

CHILD SUPPORT COMMITTEE

The Child Support Committee was assigned two studies. Section 14 of House Bill No. 1041 directed a study of the provision of child support services and child care licensing in this state. Section 14 further provided that in conducting the study, the Legislative Council consider whether child support services and child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government.

House Concurrent Resolution No. 3031 directed a study of the issues of fairness and equity as they relate to the child support guidelines and the issuance and enforcement of child custody and visitation orders.

Committee members were Representatives Eliot Glassheim (Chairman), Wesley R. Belter, Linda Christenson, William R. Devlin, April Fairfield, Dale L. Henegar, George Keiser, Amy N. Kliniske, Sally Sandvig, and Jim Torgerson and Senators Dwight C. Cook, Joel C. Heitkamp, Donna L. Nalewaja, and John T. Traynor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

PROVISION OF CHILD CARE LICENSING

In conducting the study of child care licensing in this state, the committee was directed to consider whether child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government.

Legislative Background

House Bill No. 1041 (1997) related to the administration and financing of human services programs by the state and counties. Counties are to assume fiscal responsibility for certain programs, including the child care block grant program. In return, the state takes responsibility for the complete grant cost of Medicaid and basic care. In light of the "swap" in responsibilities between the state and counties, the study was proposed to determine which entity should be responsible for child support services and child care licensing.

1997 Legislation

House Bill No. 1226, which provided for implementation of federal welfare reform, also addressed how the county administration of early childhood services is funded. The bill provides that effective July 1, 1997, the Department of Human Services no longer reimburses counties for 50 percent of the amount expended by the counties for the administration of the early childhood services program and counties are no longer required to reimburse the Department of Human Services for one-fourth of the amount expended in the counties for the program costs of the early childhood services program in excess of the amount provided by the federal government for the program costs. Senate Bill No. 2055 provided for a penalty for providing certain early childhood services without a license.

House Bill No. 1331, which failed to pass the House, would have required licensure for all early childhood service providers except when the services were provided by a relative. House Bill No. 1352, which failed to pass the House, would have created an early childhood services board. House Bill No. 1465, which failed to pass the House, would have created a child care trust fund. Senate Bill No. 2345, which failed to pass the Senate, would have provided public access to certain information regarding early childhood service providers.

Recent Studies

During the 1995-96 interim, the Joint Social Service System Committee, composed of representatives of the North Dakota Association of County Social Service Board Directors, the Department of Human Services, the North Dakota Association of Counties, and the 1995-96 interim Budget Committee on Human Services, was formed. Subcommittees studied statutes relative to county-based social services; options for the provision of child support enforcement services; the current and ideal structure for early childhood licensing; and the overall structure and funding of children and family services. The joint committee's Subcommittee on Early Childhood Services agreed with many of the recommendations made by the Child Welfare League of America, Inc., a consulting firm employed by the Budget Committee on Youth Services during the 1993-94 interim, and determined the quality and consistency of early childhood services could be improved if the services were provided through a regionalized and specialized system. The subcommittee determined early childhood services licensing should be a regionalized service provided by specialists in early childhood education and should be funded with increased fees and at least partially funded with broad-based federal or state taxes. Because there was no increased funding available at the time, the subcommittee did not propose a specific plan. Possible alternative early childhood service licensing agencies were described as including child care providers, the Department of Human Services, the Department of Health, the Attorney General's office, county social

service boards, and regional human service centers. The study proposed in Section 14 of 1997 House Bill No. 1041 in large part arose from the research conducted by this subcommittee.

During the 1993-94 interim, the Budget Committee on Youth Services studied the provision of services for children, including services related to child care, education, health, corrections, and foster care. The committee contracted with the Child Welfare League of America, Inc., to assist in the study of children's services in this state. Recommendations by the consultant regarding early childhood development and education addressed the need to ensure quality, licensed child care providers. The consultant made the following recommendations:

- Enact a state licensing authority for children's programs administered by the Department of Human Services and located in each regional human service center which would be responsible for licensing child care, foster homes, and children's group care and institutional facilities. The licensing authority would serve as a liaison for fire inspections, health and safety, and law enforcement clearances and would balance parental decisionmaking with ensuring accurate and timely payments to caregivers. The licensing authority should be staffed with professionals with field experience in children's programs and training in child development.
- Clarify regulations to ensure that local officials have the authority to close child care facilities in emergency situations.
- Eliminate the category of "registered" day care homes and use one set of standards for child care licensing. The Department of Human Services should develop a phased plan over a two-year period to move appropriate "registered" homes into the "licensed" category.
- The Department of Human Services should develop a single eligibility determination process to simplify ease of access to child care resources regardless of the public funding source.
- Priorities should be given to licensing school-based child care programs and adding slots for protective child care, prime-time day care, infant care, and nontraditional hours of care.

In response to the consultant's recommendations, the committee recommended Senate Bill No. 2043 to establish a child care licensing authority in each regional human service center for licensing child care facilities. The bill would have transferred child care licensing responsibility from the counties to the state. The bill also would have expanded the number of child care providers needed to be licensed beginning July 1, 1997, from the current requirement of a provider who cares for six or more children at any one time to all child care providers unless the provider was a relative or a person caring for children from no more than one family other than their own. The fiscal note indicated the state fiscal effect would be approximately \$1.7 million per biennium and the county fiscal effect would be approximately \$900,000 per biennium. Senate Bill No. 2043 failed to pass the Senate.

During the 1989-90 interim, the Budget Committee on Human Services studied child care issues and needs, including the feasibility and costs of providing child care support to low-income working families. The committee did not make any recommendation as a result of that study.

Statutory Background

The Department of Human Services licenses family child care homes, group child care facilities, preschool educational facilities, and child care centers. Additionally, the Department of Human Services provides voluntary registration and voluntary carecheck registration for certain early childhood service facilities.

Licenses

North Dakota Century Code (NDCC) Section 50-11.1-04 provides an applicant for early childhood licensure must pass a mandatory investigation of the applicant's activities, proposed standards of care, and facilities; pass a possible investigation of an applicant, the applicant's employees, and any person living or working in an occupied private residence to determine whether any worker or occupant has a criminal record or had a finding of probable cause for child abuse or neglect filed against them; comply with standards of sanitation, health, and safety; use qualified staff; maintain facility conduct in accordance with prescribed rules; have no license revocation within 180 days of the current application; pay all license fees and penalties; and maintain cardiopulmonary resuscitation standards. Section 50-11.1-07 requires that a provider maintain and make available required records and information, and Section 50-11.1-08 requires a provider meet minimum standards set by the Department of Human Services.

Registration

North Dakota Century Code Section 50-11.1-07 requires an applicant for in-home provider registration to pass possible investigations to determine the qualification of the provider and to maintain and make available required records and information. Section 50-11.1-08 requires the provider to meet minimum standards set by the Department of Human Services.

