

2019 SENATE JUDICIARY

SB 2071

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2071
1/7/2019
#30455 (5:47)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 6 of section 12.1-31-01.2 and subsection 5 of section 12.1-31.2-01 of the North Dakota Century Code, relating to restraining orders.

Minutes:

No Attachments

Chair Larson opened the hearing on SB 2071.

Sally Holewa, State Court Administrator, testifying in favor of the bill.

Holewa: This was introduced at the request of our judicial conference. The judicial conference is a statutory body. It consists of all of the Justices of the Supreme Court, the District Court judges, representatives from the Municipal Court, representatives from the State Bar, Clerk of the Supreme Court, the Attorney General and the Dean of the UND Law School. When the committee met in November, we discussed any potential legislation.

One of the issues that came up was that the domestic violence restraining order allows for the extension of the deadline to hear a case for good cause shown. Good cause shown is a technical term that says if you make an argument to the Court and the Court thinks that looks like good cause, then you can do whatever you want after that. Right now the domestic violence restraining orders statutes have that good cause shown. This bill will amend the sexual assault and restraining order which is section 1 of this bill.

Section 2 would amend disorderly conduct restraining orders. Part of why the discussion came up is because it's not clear. Right now it says that you have to have a hearing within 14 days. They both have two minor exceptions to that deadline, but what the judges are seeing is that sometimes there is a very good reason why you would want to continue it otherwise. There was an instance where you couldn't hold the hearing within 14 days because the alleged victim was still in the hospital. Another incident that seems to be fairly common is that people were getting attorneys late into it. The attorney may have only met their client the day before or day of and were asking for an extension, however the chances that you would get the other side to consent is pretty slim. The Court wants the overt jurisdiction to say if the judge believes there should be a continuous, we should have the authority to do so.

**Senator Luick: Moved a Do Pass.
Senator Myrdal: Seconded.**

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Chair Larson will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2071: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2071

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2071
3/12/2019
33543

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to restraining orders.

Minutes:

1, 2

Chairman Koppelman: Opened the hearing on SB 2071.

Sara Behrens, Staff Attorney for the State Court Administrator: (Attachment #1) Went over testimony.

Rep. McWilliams: Is that 14 business days?

Sara Behrens: Typically if it is less than ten days so it is each day but you can't land on a weekend or holiday, then you skip to the next day.

Chairman K. Koppelman: Do you contemplate other things delaying these hearings?

Sara Behrens: This is going to be before those more extreme situations where you cannot do it within 14 days. Everyone's due process is protected by having a little bit of leeway to go outside that 14 days.

Chairman K. Koppelman: Have courts been struggling in getting with getting it done within this window of time?

Sara Behrens: I believe courts do struggle with the 14-day restriction. If something comes up they just don't have the leeway to do anything about it and they have to have the hearing whether everyone is ready for it or not.

Rep. Paur: This is fairly open ended. Maybe we should put a limit on how long it could be extended.

Sara Behrens: The reason it doesn't have that end date is there are some reasons like a victim in the hospital and cannot meet that time frame.

Rep. McWilliams: What happens right now?

Sara Behrens: Currently they have to have the hearing whether parties can make it or not. As far as I am aware they have to do it within that timeframe. Putting this in statute would give them a way out where the timing isn't right even for the victim.

Rep. McWilliams: Is there any type of temporary restraining order that is in place at that time to help protect that victim?

Sara Behrens: There is a temporary order. That 14-day window starts when that temporary order is issued. As long as the hearing hasn't happened you are going to have that temporary order in place.

Rep. McWilliams: How long can that temporary order last. Is there a maximum on that?

Sara Behrens: Currently it is that 14-day window or if you showed the defendant wasn't able to be served yet that is one of the only exceptions currently for extending that time period.

Rep. McWilliams: Is that temporary order max set somewhere else in century code?

Sarah Behrens: No I don't believe so.

Rep. Magrum: Was there a point in time where they had such a short time when they could act on this court case or hearing because maybe things were getting extended out. Do you know the history on this when it all began?

Sara Behrens: I do not know the history. They want that narrower time frame so that it is last too long for no good reason.

Chairman K. Koppelman: Can one of these hearings be continued now?

Sara Behrens: I believe it is quite limited in these situations.

Chairman K. Koppelman: Can good cause include a full court docket.

Sara Behrens: Good cause is a fairly well used standard that comes up. I don't believe it is defined anywhere. Courts are used to working within that good cause timeframe.

