



REVISED

**First Meeting
August 29, 2006**

**LCR 1 & 2
State Capitol Building
Pierre, South Dakota**

Tuesday, August 29, 2006

The first meeting of the Education for Divorcing Parents, Visitation, and Custody Task Force was called to order by the Chair, Representative Casey Murschel, at 10:05 a.m. (CDT) in Legislative Conference Rooms 1 & 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Dave Braun, Jeff Gillaspie, Senator Tom Hansen, Senator Clarence Kooistra, Tom Linngren, Senator William Napoli, Thomas Otten, Dr. Thomas Stanage, Representative Mike Vehle, Linda Lea Viken, Deb Watson, and Representative Casey Murschel (chair). Judge Rodney Steele, Senator Dan Sutton, and Representatives Tom Deadrick (vice chair), H. Paul Dennert, and Burt Elliott, were excused.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Dave Ortbahn, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

(NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC).

Approval of Agenda

SENATOR KOOISTRA MOVED, SECONDED BY SENATOR HANSEN, THAT THE AGENDA BE APPROVED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Remarks from the Chair

Representative Murschel stated that the task force was created from the passage of HB 1218 during the 2006 legislative session. She said the purpose of this task force is to improve divorce outcomes for children and families in South Dakota hopefully on a large scale instead of individual cases. By June 30, 2007, the committee is to make recommendations to the Governor, Legislature, and Chief Justice.

Reuben Bezpaletz informed the committee that the task force has a longer duration than a summer interim committee and has a year to constructively address the issues. He also noted certain difficulties the committee must overcome from being blended committee of both legislators and members of the public. The strength of having new ideas and resources from the blended committee and the importance of full participation were also stressed.

Mr. Bezpaletz explained the agenda to the committee and reasoning for the limited testimony. He stated that the committee needs to create priorities and topics for the legislative research

staff to research and place on the next agenda. HB 1218 from the 2006 legislative session (**Document #1**) was distributed to the committee.

Introductions of Committee Members

Representative Murschel said that she received her Masters in Guidance and Counseling, served on the city council, is active in child issues in Sioux Falls, and is currently serving her third term in the House of Representatives. She is on the House Judiciary Committee and handles similar issues that the task force will be addressing. Rep. Murschel stated during her freshman year, she cosponsored a visitation bill that primarily addressed grandparents rights. With her childhood of living primarily with her grandparents, she hopes to bring sensitivity towards the children's perspective.

Linda Lea Viken was in the legislature in the 1970's and again in the 1990's. She was a teacher, served on the judiciary committee, member of the Child Support Commission, has been on the Visitation Task Force for twenty years, and specialized in family law for twenty-eight years. She has previously been divorced, and remarried for twenty-six years.

Senator Kooistra stated that he has been a teacher and coach for over thirty-five years and in the legislature for ten years. His interest in child custody began his first year in the legislature. He has introduced the shared parenting bill to try and change divorce/custody guidelines.

Jeff Gillaspie informed the committee that he is a graphic designer. He is finalizing the shared parenting plan with his ex-wife that took four years to accomplish. He strongly believes in equal time for both parents.

Tom Linngren is an attorney in Watertown. Although not specializing in family law, he has litigated visitation and divorce cases. He has been married for sixteen years with one child, and has not experienced divorce other than through his practice. He stated that visitation referees have worked well in his practice, but there is a lack of attorneys that feel qualified.

Dr. Thomas Stanage said that he graduated from the University of Nebraska in Lincoln, Nebraska with a degree in psychology. He has over thirty years experience in the mental health field and is the current executive director of the Lewis and Clark Behavioral Health Services, which provides mental health centers to 600-700 children a year.

Representative Vehle stated that he graduated from the University of South Dakota and worked in Washington D.C. He now runs a credit card operation for CorTrust Bank. He believes that he offers a different and non-preconceived perspective on the issue since he is a bachelor and has not experienced divorce.

Senator Napoli said that he has been in the legislature for twelve years and sells antique cars in Rapid City with his wife of thirty-five years. He only has one child, but through the years has helped raise about twenty-five other children because various situations involving other families. He has experienced many employee divorces from his business, but one significant family experience that helped shape his familial views was his upbringing.