Carecheck Registration

Carecheck registration requires fingerprinting of an applicant and completion of a fingerprint card. If the Department of Human Services has no record of a determination of probable cause for child abuse or neglect, the department submits a set of fingerprints to the Federal Bureau of Investigation and a set of fingerprints to the Bureau of Criminal Investigation to determine whether there is any criminal history record information regarding the applicant for carecheck registration. The applicant is placed in the carecheck registry after satisfaction of requirements adopted by the department and if no relevant criminal history record information is found and no report of a determination of probable cause for child abuse or neglect is found which disqualifies the applicant.

Miscellaneous Requirements

Under NDCC Section 50-06-05.1(11), the Department of Human Services is responsible for formulating standards and making appropriate inspections and investigations in accordance with these standards in connection with all licensing activities delegated by law to the department, including child care facilities. North Dakota Administrative Code (NDAC) Title 75, the administrative rules adopted by the Department of Human Services, provides that each regional human service center must have a regional representative of county social service programs who is responsible for approving, denying, and revoking early childhood service licenses; providing technical assistance relevant to early childhood services; and providing or arranging inservice training for early childhood licensing staff within the region. Delivery of the actual early childhood services, such as the processing of early childhood services license applications, is provided by county social service boards under the supervision of the designated regional representatives.

Testimony and Committee Consideration

The committee received testimony that county social service agency concerns and recommendations regarding early childhood services licensing include inadequate availability of early childhood services facilities in light of welfare reform; proposed training hours for early childhood providers will make it more difficult to keep early childhood providers and recruit new early childhood providers; individuals issuing the licenses at the regional level often have less training than the individuals making evaluations at the county level; and a separate licensing division should be created which addresses early childhood services and foster care for children and adults.

A representative of the Department of Human Services testified that although funding for child care licensing is always a struggle and there is a concern that funding from the federal child care assistance grant will be shifted away from quality assurance programs, provision of child care licensing is working well under current law and new child care licensing legislation is not needed.

Funding

Until 1998 counties traditionally paid for 100 percent of the administrative costs of early childhood services even though state law provided for state reimbursement of counties for child care licensing services. Effective January 1998, there is now up to 50 percent reimbursement by the state to the counties for child care licensing expenses.

The committee received information regarding how other states fund child care licensing services. The license fee that is charged by North Dakota counties results in little revenue, but is used by counties for training of early childhood specialists.

Licensing System

The committee received testimony that at different times, the Department of Human Services has considered creating a specific licensing unit within the department, but there is concern that social workers are not fully qualified to evaluate fire safety, health safety, and food preparation. This is a concern shared by counties because the county employees inspecting child care facilities do not receive fire inspection, electrician, or health care worker training.

The committee received information that the Department of Human Services is implementing a plan to coordinate child care licensing across the state and replace the current system that requires eight regional decisionmakers. As initially conceived, the plan would have partnered each of the eight regional human service centers, and each quadrant would have one full-time early childhood services supervisor. In response to local comment, the plan was changed so each regional human services center has the option of either working with a neighboring region and hiring one full-time early childhood services supervisor, or hiring a part-time early childhood services supervisor.

The committee received testimony indicating that county social service boards are concerned the new plan requires counties to upgrade county employees who perform licensing inspections to early childhood specialists; however, this upgrade requirement is not taking place at the regional level. Under the new plan, the regional supervisor, who makes the final licensing determination, might have less training in child care licensing than the county employee who performs the investigation. Counties expressed concern that under the old system and the new plan, the county has all the liability and the region is given

all the authority, and this liability is a good reason to require that a supervisor be at least as qualified as the county early childhood specialist.

Conclusion

The committee makes no recommendation regarding the provision of child care licensing. Given the recent funding "swap," it might be premature to make changes regarding the provision of child care licensing services before the impact of the "swap" is fully understood.

PROVISION OF CHILD SUPPORT ENFORCEMENT SERVICES

The committee was charged with studying the provision of child support services in this state, and to consider whether child support services could be more efficiently and effectively provided and, if so, by which agency or unit of government.

Legislative Background 1997 Legislation

Section 83 of House Bill No. 1226 established a task force to accomplish several of the goals and programs provided for under the bill. The bill included numerous child support enforcement provisions, including centralization of child support collection and disbursement with the Department of Human Services and a requirement that all employers report to the Department of Human Services all new employees within 20 days of hire.

Senate Bill No. 2280 required the Department of Human Services to request a child support enforcement agency to enter a child support withholding order within 20 days of the date income withholding is determined to be appropriate or the date of receipt of information necessary to carry out the withholding.

House Bill No. 1244, which failed to pass the House, would have required courts to order the obligor in child support cases to submit nonreimbursable medical expenses to the clerk of court as disbursements taxed in judgment. Senate Bill No. 2390, which failed to pass the House, would have required the inclusion of a spouse's income in child support calculations.

Recent Studies

During the 1995-96 interim, the Budget Committee on Human Services studied the responsibilities of county social service agencies, regional human service centers, and the Department of Human Services. Testimony was received from the Joint Social Service System Committee. The interim committee recommended House Bill No. 1041, which required counties to assume the financial responsibility for the costs of administering several economic assistance programs. In return for taking on this financial responsibility, the bill provided that the state assumes complete financial responsibility for the grant costs of medical assistance and basic care and contributes additional support of administrative costs for counties with Indian land.

In 1995 the State Auditor conducted an audit reviewing the efficiency and effectiveness of the state's system of establishing and enforcing child support orders, the potential for reducing costs through program fees and interest on arrears, and the adequacy of policies and procedures surrounding the collection of overpayments to custodial parents. This audit was conducted as part of a joint performance audit initiated by the National State Auditors Association.

Statutory Background Federal Requirements

Part D of Subchapter IV of the Social Security Act (IV-D) addresses child support and establishment of paternity as it relates to federal grants to states for aid and services to needy families with children and for child welfare services. The IV-D program is administered by the United States Department of Health and Human Services through the Office of Child Support Enforcement. IV-D services are provided to anyone who makes application for IV-D services. Additionally, referrals are made to IV-D on foster care cases to permit the recovery of foster care expenses from parents. Approximately one-half of the total child support cases in the state are IV-D cases and the remaining cases are typically handled by private attorneys.

State IV-D System

Significant change in federal law resulting from 1996 federal welfare reform is changing the state's provision of child support services. IV-D services are provided by a variety of governmental agencies in North Dakota. North Dakota's IV-D program is state-supervised and county-administered. The counties discharge county administrative duties primarily through the regional child support enforcement units. The eight regional units provide the front-line enforcement services. The national trend is to move from county-administered programs to state-administered programs.

