

**Senate Bill 2082
Senate Judiciary Committee**

**Testimony Presented by Sally Holewa
State Court Administrator
January 6, 2021**

Good morning Chair Larson and members of the committee. For the record, my name is Sally Holewa and I am the North Dakota State Court Administrator.

SB 2082 was introduced by the Supreme Court for the purpose of transferring child support duties that clerks of court are currently performing to the Child Support Unit of the Department of Human Services. Our staff attorney, Sara Behrens, will present testimony on the specific provisions within the bill. My purpose in appearing today is to discuss the origins of the bill and its intended effect within the court system.

Chief Justice Jensen has set the twin goals of meeting the need of trial judges for better support in their decision-making duties, and reducing the clerk of court shortage without the need for more FTEs. To do this, we must find more efficiencies within the court while also shedding some responsibilities. After meeting with judges and clerks from around the state, he identified increasing the use of initial criminal e-filing and eliminating child support duties as the two areas where change would have the greatest impact on these goals.

In drafting this bill we worked closely with the Child Support unit to write a bill that was as complete as possible. In saying this, I want to be clear that while Mr. Fleming and his staff assisted in this endeavor, they do not support the transfer of duties without a sufficient appropriation and additional authorized FTEs. They also have a concern about

requiring parents to enforce orders without the assistance that they have been receiving from the clerks of court.

The bill does not include a transfer of FTEs. Child support enforcement work is currently done by clerks in all 53 counties. However, there are only 14 counties in the state where the clerks are state employees. The remaining clerk of court staff are county employees. In those 39 counties we have a contract with the county to pay a portion of the clerk's salary and benefits to cover their cost of performing court work. Put quite simply, the state does not own these FTEs so we are not able to transfer them. None of the clerks in the 14 counties where clerks are state employees work full-time on child support duties. Like all other clerk of court duties, the work is spread out across employees so it becomes only a portion of what any given clerk does on a regular basis. We estimate that if the duties were done by dedicated staff it would equate to a total of 8-10 FTEs. This is an issue for us because we currently have an insufficient number of FTEs to adequately staff most of these offices. Of the 14 counties with state-employed clerks, we currently have three that are minimally staffed at 2 FTEs. We have an additional six offices that have staffing shortages that range from 15-31%. Our staffing studies show that within these 14 counties we currently have a shortage of 17 clerks. Part of our strategy to ease that shortage without requesting additional FTEs is to shed duties that we do not feel are properly within the court's responsibility.

Child support enforcement is one of those areas where the clerk's statutory responsibility puts it at odds with the Court's position as a neutral arbiter of disputes because those duties require the clerk of court to actively assist one side (the obligor) in a case. In no other case type do clerks take an active role in assisting just one side of a dispute.

Because they are more familiar with the computer system that tracks child support obligations, and because of their expertise in the subject matter, we believe that Child

Support can carry out these duties more efficiently and more accurately than the clerks of court can.

You may be asking yourself how these duties came to be assigned to clerks to begin with. Mr. Fleming, the director of Child Support, is in the best position to respond to those questions since he has been with the Child Support unit from the beginning. I can give you the shorthand version. The answer to how clerks got to be involved in enforcement goes back to a time before there was a unified court system and before the federal government required state's to create a central child support enforcement unit. Back in the day, the clerk of the county court was responsible for collecting and disbursing child support payments. When the state child support unit was created the state chose not to require all parties use that service unless there was a federal requiring it. For that reason, the statutes were written so many of the duties could be done by either the Child Support unit or the clerks of court. In 1998 the court and the child support enforcement unit agreed on a split of the duties as well as how the federal flow-through dollars for child support enforcement are allocated and we have continued to work closely together since then.

In particular, since Mr. Fleming became the director of the unit, we have partnered with the department to shift some responsibilities from the clerks to child support as they were able to absorb them. I would like to share two specific examples of this partnership. Between 2009 and 2011 we worked with Mr. Fleming to eliminate, reduce or reassign the responsibility for responding to computer system-generated alerts regarding child support cases. Through that effort we were able to reduce the number of alerts that clerks had to respond to by an average of 181,000 alerts per year. This equates to a time savings of approximately 3,000 hours of clerk time per year, or the equivalent of 1.5 FTE. This past year, Mr. Fleming initiated a change that to-date has resulted in child support taking over the data entry of child support court orders for 28 counties. With this change, we went

from clerks entering 100% of the orders to child support entering 71% of the orders. This change has resulted in a noticeable time savings for the clerks in those 28 offices. .

While it would be ideal to continue to voluntarily transition duties as resources allow, the fact is that unless more resources are allocated to child support, any transition will be so incremental and occur so gradually that it will never have enough impact to ease the clerk of court shortage. Because we believe that these duties are not appropriate for court staff, and that child support is in the best position to do this work most efficiently we are advocating for the transfer of duties to them along with adequate funding and staff to absorb the work.