Senator Hansen has served two years in the House of Representatives and two years in the Senate. He is a member of the Senate Health and Human Services Committee which receives similar issues. He believes that the committee needs to recognize that some divorced parents are selfish and the rules written must reflect the child's best interest.

Thomas Otten stated that he is the manager of child and adolescent in-patient services at Avera McKennan Hospital in Sioux Falls and previously was a child and adolescent counselor at McKennan. He has been married for sixteen years and has five children. Mr. Otten stated particular interest in the topic because he experienced the divorce of his wife's parents.

Dave Braun is an attorney in Pierre and legal advisor for the child support commission. Some of the main functions of the Division of Child Support include: locating the parents and establishing paternity – 3,468 cases were established in 2004. He distributed a handout titled "Report of the South Dakota Commission on Child Support, December 2004." (**Document #2**) He stated that the committee's decisions should not jeopardize the states 28 million dollars from federal funding.

Deb Watson graduated from the University of South Dakota with her masters in public administration. He has been practicing family law in Rapid City for twenty-eight years. She has been married for twenty-seven years and has one daughter.

1993 Legislative Interim Committee on Custody and Visitation

Reuben Bezpaletz stated that in 1993, the Executive Board authorized an interim committee to meet to discuss for the first time the issue of child custody and dispute resolution. Representative Haley was asked to be present at the committee and provide the history of the 1993 visitation task force because he was the chairperson, but was unable to attend. The minutes (**Document #3**) of the three meetings for the 1993 visitation task force and the 1994 bills (**Document #4**) that were introduced were distributed to the committee. Mr. Bezpaletz said that there are at least eight different types of divorce based upon who left whom, children, and gender.

Senator Kooistra asked to have a clarification of the final report the committee must present. Mr. Bezpaletz stated that the report would be presented to the 2007 Executive Board and would include any legislation adopted, any non-legislative recommendations, and a short summary of the process the committee went through.

Ms. Watson asked if the committee would be able to have legislation presented in the upcoming 2007 legislative session. In response, Mr. Bezpaletz stated that the Executive Board needs to approve all committee legislation. The next meeting of the Executive Board is in November, so it is possible for the committee to move quickly enough, but more probable to have legislation drafted for the 2008 legislative session. Mr. Bezpaletz said that individual legislators can also still draft legislation for the 2007 legislative session without committee approval.

The committee recessed at 12:00 p.m. and reconvened at 1:17 p.m.

Unified Judicial System Visitation Enforcement Task Force Report

Lynn Sudbeck, Deputy State Court Administrator and Director of Human Resources for the Unified Judicial System (UJS), spoke to the committee about the Visitation Enforcement Program Implementation Task Force that was created by HB 1253 of the 1997 legislative session. A copy of HB 1253 (**Document #5**) and the bill history (**Document #6**) was distributed to the committee. Ms. Sudbeck stated that the committee meets one time a year, August 15, 2006 was the last meeting, and is primarily a funding body. The Unified Judicial System was appropriated \$100,000 dollars of federal funds for the task force to disperse in grants to prepare visitation enforcement programs with the Department of Social Services. The grants are for a two year period and are determined based on applications. Eight grants were awarded in years 2002 to 2004 and nine awarded in 2004 to 2006. All the awards must be used towards visitation issues. Ms. Sudbeck stated that there is one attorney in Sioux Falls, Amy Walsh, that is not a visitation exchange center – all others are – but a mediator who reviews every decree before a judge signs them to ensure the language is clear and easy to enforce. In response to Mr. Braun's question about how much money is granted to Ms. Walsh, Ms. Sudbeck stated that about half the grant money is requested, but the amount awarded can vary. In response to Senator Napoli's question about the date of implementation of the program, Ms. Sudbeck stated that she believes it was four to five years ago but will find the exact information.

The contract agreement between Amy Walsh and UJS (**Document #7**) was also distributed to the committee.

Public Testimony

Tim Stanga stated that he is a divorced man of fourteen years and believes that the standard guidelines for child support visitation should be abolished and new laws implemented. In response to Mr. Linngren's question pertaining to any specific problems with the guidelines, Mr. Stanga stated that he does not think that the government should be telling a parent the only time they are able to see their children. He believes that the guidelines should be abolished and the parents should workout a visitation agreement.