Until January 1, 1998, the nonfederal share of the cost for the regional units was 34 percent and was divided equally between

the state and the counties. As a result of the funding swap under 1997 House Bill No. 1041, the counties' share is 100 percent of the costs of the regional child support enforcement unit.

State IV-D Services

The Department of Human Services Child Support Enforcement Division is the state IV-D agency and is responsible for the overall operation of the state's IV-D program.

The division's functions include:

- Ensuring compliance with federal and state laws and regulations governing the IV-D program.
- Making and interpreting all matters of policy.
- Administering a "new hire" data base.
- Performing intake and recordkeeping on all IV-D child support collections.
- Collecting and distributing all child support collections (effective July 1, 1999).
- Preparing affidavits of public assistance and child support collections.
- Providing statewide, national, and international location services.
- Obtaining federal funds and state appropriations for operations of the statewide IV-D program.
- Assisting in regional unit budget preparations by providing the county social service boards with updates on state and federal projects.
- Processing and approving regional unit expenditures and ensuring payment of these expenditures.
- Providing statewide training to regional unit personnel.
- Acting as liaison between other state IV-D agencies and international, federal, state, and county entities.
- Completing reports as required by federal, state, and county officials.
- Providing statewide public relations for the program.
- Providing legal advice on IV-D matters.
- Paying incentives and reimbursements to political subdivisions.
- Preparing contracts and agreements with political subdivisions and other governmental agencies and divisions.
- Handling special requests from the Department of Human Services and other states, counties, regional units, recipients, applicants, legislators, and related agencies.
- Serving as the state information agency for the Uniform Reciprocal Enforcement Security Act (URES) and related IV-D matters.
- Providing program research and analysis.
- Preparing and updating the IV-D procedures manual.
- Issuing policy and procedures.

Local IV-D Services

County social service boards are responsible for the administration of IV-D services on the local level. Board duties include the budgeting and funding of the regional IV-D unit; contracting with public or private agents to discharge child support enforcement duties; reporting to the state IV-D agency; providing staff to operate the regional IV-D unit; interfacing with the regional unit on IV-A (public assistance) case matters helpful to successful child support enforcement; and approving past public assistance and arrearage settlements.

The county social service boards discharge the duty to administer IV-D services through eight regional child support enforcement units. The services offered by the regional child support enforcement units include: establishing paternity and support orders; enforcing and collecting child support; performing the initial parent location effort; implementing policy as determined by the state IV-D agency; and cooperating fully with the state IV-D agency. Each regional child support enforcement unit operates somewhat differently; however, each child support enforcement unit is generally comprised of an administrator, investigator, attorney, and support staff. Each of these positions is responsible for providing a variety of functions for the unit.

Each regional child support enforcement unit is headed by a regional IV-D administrator. The administrator is responsible for the administration and management of a regional IV-D unit and the supervision of the operations and personnel within the unit. Duties of the administrator include:

- Hiring and discharging IV-D personnel within the unit.
- Conducting studies and surveys for statistical information and reports.
- Supervising and coordinating the work of all personnel within the unit.
- Coordinating the work of the unit with the state IV-D agency, county social service boards, county clerks of court, and other applicable agencies.
- Promoting public relations between the IV-D unit, other agencies, and the public.
- Interviewing recipients and applicants and working individual cases.

- Assisting in the preparation of legal documents and, if an attorney, performing all legal duties relative to cases.
- Overseeing the maintenance of case records and monitoring of case records.
- Fiscal responsibility of the operation and budget preparation of the unit.
- Ensuring compliance with program policies and procedures.

Duties of a unit investigator or case analyst include:

- Performing case intake, reviewing files, and gathering additional information when required.
- Interviewing a recipient, applicant, or absent parent and other necessary parties.
- Ensuring proper referral from public assistance is made and the case is within IV-D guidelines.
- Developing a plan of action for proceeding in each case.
- Locating absent parents.
- Investigating, gathering, and developing the evidence necessary for establishing paternity or establishing and enforcing support.
- Reviewing the obligor's financial status, ability to pay, and any other factors that might affect payment of child support obligations.
- Occasionally assisting in the preparation of legal documents.
- Occasional service of process.
- Drafting correspondence and assisting in monitoring of cases for collections.

A child support attorney is the legal representative of the unit. The attorney's duties include:

- Monitoring and advising decisionmaking matters regarding all legal procedures and actions.
- Responding and negotiating with opposing counsel and appearing in court as necessary.
- Advising the unit of court rules, practices, and child support law.
- Maintaining a close liaison with the state IV-D agency and county officials.
- Assisting investigators and other IV-D staff in legal matters.
- Acting as an assistant state's attorney when appointed.

Court Activity

Child support enforcement has a large impact on courts' caseloads. Approximately 70 percent of state courts' caseloads is domestic relations cases. In larger districts, judicial referees typically hear child support matters.

Before July 1, 1997, the clerks of the district court were responsible for receiving and disbursing child support payments for IV-D and non-IV-D child support cases and implementing income withholding. Section 9 of 1997 House Bill No. 1226 provides for the creation of a state disbursement unit that will assume the child support receipt and disbursement duties previously performed by the clerks. Section 84 of House Bill No. 1226 provides the transition from the clerks acting as the agents for receipt and disbursement of child support payments will occur between July 1, 1997, and April 1, 1999. Between July 1, 1997, and the state disbursement unit implementation date, with respect to income withholding and other activities, the clerks and the state will share responsibilities. The transfer of responsibilities will occur on a county-by-county case-by-case basis.

Testimony and Committee Consideration

The committee learned there are approximately 37,000 IV-D cases in North Dakota. The caseloads for regional units vary from 1,784 to 7,733. The current collection rate of current child support owed in IV-D cases is approximately 57 percent. For arrears, the collection rate is approximately 14 percent. Retained collections on public assistance cases typically provide for the recovery of 40 percent of the total grant costs, compared to a national average of 13 percent.

The committee was informed that each regional child support enforcement unit is organized differently, and therefore it is difficult to recommend one system of organization because one system is not necessarily better or worse than another system. Regional unit variations include different customer needs, constituents, and economics. The committee members discovered that as counties become responsible for funding child support enforcement, the counties will likely want more autonomy, and this will likely result in further nonuniformity of the child support enforcement services offered across the state.

Indian Reservations

The regional child support enforcement units do not service North Dakota Indian reservations because federal law requires that tribal codes meet federal IV-D requirements. The current tribal codes do not meet federal IV-D requirements. The Department of Human Services received a federal grant to revise the tribal codes to come into compliance with federal requirements and the grant project is being administered through the Northern Plains Tribal Judicial Training Institute at the University of North Dakota School of Law. Under the grant project, tribal codes will be drafted for each of the four tribal jurisdictions for presentation to the

tribal councils for approval. The department reported that once the Indian reservations join the child support enforcement program, Indian reservation cases will account for approximately 16 percent of the state's IV-D caseload.