Chairman K. Koppelman: If someone's freedom is being restricted we want to be sure they can have a hearing soon.

Katie Weigel, Student at the University of Mary: (Attachment #2) Went over testimony.

Chairman K. Koppelman: Some of the things you talked about are different from what we heard in the sense that some are the same, but you are also talking about people who don't have a ride, or babysitter for my kids; am not sure it is good policy to say if things just don't fit your schedule well we are not going to do a court hearing within that window of time. Do you understand the concern from the flip side of that?

Katie Weigel: Yes, I definitely see that. I know that many of them don't have means for that and it is just so hard to get there and they feel more protected but I definitely see your concern.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. Satrom; Seconded by Rep. McWilliams

Discussion:

Roll Call Vote: 12 Yes 0 No 2 Absent Carrier: Rep. Vetter

Closed.

Date: 3-12-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2021

House 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 Satrom Seconded By McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Vetter

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

REPORT OF STANDING COMMITTEE

SB 2071: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2071 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2071

#1
SB 2071
3-12-19
P. 1

**Senate Bill 2071
House Judiciary Committee**

**Testimony of Sara Behrens
Staff Attorney, State Court Administrator
March 12, 2019**

Good morning Chairman Koppelman and members of the committee. For the record, my name is Sara Behrens and I'm a staff attorney for the State Court Administrator. Senate Bill 2071 was introduced at the request of the Supreme Court. This bill will make the various types of restraining orders consistent. Currently, under section 14-07.1-02, upon the application for a domestic violence protection order, a court must hold a hearing within 14 days or at a later date if good cause is shown.

Section 12.1-31-01.2, governs sexual assault restraining orders. Section 12.1-31.2-01 governs disorderly conduct restraining orders. This bill amends each of these sections to allow the court to set the hearing for a date later than 14 days if good cause is shown.

This allows some flexibility in setting the hearing date. In the majority of cases the hearing will be held in the 14 day window. However, there are situations where circumstances will exist to set the hearing date for a later date. For instance, a victim may be in the hospital or an emergency could arise which makes it impossible to have the hearing within the 14 day timeframe. The good cause standard will also encompass the two situations currently provided for an extension: agreement of the parties and a showing that the respondent has not been served with a copy of the temporary order. Currently, the hearing date cannot be set for later than 14 days in any other situations.

We request a do pass recommendation on this bill. Thank you.

#2
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P.1

SB 2071

House Judiciary Committee

Katie Weigel, Social Work Student, University of Mary

3-12-19

Good morning,

Chairman Koppelman and the Judiciary committee, I would like to thank you for allowing me the time to speak with you today. My name is Katie Weigel and I am a student at the University of Mary studying social work. I am here today to offer a testimony in favor of the revision of Senate Bill 2071. The revision of this bill would allow for an extension of a permanent restraining order hearing in circumstances that are seen as needed. This change would be beneficial for victims in two big ways. For some individuals, it can be very hard to get to a hearing that is scheduled and cannot be changed. This is because many of the people who need restraining orders do not have access to means of transportation or child care whenever they need it. A classmate of mine, who is here with me today, works as an intern at the Abused Adult Resource Center. From her experience, she knows that the AARC cannot get an individual a restraining order, but they can help them in the process of finding out how to write the affidavit and then submitting it. She also notes that they work with a lot of people in this situation who find it difficult to even make it to meetings because of the lack of transportation, child care, and support. When it is necessary to have a court date that is set in stone with a date and a time, it can be hard, if not impossible, for people to make it there for reasons such as these. There are also the occasions where a person may be in the hospital or other extenuating circumstance that would challenge them to get to a court date. Allowing these individuals the opportunity for an extension on the date would really be helpful in keeping them safe from harm. Another reason that the revision to this bill would be helpful to victims pertains to the offender. Right now, there is a fourteen-day period between when a temporary restraining order is granted and when the permanent protection order is granted for the defendant to get served with the paperwork. Right now, the way this bill is written, if the respondent does not get served within the fourteen days, then the court date has to be changed for a time after the respondent has been served. Because of that, it could take a while, leaving victims at more risk. With the revision of this bill, the judge would be able to decide if the court date should be moved or not. If the police have tried to find the respondent throughout the fourteen days and have not been able to find them, then the judge could order a permanent restraining order without the respondent present. This could aid in the protection and safety of the victims even more.