He said that the current system does not contain education classes for divorcing couples. Currently divorce education courses are occurring in Florida. The class would be required for all divorcing couples within the first thirty days of filing for divorce. It is a four to six hour course that teaches the couples what the actual process will entail, what the children and parents will go through, and to teach parents that their children should come first. Mr. Stanga suggested that the parents should come up with a visitation schedule within the first thirty days of filing for divorce and guidelines for visitation should only be used in cases with abuse. He also stated that the couple should see a mediator fifteen days after the divorce class. If the mediator does not work, the couple would see an arbitrator, and a referee if the arbitrator does not work. If all the steps fail, the couple should go back though the divorce class.

Distributed was a copy of HB 1278 from the seventy-seventh legislative session in 2002 and a copy of a September 15, 1993 Argus Leader article pertaining to the legislature addressing child visitation. (**Document #8**)

John Dawson stated that he is a divorced pastor in Sioux Falls and has not seen his children in two years. In his practice, he requires all couples that he marries to undergo six to eight marriage counseling classes prior to marriage. This is to teach the couple about the potential difficulties that may arise and how to cope with them. Mr. Dawson believes this practice should be implemented in divorcing parents, and encourages the divorce education class.

Sue Kelly said that she is a divorced mother who believes that two-parent homes are best, but two-home parents can work. She stated that the current visitation guidelines are in favor of the tender-years philosophy where the mother is the providing parent. Ms. Kelly said this ideology needs change because fathers are able to parent and provide for their children.

Ms. Kelly also stated that society is not sending the message of how necessary it is to have communication in a relationship. She said that with proper tools and boundaries, two people can come to a mutual decision, which will allow parents to determine the best agreement for their situation. In response to Ms. Viken's question about what tools and boundaries should be instilled, Ms. Kelly stated that she does not know, but they need to be fair to both parents, consistent, and certain. She also informed the committee that the current laws do not protect children of non-marriage parents, and that the issue needs to be conjunctively addressed.

Randy Mertz said that he has been divorced for five years and has one son. He stated that one problem with the current visitation guidelines is that the minimum amount of time allotted for visitation is typically considered the maximum amount by the UJS. Equality was another issue in that both parents need to be equal and that the visitation time between both parents should be as close to equal as possible. He stated that any deviation from the arranged schedule must have a valid purpose.

In response to Mr. Linngren's question about preferred shared custody arrangements with parents in close proximity, Mr. Mertz stated that a similar schedule will not work for all parents, but visitation consisting of every other week or three days a week and more days during summer and vacation holidays. He stated that it can be difficult to have a child live in two households, but it has been proven to work and is best to give equal time to both parents.

Mr. Mertz stated that the child support guidelines need to have accountability as to the purpose of the money. The amount is usually stated but there needs to be an accountability system as to how the money is actually spent.

Committee Discussion

Background information

Ms. Viken stated that she would like to have a packet of background information compiled that includes the guidelines so the committee will have a reference point.

Ms. Watson informed the committee that she will bring to the next meeting her PowerPoint presentation that summarizes the current laws.

Senator Hansen requested to research the availability of statistics about the non-custodial parents for the next meeting.

Senator Kooistra requested a breakdown of state programs and funding use.

Dr. Stanage requested the available research on shared parenting custody arrangements for children at the next meeting.

Education Classes

Mr. Linngren informed the committee that there are some parents that create custody fights over child support. He stated that there needs to be some educational elements that show people who receive child support money are not profiting monetarily.

Mr. Gillaspie stated that when parents are going through a divorce and have conflict, it rarely occurs that the parents can sit down and sensibly talk about visitation and custody. He said that divorce education is a good solution because the parents will know the proper steps that need to be taken.

Representative Vehle wondered what different outcomes there are for the children if the parents go through divorce education classes.

Mr. Otten would like information about the divorce education program currently in place in Florida available to the committee members at the next meeting.

Visitation guidelines and statutes

Representative Murschel informed the committee the mission of task force does not include child support, however, it may be unavoidable to talk about the issue to reach conclusions about custody and visitation.

Senator Kooistra informed the committee that his understanding of the term "custody" in the title of the bill refers to everything pertaining to childcare and divorce including child support.

Ms. Viken stated that child support and visitation should not be tied together because every parent is entitled to see their children regardless of their failure to make child support payments.

Mr. Braun said every four years, a child support commission is appointed to address child support issues and one major topic is child access.