State Disbursement Unit

Federal law mandates that states centralize IV-D collection and disbursement of child support payments. In 1997 the Legislative Assembly enacted necessary legislation to meet the federal mandates of welfare reform, including the centralized child support collection and disbursement mandate. The Legislative Assembly created the state disbursement unit and decided to include non-IV-D cases with the IV-D case centralization. Income withholding for child support will also be centralized under the new unit.

The committee received testimony indicating the federally mandated state move toward wholesale child support services accomplishes the federal intent to encourage a mass processing program versus a program that stresses personal contact. The Department of Human Services informed the committee that significant reasons for the federal changes include economies of scale and alleviation of the burden placed upon employers withholding child support payments from a variety of employees. A representative of the department testified the department's move to automation is consistent with the federal intent of wholesale services versus retail services. The representative stated that with caseloads in excess of 1,600, it is not realistic to expect child support enforcement units to provide clients with a large degree of individual attention.

Eighty percent of the conversion to the state disbursement unit will be covered by federal funds and 20 percent will be covered by state and county funds. Additionally, the department contracted with the North Dakota Association of Counties to perform site assessments of the clerks of courts' offices to determine whether any technology or other issues must be addressed before conversion. In preparation for the conversion, the department is reconciling child support cases in an attempt to minimize problems during conversion. The committee received testimony that several child support obligors are experiencing problems with the accuracy of the figures resulting from the state's reconciliation of child support payment records. The committee was informed that in spite of the conversion planning and precautions, upon full conversion, the state disbursement unit will process payments for approximately 75,000 cases, and it is inevitable that during the conversion, some setbacks will occur.

Under the new state disbursement unit, child support obligees and obligors will receive annual reports; obligees will receive monthly reports any time a child support payment is retained by the state; and obligors who are not under income withholding will receive a monthly billing statement. Under the new system, each case will have one ledger. The committee was informed by a representative of the department that obligee and obligor reports will likely change as the system is implemented and the department receives feedback, and therefore, the department requested the committee not recommend legislation that would mandate particular report data elements until the department has an opportunity to learn from experience.

One element of the 1997 state disbursement unit legislation requires the department to use automated procedures, electronic processes, and computer-driven technology, including a statewide automated data processing system. The fully automated child support enforcement system (FACSES) is under development and being tested. Additional changes being considered as part of the move to automation are assessing interest on unpaid child support and implementing an automated telephone system.

The department did not meet the September 30, 1998, federal deadline for implementation of the automated state disbursement unit. As a result of missing the deadline, the state will incur a penalty of approximately \$150,000. A representative of the department testified that one reason the department missed the deadline is the department is trying to implement the welfare reform provisions and the state disbursement unit system requirement changes in such a way that the system submitted for federal approval will implement these mandates instead of having to modify an approved system. Several states that met the federal deadline are now in the position of incurring substantial costs in an attempt to accommodate the federal changes regarding system requirements.

Child Support Enforcement Provision Options

Federal law allows privatization of child support enforcement services. If child support collection is privatized, federal law allows a private firm to charge a fixed fee or to charge a percentage of the amount collected. A representative of the Department of Human Services testified the department is looking into a privatization pilot project of cases that have arrears and the only money owed is money owed to the state.

The committee was informed that in addition to privatization, other state agencies that could take over all or a portion of the IV-D child support collection services currently provided through the department might include the Attorney General or the Tax Commissioner.

Conclusion

The committee makes no recommendation regarding the provision of child support services. Given the current transition to automation and a state disbursement unit, no change should be made until the 1997 legislative changes are fully implemented

and can be accurately evaluated.

FAIRNESS AND EQUITY OF CHILD SUPPORT GUIDELINES, CHILD CUSTODY ORDERS, AND VISITATION ORDERS STUDY

The committee was charged with studying the issues of fairness and equity as they relate to the child support guidelines and the issuance and enforcement of child custody and visitation orders. This charge focuses on three issues--fairness and equity of child support guidelines, issuance and enforcement of child custody orders, and issuance and enforcement of visitation orders. The legislative history of the study resolution indicates a strong impetus for the study was frustration on the part of noncustodial parents regarding payment of child support accompanied with the inability to exercise visitation. Special interests include custodial parents, noncustodial parents, and the best interests of the children.

Legislative Background 1997 Legislation

House Bill No. 1226 provided for the welfare reform legislation necessary to bring the state into compliance with federal welfare legislation and included numerous child support enforcement provisions.

Senate Bill No. 2167 limited postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interest of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

Senate Bill No. 2280 required the Department of Human Services to request a child support enforcement agency to enter a child support withholding order within 20 days of the date the income withholding is determined appropriate or the date of receipt of information necessary to carry out the withholding.

Senate Bill No. 2357 required a court to award attorney's fees and costs if the court finds that the custodial parent willfully and persistently denied visitation rights to the noncustodial parent.

House Bill No. 1244, which failed to pass the House, would have required a court to order the obligor in a child support case to submit nonreimbursable medical expenses to the clerk of court as disbursements taxed in judgment. House Bill No. 1258, which failed to pass the House, would have imposed a 90-day waiting period from the date of filing a divorce petition before the court could enter a final decree, during which time the parties would have been required to attend parent education courses. House Bill No. 1308, which failed to pass the House, would have required the court to weigh heavily in favor of changing custody the court-ordered placement in foster care of any child who resides or has resided in the household of the custodial parent. House Bill No. 1317, which failed to pass the House, would have changed the basis for calculation of gross income and expense deduction in determining child support by referencing the Internal Revenue Service Code and would have required the use of a five-year average of net income to determine the net income of a self-employed individual. Senate Bill No. 2390, which failed to pass the House, would have required the inclusion of an obligor's spouse's income in child support calculations.

Recent Studies

During the 1993-94 interim, the Judiciary Committee studied the Uniform Interstate Family Support Act and the Act's relationship to existing North Dakota law and the desirability of adopting the Act. The committee recommended adoption of the Act.

During the 1991-92 interim, the Administrative Rules Committee studied the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families, and on children who receive child support. The committee recommended guidelines that incorporate a modified income shares model. Also during the 1991-92 interim, the Budget Committee on Human Services studied the distribution of child support enforcement incentive payments made by the federal government. The committee recommended a child support incentives account funded with money from the federal child support incentives, with distributions made to child support education programs.

During the 1987-88 interim, the Budget Committee on Human Services received information on allocation of federal child support enforcement incentives.

