

Testimony
House Bill 1423 - Department of Human Services
House Judiciary Committee
Representative Lawrence Klemin, Chairman

February 2, 2021

Chairman Klemin and members of the Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). The Department suggests a "do not pass" recommendation on House Bill 1423 because the state's child support guidelines already consider parenting time in determining the appropriate amount of monthly child support.

The state laws on lines 6 and 7 of the bill that would be superseded need some discussion. Sections 14-09-06.2 and 14-09-31 require consideration of the best interests of the child. Section 14-09-09.32 codifies long-standing caselaw from the North Dakota Supreme Court that parents cannot negotiate away the child's right to support because the right to support belongs to the child. Section 14-09-09.7 requires that all child support obligations in North Dakota be determined using the state child support guidelines. Not only does section 14-09-09.7 provide for consistency in what parents owe based on their income, it also removes a potentially contentious issue between the parents of a child because the amount of support is generally determined based only on the income of the parent who does not have primary residential responsibility.

Lines 9 through of the 12 propose that parents can agree to an amount of child support that is contrary to amount determined under the state child support guidelines. Federal law requires North Dakota to adopt child support guidelines that apply in all cases, and can only be rebutted by a "finding [by the court or administrative tribunal] on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State." 42 United States Code Section 667(2)(b).

Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

45 Code of Federal Regulations 302.56(g). Simply put, federal law and regulations do not allow parents to negotiate their own child support obligation that is contrary to the amount determined under the state child support guidelines or to require the court to accept the parties' agreement.

Failure to follow the federal mandates in this area would lead to disallowance of North Dakota's state child support plan and a loss of eligibility for federal funds for the child support program. Because having an approved child support plan is a condition of receiving TANF block grant funds, TANF funds are also at risk. The Department was not asked for a fiscal note on this bill, but a similar fiscal note for another bill that would lead to federal noncompliance (House Bill 1406) reveals a loss of federal funds of \$74,735,058 for the 2021-23 biennium and more than \$75 million per biennium in the future.

As required in North Dakota Century Code Section 14-09-09.7(1), North Dakota's child support guidelines "[i]nclude consideration of extended periods of time a minor child spends with the child's obligor parent." The Child Support Guidelines Drafting Advisory Committee reviews and proposes improvements to the child support guidelines every four years. The adjustment for parenting time was expanded by the Advisory Committee in 2018. If the court order provides for 100 overnights per year or more of parenting time, the parent who owes child support gets an annualized reduction in his or her child support obligation in an amount equal to 32% of the daily child support obligation per day of parenting time. The Child Support Guidelines Drafting Advisory Committee based the 32% reduction on research showing that the child-rearing costs of a parent with residential responsibility are reduced by 32% (primarily the cost of food) when the child is spending time with the parent who owes

child support. This methodology ensures that a portion of support is available to help offset the fixed costs of raising the child, particularly if the parent who owes child support does not use all of the parenting time that is scheduled in the court order.

North Dakota's child support guidelines also authorize the court to take into account a parent's travel expenses when exercising parenting time in appropriate situations.

Mr. Chairman and members of the Committee, it is not unusual for parents to be unhappy over the amount of child support they have to pay. The important underlying fact to remember is that the amount a parent owes under the guidelines is based on his or her net income and the number of children to whom the parent owes a duty of support, similar to what parents would spend if they were living together. This leads to the following breakdown of active North Dakota child support obligations as of November 2020:

Current Monthly Child Support	Number of Obligations	% of Total	Cumulative
Up to \$50	161	1.2%	1.2%
\$51 - \$100	423	3.1%	4.3%
\$101 - \$150	788	5.8%	10.1%
\$151 - \$200	1,323	9.7%	19.8%
\$201 - \$300	2,829	20.8%	40.5%
\$301 - \$400	2,160	15.8%	56.4%
\$401 - \$500	1,962	14.4%	70.8%
\$501 - \$750	2,657	19.5%	90.3%
\$751 - \$1000	834	6.1%	96.4%
\$1001 - \$2000	436	3.2%	99.6%

\$2001 - \$3000	41	0.3%	99.9%
\$3001 - \$4000	14	0.1%	100.0%
More than \$4,000	1	0.0%	100.0%
Total	13,629		
Mean	\$422.53		
Median	\$368.00		

The average one-child order under the North Dakota child support guidelines in cases established by our program is \$422.53 per month. The amount drops to \$392.70 if you include a per-child average for support orders covering two or more siblings. If you include the orders that are not being enforced by our program, the amounts increase slightly to \$449.71 and \$422.15. To the parent paying support, this may be a large amount, but in reality, this amount often does not cover half of the cost of raising a child. At best, the guideline amount of support can be described as a contribution toward the child's support, with the parent with residential responsibility being liable for the rest of the child's actual expenses. This disparity would only increase further if the current reduction for parenting time was increased, at the risk of the parent with residential responsibility no longer being able to maintain a home for the child. The Department believes the current child support guidelines do a good job of balancing the best interests of the child and the parent's ability to pay child support.

Mr. Chairman, this concludes my testimony, and I would be happy to answer any questions you may have.