Mr. Linngren stated that when non-custodial parents are prohibited from seeing their children as a result of not making child support payments, the parents most often go to court and make modifications to the child support payments to make-up for lost payments.

Ms. Viken stated that shared parenting works if the child can tolerate the schedule and if the parents can still be parents. A custody and visitation schedule needs to be decided within thirty days of filing for divorce.

Mr. Otten said that it is very rare to see visitation allotments above the minimum amount listed in the guidelines. The guideline minimums have become more like maximums.

Ms. Watson stated that the visitation guidelines are inflexible and usually the minimum amount of visitation is enforced as the maximum.

Referees/Mediators/Arbitrators/Similar Entities

Ms. Watson would like to have a simple referee system instilled for parents that are not able to communicate and work through issues.

Mr. Linngren stated that professional referees have worked successfully in his law practice.

Enforcement

Senator Kooistra requested information on enforcement for shared parenting.

Ms. Viken said that she will have LRC copy and distribute enforcement packets that are available to the public at the county courthouses.

Mr. Linngren stated his concern about the three day jail statute because the respondent would be allowed court appointed counsel which results in an issue of who is financially responsible.

Ms. Viken stated that there needs to be a simplified system of forms.

Ms. Watson stated that the system needs to be more accessible and economical.

Children out of wedlock

Mr. Linngren requested the committee look at the statute pertaining to visitation for children out of wedlock.

Senator Hansen would like the definition of parental rights and statute for children out of wedlock.

Miscellaneous

Ms. Viken requests the committee to review the "Family Law Arbitration Act."

Senator Hansen asked about the rights of the biological parent who later claims the right to a child that was adopted by another couple.

Senator Napoli stated that the ideology of public policy needs to be changed. He wants to see a change from the concept that the mother is the primary caregiver towards a new concept that the primary caregiver should be the person most capable of providing care for the children.

Mr. Linngren informed the group that it may be beneficial to hold meetings at other locations across that state, such as Sioux Falls, Rapid City, and Aberdeen.

Representative Murschel provided a summary of the groups' conversation and discussion:

1. background information – what is process, research on issues, stats, funding, numbers

2. education course – how working in other states
3. visitation guidelines and statutes
4. referees, mediators, arbitrators and similar entities
5. enforcement
6. custody and visitation disputes for children out of wedlock

LINDA LEA VIKEN MOVED, SECONDED BY DEB WATSON, THAT THE COMMITTEE REVIEW THE FAMILY LAW ARBITRATION ACT. THE MOTION CARRIED UNANIMOUSLY ON A VOICE VOTE.

DEB WATSON MOVED, SECONDED BY LINDA LEA VIKEN, THAT THE COMMITTEE REVIEW THE SOUTH DAKOTA VISITATION GUIDELINES. THE MOTION CARRIED UNANIMOUSLY ON A VOICE VOTE.

SENATOR KOOISTRA MOVED, SECONDED BY JEFF GILLASPIE, THAT THE COMMITTEE REVIEW THE SHARED PARENTING ACT. THE MOTION CARRIED UNANIMOUSLY ON A VOICE VOTE.

DEB WATSON MOVED, SECONDED BY SENATOR KOOISTRA, THAT THE COMMITTEE ACCEPT THE PRIORITIES LISTED BY CHAIR MURSCHEL AS THE OTHER PRIORITIES OF THE TASK FORCE. THE MOTION CARRIED ON A VOICE VOTE.

TOM LINNGREN MOVED, SECONDED BY LINDA LEA VIKEN, THAT THE COMMITTEE HOLD SUB-SOMMITTEE PUBLIC TESTIMONY MEETINGS IN SIOUX FALLS, RAPID CITY, AND ABERDEEN. THE MOTION CARRIED UNANIMOUSLY ON A VOICE VOTE.

The document titled “Children in the Middle: Divorce Education for Parents” (**Document #9**) was distributed at the committee at the request of Dr. Susan Randall.

The next meetings are scheduled for Wednesday, September 27, 2006, Wednesday, December 13, 2006, and Thursday, December 14, 2006. The committee members will divide into subcommittees and meet at three separate locations across the state on September 27. The committee will meet as a full committee for a two-day meeting in December in Pierre.

Adjourn

CHAIR MURSCHEL ANNOUNCED THAT THE MEETING WAS ADJOURNED.

The meeting adjourned at 5:15 p.m.



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