Child Support Guidelines Background

Federal Law

One portion of the 1996 federal welfare reform legislation--42 United States Code (U.S.C.) 602(a)(2)--provides that a state's eligibility to receive a block grant for temporary assistance for needy families (TANF) is in part dependent on "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under

the state plan approved under" the Child Support Enforcement Act. The Child Support Enforcement Act, 42 U.S.C. 651 through 669, requires states to enact certain remedies and procedures to improve child support collections.

The federal Personal Responsibility and Work Opportunities Reconciliation Act of 1996 amended 42 U.S.C. 666 to address the federal requirements for state statutorily prescribed procedures to improve the effectiveness of child support. The prescribed state statutory procedures addressed in the Act include income withholding, expedited procedures, state income tax returns, liens, determination of paternity, guarantees, arrearages, support order review and adjustment, parent location networks, Social Security numbers, interstate child support orders, license suspension, financial institution data matching, children with minor parents, and health care coverage. In 1997 the Legislative Assembly enacted House Bill No. 1226 to implement the federal requirements.

North Dakota Law

North Dakota's child support guidelines law is found in NDCC Section 14-09-09.7. A portion of this section, as created in 1983, required the Department of Human Services to assemble information and create a scale of suggested minimum contributions to be used in determining the amount a parent might be expected to contribute in child support. The scale was not obligatory and the department testified that the department anticipated the vast majority of administrative child support orders would be entered as a consequence of the agreement of the parties involved. Section 14-09-09.7 was amended in 1987, but in 1990, the North Dakota Supreme Court determined the guidelines created by the Department of Human Services were invalid because the guidelines had not been adopted in accordance with NDCC Chapter 28-32. The 1989 Legislative Assembly enacted Senate Bill No. 2245 to implement 1988 amendments to federal law. The bill was drafted by the Department of Human Services with substantial advice from the Juvenile Procedures Committee of the Judicial Conference.

North Dakota Century Code Section 14-09-09.7 provides:

1. The department of human services shall establish child support guidelines to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
 - o Include consideration of gross income.
 - o Authorize an expense deduction for determining net income.
 - o Designate other available resources to be considered.
 - o Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
 - o State the child support amount determined through application of the guidelines;
 - o Identify the criteria that rebut the presumption of correctness of that amount; and
 - o State the child support amount determined after application of the criteria that rebut the presumption.
4. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

North Dakota Century Code Section 14-09-08.4 provides:

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - o In the case of an order with respect to which there is in effect an assignment under chapter 50-09 or 50-24.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - o In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:
 - o More than twelve months have passed since the establishment of the order or the most recent amendment or

- review of that order by the court or child support agency, whichever is later; and
 - o The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
- 3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
- 4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
- 5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

North Dakota Administrative Rules

North Dakota Century Code Section 14-09-09.7 requires the Department of Human Services to adopt child support guidelines and requires that the child support guidelines consider gross income, recognize expenses to determine net income, designate financial resources to consider, and specify the circumstances to consider in reducing support contributions due to hardship. State law does not dictate the model to be used by the department in establishing the guidelines and does not specify whether the income of both parents must be considered in child support order decisions. The department's administrative rules addressing child support guidelines are found in NDAC Chapter 75-02-04.1.

In 1989 the department determined the guidelines should be adopted in the form of administrative rules to assure that the guidelines have the force and effect of law as provided for by NDCC Section 28-32-03. In addition, the department determined the publication of the guidelines in the Administrative Code would make the guidelines readily available to courts and state's attorneys, as required by NDCC Section 14-09-09.7(2).

On January 5, 1990, the department initially proposed to adopt child support guidelines as administrative rules. As required by law, the department requested public comments and announced a public hearing. On February 9, 1990, the department conducted a public hearing concerning the proposed rules. The oral comments received at the hearing and the written comments received before and during the hearing generally opposed the proposed rules. The interim Administrative Rules Committee members also received public comment opposing the proposed rules. Upon review of those comments, the department withdrew the proposed rules.

The department began drafting guidelines based on the "income shares" model. During the development of that model, the department solicited comments from the Juvenile Procedures Committee, a committee established by the North Dakota Supreme Court. Committee members recommended that an income shares model not be adopted. The department then developed guidelines based on the "obligor" model. The obligor model bore some resemblance to the previously existing guidelines but incorporated changes to reflect the suggestions made with respect to the withdrawn rules.

On September 26, 1990, the department proposed rules in the alternative. The two alternatives were the income shares model, developed early in 1990, and the obligor model, developed after receiving comments from the Juvenile Procedures Committee. The department's proposals were widely disseminated and debated. The department received a combination of written and oral comments from 138 commentators. The department specifically asked commentators to indicate whether they preferred the income shares model or the obligor model. The commentators who expressed a preference were almost equally divided, with most of the attorneys and judges who offered comment preferring the obligor model. The reasons given were varied, but most who preferred the obligor model were concerned about the additional judicial and legal time that would be required to develop and consider financial information about two persons, rather than one person.

The department opted to adopt the rules based on the obligor model. The rules became effective February 1, 1991. The department's stated reasons for adopting the obligor model over the income shares model included the department's opinion that the income shares model was more complex and thus would increase litigation costs, lead to more requests for review, be more difficult to use in emergency cases, and although the income shares model appeared more fair, in most cases there would be little or no difference in award amounts.

Proposed legislation introduced in 1991, 1993, and 1995 would have provided for adoption of an income shares model for the child support guidelines, but in each case the proposed legislation failed to pass. The department adopted many minor and technical changes to the child support guidelines effective January 1, 1995. The changes provided for recognition of all the obligor's child support duties in determining the obligation in each case, imputing income based on earning capacity, determining the cost of supporting a child living with the obligor who is not also a child of the obligee, and for determining support amounts in multiple-family cases. The rule change also changed the criteria for rebuttal of the amount determined by application of the child support guidelines.

Child Support Guideline Models

Much of the debate over child support guidelines in recent years has centered on the appropriate model to use in establishing child support orders. The income shares model, the obligor model, and the Melson Delaware model are the three basic approaches used by states to determine child support orders.

The income shares model is based on two assumptions:

1. The support available to the child should be based on the combined income of the two parents.
2. The child should receive the same proportion of parental income that the child would have received if the parents lived together.

These assumptions are predicated on studies finding expenditures on children amount to a consistent proportion of household consumption, and this proportion varies systematically with the level of household income and the number and age of the children.

Application of the model involves:

1. Determining combined adjusted income of parents, with some allowable deductions, and the percentage of income contributed by each parent;
2. Determining the combined obligation of parents toward the support of their children from the available economic evidence, less medical and child care expenses; and
3. Apportioning the obligation to parents in the percentages determined for their incomes.

