I am not able to be with you in person today, but Mark Heinert, one of Youthworks' program managers is present to help provide some context and background to this bill.

We support this bill as in our experience, minor victims of human trafficking are often in need of an independent advocate who looks out for their interests, and helps make sure that their well-being does not get lost in the criminal process. The intent of the lay Guardian Ad Litem (GAL) project is to have an advocate in the courtroom regarding their safety and their protection. Given what we know about HT and the involvement of minors, we support the need for a lay GAL for juveniles that are victims of HT. It is logical that minors that are in anyway victimized by the heinous crime of HT would receive this service as a matter of course.

Juveniles often feel that they don't have a voice in their lives and going through a court process can exacerbate that perception. Having a lay Guardian Ad Litem will alleviate this situation.

HB 1465 is intended to help with these issues by amending Section 12.1-20-16 of the Century Code to incorporate human trafficking offenses. Section 12.1-20-

16 provides a court-appointed guardian ad litem to victims or prosecuting witnesses who are either minors or developmentally disabled and are testifying in criminal proceedings involving sexual crimes. Section 12.1-20-16 does not mandate that guardians ad litem be provided to all witnesses in such cases, but rather leaves the discretion to the judge presiding over the case. A party to the case can request the appointment of a guardian ad litem, or the court can order the appointment itself. The Amendment in HB 1465 would simply add human trafficking offenses to the statute, and makes no other substantive changes. We think that the reasons Section 12.1-20-16 exists - to protect the interests of witnesses and victims in sexual abuse cases - also apply to human trafficking victims, and we therefore strongly support this amendment.

HB 1465 also contains a "house cleaning" amendment to Section 12.1-29-06 of the Century Code. Section 12.1-29-06 currently criminalizes solicitation of prostitution between "individuals", and provides that the crime is punishable as a class B misdemeanor for a first offense, and a class A misdemeanor for a second or subsequent offense. In 2015, Section 12.1-41-06 was added to the Century Code as part of the Uniform Act on Prevention of and Remedies for Human Trafficking. That statute specifically criminalizes the act of solicitation between an adult and a minor, and makes the punishment a class B felony. As the language in Section 12.1-29-06 currently stands, it could be used to charge an adult who solicits a minor for sex, because the language of the statute simply refers to an "individual" soliciting another "individual." This amendment would clarify that where the person solicited for sex is a minor, that 12.1-41-06 - the felony statute - is the appropriate code

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section under which to prosecute the crime, rather than 12.-29-06 – which applies a lower offense level when the solicited person is an adult. This amendment simply ensures that the higher penalty that was enacted to punish adults who seek to purchase sex by preying on vulnerable youth, is in fact utilized, rather than the misdemeanor solicitation statute.

We thank you for your time and consideration of our testimony, and are happy to answer any questions.