Additional adjustments are made in some states for split, shared, or joint custody arrangements. The custodial parent is presumed to spend the designated percentage on the child and the noncustodial parent must pay the percentage of the obligation determined for that parent to the custodial parent. Work-related child care expenses and extraordinary medical expenses are allotted between the parents in proportion to their net incomes and ordered as additional child support.

The obligor income model establishes a percentage of the obligor's income, usually net after required tax deductions, to be paid based on the available economic evidence on the cost of rearing children. In some states, a flat percentage is used; in other states, the percentage varies by number of children or economic factors.

The Melson Delaware model formula combines a cost-sharing and income-sharing approach. The model, developed by Judge Elwood Melson, has been used in Delaware since 1979. The model defines the basic amount required to support a child and apportions that amount between parents based on the relative disposable incomes. The formula then adds a standard of living adjustment that each parent may pay. The standard of living adjustment is 15 percent of net income for the first child and 10 percent for each additional child. The standard of living adjustment is not applied to the obligor until the obligor's income is adequate to minimally support the obligor. Once this minimal income level is reached, the next increments of income are used for child support until the children reach the same poverty level of support. Beyond this level, the income-sharing formula is used to determine the portion of the obligor's remaining income that must be contributed for child support. The formula takes into account child care and medical expenses. The formula as developed was the most complicated, but in 1990 Delaware made major changes to simplify the formula.

Child Custody Orders and Visitation Orders Background Initial Child Custody and Visitation Determination Laws

Child custody determinations are based on North Dakota statutes. North Dakota Century Code Section 14-09-04 provides the mother and father of a legitimate unmarried minor child are entitled equally to custody of the child. Under Section 14-09-05, when maternity and paternity of an illegitimate child are positively established, the custody rights are equal as between the mother and father and must serve the best interests of the child.

Child custody often becomes an issue when a mother and father live separate and apart from each other. Section 14-09-06 provides:

- The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

Section 14-09-06.1 provides child custody determinations must promote the best interests and welfare of the child. Regardless of whether parents are married, Section 14-09-06.2(1) lists the factors considered in determining the best interests and welfare of a child, providing:

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
 - The love, affection, and other emotional ties existing between the parents and child.
 - The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
 - The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
 - The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
 - The permanence, as a family unit, of the existing or proposed custodial home.
 - The moral fitness of the parents.
 - The mental and physical health of the parents.
 - The home, school, and community record of the child.
 - The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
 - Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
 - The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.
 - The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
 - Any other factors considered by the court to be relevant to a particular child custody dispute.
 - Because of their interrelated nature, visitation is frequently considered at the same time custody is determined. North Dakota case law indicates a trial court may consider the parents' attitudes regarding visitation when the court determines child custody. Although the North Dakota Supreme Court determined visitation with the noncustodial parent is presumed to be in the best interests of a child, the primary purpose of visitation is to promote the best interests of the child and not the wishes or desires of the parents.

North Dakota Century Code Section 14-05-22 addresses visitation issues in divorce proceedings:

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be

beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.

3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

Child Custody and Visitation Enforcement Laws

Enforcement of a child custody order or visitation order is essentially the same as enforcement of any other court order. The enforcement tool available to a court is contempt proceedings. Additionally, 1997 legislation created NDCC Section 14-09-24, which provides that in a child visitation proceeding, the court is required to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Child Custody and Visitation Modification Laws

An original award of custody is based on a single issue--what is in the child's best interests. When the trial court considers a request to modify a custody award, however, the court must determine two issues: (1) whether, on the basis of facts that have arisen since the earlier order or on the basis of facts that were unknown to the court at the time of the earlier order, there has been a material change in the circumstances of the child or the parties since the earlier custody award; and, if so, (2) whether the modification is necessary to serve the best interests of the child. The parent seeking to modify custody has the burden of showing that a circumstance changed significantly and this change so adversely affected the child that custody should be changed.

The North Dakota Supreme Court has determined frustration of visitation does not in and of itself constitute a sufficient change in circumstances to warrant a change in custody. Before visitation problems justify changing custody, there must be a finding that the visitation problems worked against the child's best interests. Additionally, as amended in 1997, NDCC Section 14-09-06.6 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interests of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

North Dakota Century Code Section 14-09-07 limits when a custodial parent may change the residence of a child to another state. Modification proceedings frequently accompany legal proceedings initiated when a custodial parent seeks to change the residence of a child. Under section 14-09-07, a parent entitled to the custody of a child may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, if the noncustodial parent has been given visitation rights by the decree. A court order is not required if the noncustodial parent (1) has not exercised visitation rights for a period of one year, or (2) has moved to another state and is more than fifty miles from the residence of the custodial parent.

Child Custody and Visitation Mediation Laws

Although typically in litigated child custody cases the determination of the best interests and welfare of a child is made by the court, NDCC Chapter 14-09.1 provides for voluntary mediation in custody determinations. Section 14-09.1-02 provides:

- In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

Committee Considerations

After receiving testimony from interested persons regarding the child support guidelines, child custody, and visitation, a 32-topic survey was distributed to members of the committee and other interested persons. The focus of the survey was to clarify the committee's direction regarding the committee's study of the fairness and equity of the child support guidelines, custody orders, visitation orders, and enforcement of these orders. The survey results were the basis of the committee's deliberations during the study.

The committee decided to drop the following survey topics from further consideration:

- Whether there should be requirements, by legislation or by agency rules, for how custodial parents may or should spend child support payments.
- Whether recurring and unjustified withholding of visitation rights by a custodial parent should result in loss of child support.
- Whether visitation should be withheld if child support is willfully withheld.
- Whether the obligor should get a state income tax dependent deduction for regular payment of court-ordered child support.
- Whether the state should make funds available to colleges or other facilities to train mediators.
- Whether the state should request the Department of Human Services or district courts to do a random satisfaction survey of divorced or separated parents.
- Whether the Legislative Council should contract with a business entity to do a survey of divorced parents to find out levels of satisfaction with child support, best interest of children, visitation, and other issues.
- Whether there should be annual adjustments in child support to take inflation into account.
- Whether child support arrears should accrue interest.

The committee decided to keep the following survey topics for further consideration, reviewing a variety of laws from other states and receiving testimony of interested persons regarding these topics:

- Whether the committee should draft legislation that would set out clearer definitions for joint legal custody, joint physical custody, and extended visitation.
- Whether a custodial parent should be required to account for expenditure of child support.
- Whether the committee should draft legislation creating statutory advisory visitation guidelines.
- Whether the state should allow an obligor who regularly pays court-ordered child support to deduct that amount from the obligor's taxable income.
- Whether the committee should draft legislation that defines "family law mediators" to include attorneys with certain specific additional training and licensed counselors, social workers, and psychologists with specific additional training.
- Whether there should be a presumption that, absent abuse or other strong reason, joint physical or legal custody is in the best interest of the child.
- Whether the state should require the Department of Human Services (and anyone else in a position of collecting money in child support matters) to give a periodic accounting to the obligor of moneys received and moneys paid to whom and for what.
- Whether there should be minimums and maximums of amounts of income used in calculating child support.
- Whether the committee should recommend creation of a Joint Legislative Committee on Family Law or Senate and House standing committees on family law.
- Whether the committee should recommend the creation of a system of family law courts with practitioners having specific training in family law.
- Whether the committee should draft legislation requiring the Department of Human Services to change from an obligor child support guidelines model to an income shares child support model.
- Whether the child support guidelines should continue to be created by rulemaking.
- Whether overtime or second jobs should be excluded from a noncustodial parent's income for child support determinations.
- Whether the noncustodial obligors should receive credit on child support for extended time the children spend in the noncustodial parent's care.
- Whether both parents should be guaranteed access to children's medical, legal, and educational records unless a court finds otherwise.
- Whether visitation rights should be more stringently enforced.
- Whether there should be an expedited visitation enforcement procedure.
- Whether the noncustodial parent should receive credit on child support for travel expenses made necessary when the custodial parent moves away from the noncustodial parent.
- Whether there should be streamlined or expedited procedures, either by legislation or by agency rules, to take into account changes in an obligor's financial situation.
- Whether judges should be given the authority to phase in large modifications of child support orders.
- Whether both parents should be responsible for medical, dental, and eye care insurance.

Testimony Study Criteria

A forensic psychologist testified that the committee should view requests by parties for rights in child custody and visitation with some skepticism. The committee should focus on the theme that parents' priority should be to their children. The psychologist recommended the committee use the following six criteria in evaluating proposed actions:

- Try to minimize parental conflict.
- Try to maximize the child's access to each parent's unique strengths and assets.
- Try to minimize loss.
- Try to make the child's postdivorce adjustment easier.
- Try to facilitate the parents' postdivorce adjustment.
- Try to facilitate the family's postdivorce adjustment.

The forensic psychologist also testified poverty is a major contributor to stress, and because divorce is significantly stressful for parents, it is often difficult for parents to deal with divorce responsibly. The legal system does not encourage parents to decrease conflict, and one way parents could be encouraged to work out divorce issues would be to require a parent to have a "ticket" such as predivorce training or a parenting plan, before entering court. Another way to decrease the conflict that accompanies divorce is to teach conflict resolution skills.

Child Support Guidelines Concerns

The committee received testimony from a broad range of persons interested in the child support guidelines, including representatives of Remembering Kids in Divorce Settlements (R-KIDS) an organization made up of custodial parents and noncustodial parents. The testimony from the interested persons included concerns that:

- Although the child support guidelines laws are pretty good, the guidelines need to be changed to reflect the needs of children, obligors, and obligees.
- Custodial parents are not required to account for how child support is used.
- The obligor model of child support guidelines is perceived as unfair, and therefore, the Department of Human Services should be required to adopt child support guidelines based on an income shares model.
- The current child support and divorce system is not sensitive to the feelings of the parties.
- The child support guidelines allow obligors to be put below poverty level.
- State law does not provide adequate repercussions for obligors who refuse to pay child support and prosecutors need to use existing legal repercussions to be tougher in enforcing child support orders.
- There is an unmet need for an expedited system to modify child support orders.
- The child support guidelines should be based on a strict percentage of an obligor's income.
- Courts should be granted express authority to order a portion of child support be put in trust for the child's future needs.
- The child support guidelines do not adequately address multifamily situations.

A judicial referee testified that because the child support guidelines are based on what a two-parent family typically spends on a child, it is an error for the North Dakota guidelines to add medical insurance and noncovered medical expenses on top of child support and to increase child support for child care and the age of the child. Additionally, the referee testified that referees need more leeway in setting child support amounts because child support guidelines do not allow enough flexibility in addressing exceptional situations such as when an obligor voluntarily changes circumstances in order to pay a lesser amount of child support. Concern was voiced that the child support guidelines do not establish a maximum amount of child support needed to support a child and the child support guidelines discourage visitation because obligors are required to pay the full amount of monthly child support even though the child might be spending the month visiting the obligor parent.

Child Support Guidelines Drafting Advisory Committee

The committee received a report on the work performed by the Child Support Guidelines Drafting Advisory Committee. The advisory committee was formed pursuant to NDCC Section 14-09-09.7(4), which provides the Department of Human Services shall convene a drafting advisory committee every four years. As a result of the advisory committee's activities, the Department of Human Services proposed changes to the child support guidelines. The proposed changes to the child support guidelines address the following areas:

- Clarification of what is considered income.
- Calculation simplification regarding the cost of supporting children living with an obligor.
- Limited imputation of income of an obligor who voluntarily changes employment resulting in reduced income.
- Reduction of child support in cases of extended visitation.
- Clarification of the child support guidelines application to children in foster care.

Child Support Guidelines Model

The child support guidelines created by the Department of Human Services are based on an obligor child support model, a model that does not take into account the income of the custodial parent. A representative of the Department of Human Services testified that guidelines based on an income shares child support model--a model that takes into account the income of the custodial parent and the noncustodial parent--was rejected for several reasons, including the income shares model is more costly to administer, there is no good way for the income shares model to account for second families, and the amount of child support under either model is essentially the same.

The committee received information regarding comparisons of child support scenarios under the North Dakota obligor model, the Utah income shares model, and the Washington income shares model and information regarding the financial impact of changing from the obligor model to the income shares model. Ultimately, the committee decided that although an income shares child support guidelines model has the appearance of fairness, the testimony indicated that regardless of which model is used, there was little or no difference in the amount of child support ordered. The committee recognized a change to an income shares model may improve the appearance of fairness which may ultimately decrease litigation because of the public's perception of the child support system.

Gender Bias

The committee received a summary of the Domestic Law Committee of the Supreme Court Commission on Gender Fairness of the Courts' findings as they relate to domestic law. The findings indicate North Dakota laws are not gender-biased, although there are risks of bias in the application of the laws. The committee learned this bias in application may be the result of stereotypical thinking.

The commission's findings also indicate there is a common misperception that women are awarded custody of children in 90 percent of custody determinations, when in reality, women are awarded custody of children in approximately 73 percent of the cases, and in over 50 percent of the child custody cases in which a woman is awarded custody, the custody decision was made jointly by the parents. The committee learned it is possible a gender bias factor that may play a role in parents agreeing that the mother get custody is a fear on the part of the father that the judge will award custody to the mother.

A forensic psychologist also testified that a common occurrence in divorce is the differing financial disparity between men and women, men are typically financially better off after divorce and women are typically financially worse off after divorce. The committee also received testimony from an interested person that the financial disparity data may be untrue.

Mediation

Testimony from a representative of the University of North Dakota Conflict Resolution Center defined mediation as "the process in which trained neutral mediators assist conflicting individuals in making their own decisions about the issues over which there is conflict and in developing a better understanding of those issues and the perspective of other participants." Approximately 40 to 60 percent of mediation cases settle on all issues, and the other 40 to 60 percent of mediation cases go to court to settle all or some of the issues.

Reported benefits of mediation include the amount of time necessary to conclude civil cases is reduced, participants are encouraged to take more responsibility in dealing with conflicts, participants have a greater opportunity to express concerns, attorneys and participants are helped to better understand the strengths and weaknesses of a case, participants save money, participants are more satisfied with the outcome, participants believe the agreements are more fair and sensitive to the participants' needs, agreements are more comprehensive, agreements are more likely to be maintained, and participants often learn new methods of handling conflict and are able to resolve future differences informally rather than relying on the courts. Reported concerns of mediation include problems associated with mandated mediation and the variable quality of available mediators.

The committee received reports relating to mediation from the Joint Dispute Resolution Study Committee, a committee made up of attorneys and trial judges pursuant to Supreme Court Administrative Order dated October 11, 1995, and the State Bar Association of North Dakota's Joint Task Force on Family Law. The task force presented proposed local court rules the joint task force created which, if adopted by a court, would require of family law cases parties to participate in a mediation orientation. The task force chose to approach mediation through local court rules because court rules can be established and modified quicker than statutes.

The committee learned that as Minnesota's mediation programs become better established, mediation is becoming more available in the eastern portion of the state; however, there is a shortage of mediators in the western portion of the state. Because of the shortage of mediators in some areas of the state, the joint task force testified, a videotaped mediation orientation may be created to assist in implementation of the proposed court rules.

Mediators are not licensed in North Dakota. Although North Dakota Rules of Court Rule 28 provides the training requirements for mediators who are on court mediator rosters, the rule does not apply to nonroster mediators, and North Dakota does not monitor or license mediators. The committee discussed whether state professional requirements are needed at this time.

The committee decided that although mediation is a valuable tool in family law matters and the committee supported mediation efforts, nonlegislative actions are being taken at this time to implement mediation, and therefore, legislative action may not be required at this time. The committee recommended additional study of mediation as it develops across the state.

Grand Forks Pilot Project

The committee received a report relating to the Grand Forks pilot project that established a small-claims-type court for family law matters. Due to the 1997 flood, the pilot project might be extended for an additional year. The committee decided consideration of whether to implement a small-claims-type court for family matters would be best evaluated upon completion of the pilot project.

Pro Se Representation

The committee considered whether courts would be more accessible, specifically for child support purposes, if the state changed the child support court system or initiated a program to encourage pro se (representing oneself) representation. Existing law and the existing system provide pro se litigants are required to follow the same rules and use the same court system as a licensed attorney.

The committee reviewed how other states are implementing programs to assist pro se litigants and received testimony that possible effects of increased pro se litigation in domestic matters might include easier access to the courts; increased demands on the judicial system, including the clerks of court; and an increased use of judicial referees. Testimony was received that states that have special pro se programs for child support matters typically have administrative child support systems, unlike North Dakota's judicial system, and invest resources in educating and assisting parties. A district court judge testified that encouraging pro se representation is inconsistent with decreasing the number of district court judges to 42.

The committee determined the impact of increasing pro se representation and modifying the child support system to better accommodate pro se representation would require more time and resources than the committee was able to invest given the committee's duty to study other charges.

Enforcement

A district court judge testified courts have the necessary tools to enforce child support and visitation. However, few of the obligors in child support enforcement hearings are professionals so it is not appropriate to suspend a professional license and it is counterproductive to revoke a driver's license because it would limit the obligor's ability to drive to work or participate in job-seeking activities. Visitation enforcement proceedings are rare, in part, because most visitation violations are minor, going to court is expensive, and it is difficult for petitioners to prove actual contempt. The district court judge testified in support of mediation and funding of legal services such as Legal Aid of North Dakota.

The committee received testimony that only one prosecutor in North Dakota has been successful in prosecuting for failure to support a child. A state's attorney testified that prosecuting for failure to support is very taxing for the prosecutor and law enforcement is not adequately trained to investigate criminal nonsupport cases.

The committee received testimony that child support enforcement laws enacted in 1997 are new, and it is too early to determine whether the changes will be helpful in enforcing child support. A child support enforcement attorney testified that because of the new enforcement methods created in 1997, additional child support enforcement legislation is not required at this time.

The committee received testimony that Cass County requires parenting education for parents in divorce cases, and this seems to help with custody and visitation determinations. Methods used in Minnesota which might be helpful in North Dakota include an expedited visitation statute, administrative judges for child support enforcement, and encouragement of pro se representation.

Recommendations

The committee recommends [House Bill No. 1027](#) to authorize courts to order a child support obligee to put into trust for the child support obligor's child's support and welfare a portion of the child support contribution. This bill is in response to concerns raised regarding the use of large child support orders and the use of child support when the custodial parent is financially well off.

The committee recommends [House Bill No. 1028](#) to provide, for purposes of the child support guidelines, gross income does not include any employee benefit that the employee may not lawfully liquidate without an income tax penalty and that the employee has no significant influence or control over the nature or amount of the benefit. This bill is in response to a district court decision that broadly interpreted gross income for child support calculations. This bill narrows the definition of gross income.

The committee recommends [House Bill No. 1029](#) to provide, for purposes of the child support guidelines, in certain circumstances, income from a second job and income from overtime may be deducted from gross income.

The committee determined situations occur in which obligor's increase employment in order to support a second family or exercise meaningful visitation, and the courts need flexibility to address these situations.

The committee recommends [Senate Bill No. 2039](#) to require the child support guidelines adopted by the Department of Human Services to include consideration of the length of time a minor child spends with the child's obligor parent. This bill provides that child support guidelines should acknowledge the additional expenses a noncustodial parent incurs during periods of extended visitation.

The committee recommends [Senate Bill No. 2040](#) to require courts to determine whether parents have certain parental rights and duties. The committee agreed with the Joint Task Force on Family Law's suggestion that more uniform parental rights and duties might decrease predivorce and postdivorce litigation. This bill also provides that in child visitation enforcement proceedings, courts may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation. This bill expands visitation enforcement remedies to include remedies available for child support enforcement and would provide an appearance of equity.

The committee recommends [House Concurrent Resolution No. 3005](#) directing the Legislative Council to study the feasibility and desirability of facilitating pro se representation in domestic relations matters.

The committee recommends [House Concurrent Resolution No. 3006](#) expressing legislative approval of the actions taken by the State Bar Association of North Dakota's Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters.