NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CHILD SUPPORT COMMITTEE

Monday, April 27, 1998
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Eliot Glassheim, Chairman, called the meeting to order at 8:35 a.m.

Members present: Representatives Eliot Glassheim, Linda Christenson, William R. Devlin, April Fairfield, George Keiser, Sally Sandvig; Senators Dwight C. Cook, Joel C. Heitkamp, John T. Traynor

Members absent: Representatives Wesley R. Belter, Dale L. Henegar, Amy N. Kliniske, Jim Torgerson; Senator Donna L. Nalewaja

Others present: See attached appendix

It was moved by Representative Devlin, seconded by Representative Christenson, and carried on a voice vote that the minutes of the February 9-10, 1998, meeting be approved as distributed.

STUDY OF THE PROVISION OF CHILD SUPPORT ENFORCEMENT AND CHILD CARE LICENSING

Provision of Child Support Enforcement

Chairman Glassheim called on Mr. William Strate, Director, Child Support Enforcement Agency, Department of Human Services, for comments regarding the implementation of the central disbursement unit. Mr. Strate said 1996 federal welfare reform legislation mandates state centralization of collection and disbursement of child support payments. The conversion to the central disbursement unit, he said, will be implemented county by county, rather than a universal, statewide change. He said conversion will begin with Divide, Williams, and McKenzie Counties. He provided written testimony, flow charts illustrating the current child support collection and disbursement system and the proposed centralized system, and a list of the names and addresses of the state's disbursement unit work group. A copy of these materials is on file in the Legislative Council office.

In response to a question from Senator Heitkamp, Mr. Strate said if the position of clerk of court is abolished, any impact this has on child support disbursement and collection can be addressed during the legislative session.

In response to a question from Representative Keiser, Mr. Strate said no portion of a child support payment is used for administration of the collection and disbursement system.

In response to a question from Senator Traynor, Mr. Strate said centralization costs will include 10 new full-time employees, the cost of the automation system, and operational costs. He said he will provide committee counsel with implementation cost figures. Child Support Enforcement has made no plans to require obligors to pay for collection and disbursement services, he said, because that is a policy question best left for the Legislative Assembly.

In response to a question from Representative Glassheim, Mr. Strate said the primary duty of the 10 full-time employees is to provide customer services; additionally, whether to implement a voice-automated response system will be evaluated during the 1999 legislative session.

In response to a question from Senator Cook, Mr. Strate said Child Support Enforcement has made a concentrated effort to reconcile payment and disbursement amounts for IV-D cases, and part of the conversion process includes reconciling all cases. He said the state disbursement unit planning group is evaluating procedures for addressing payment and disbursement discrepancies.

Child Care Licensing

Chairman Glassheim called on Ms. Corinne Bennett, Administrator, Early Childhood Services, Department of Human Services, for comments regarding the status of the provision of child care licensing services. Ms. Bennett said all counties but one have contracted with the Department of Human Services in order to receive funding for 50 percent of the cost of child care licensing. Additionally, she said, as a result of working with regional representatives the department decided each human service center will be given the

option of hiring a part-time early childhood services supervisor or working with a neighboring region and hiring a full-time early childhood services supervisor. She provided written testimony and information regarding Early Childhood Services' use of quality improvement funds and examples of child care scenarios within the state. A copy of these materials is on file in the Legislative Council office.

In response to a question from Representative Glassheim, Ms. Bennett said training funds encourage child care providers to increase training and child care training is a part of welfare reform.

In response to a question from Representative Glassheim, Ms. Bennett said child care licensing legislation is not needed at this time. She said 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. She said the provision of child care licensing is working well under the current system.

In response to a question from Senator Traynor, Ms. Bennett said she is not familiar with postflood statistics regarding the availability of child care in Grand Forks, but the state is working closely with Grand Forks and is helping the city to obtain private money. She said child care services in Grand Forks have almost recovered.

The committee requested that Ms. Bennett provide a child care licensing provision status update at the next Child Support Committee meeting.

STUDY OF THE EQUITY AND FAIRNESS OF THE CHILD SUPPORT GUIDELINES

Income Shares and Obligor Child Support Guidelines Models

Chairman Glassheim called on Mr. Strate for comments regarding three child support scenarios using the North Dakota child support guidelines (an obligor model) and the Utah child support guidelines (an income shares model).

Mr. Strate said one scenario addresses multifamily factors, one scenario addresses a situation in which the custodial parent earns above average income, and the final scenario addresses a situation in which a custodial parent quits working and becomes a stay-at-home parent. He provided written testimony, a copy of which is on file in the Legislative Council office.

Committee counsel said she modified the scenarios provided by R-KIDS in order to simplify the calculations and to provide the facts necessary to complete a child support calculation. She said she understood the committee request made at the previous meeting was to review scenarios in which the parties earned disparate incomes. In addition to the disparate income scenarios, she said, she requested Mr. Strate to review a multifamily scenario because R-KIDS expressed an interest in this subject matter.

In response to concerns raised by Representatives Christenson and Fairfield regarding Mr. Strate's failure to use the scenarios provided by R-KIDS, committee counsel said one reason she modified the R-KIDS scenarios is because she understood the committee's goal is to compare the two models and the difference between the income shares model and the obligor model is the consideration of the custodial parent's income and child care expenses. She said inclusion of factors other than income and child care expenses cause confusion by introducing factors that are not unique to a particular child support guidelines model. She said, for example, whether a state's child support guidelines consider extended visitation is not particular to the model the state uses.

In response to a question from Representative Glassheim, Mr. Strate said the Utah child support guidelines take into account extended visitation; however, decreases in child support resulting from extended visitation do not happen automatically and require returning to court for a new order. He said extended visitation child support decreases are not based on anticipated visitation but are based on past visitation patterns.

In response to a question from Senator Traynor, Mr. Strate said the situation in which an obligor has a small amount of money left after child support is paid is similar to the situation of an intact family in which parents struggle to make ends meet.

In response to a question from Representative Christenson, Mr. Strate said if a noncustodial parent takes a second job, the income from the second job is included in gross income for child support determinations.

In response to a question from Representative Keiser, Mr. Strate said in the case of a noncustodial parent who is injured and experiences a decrease in earning ability, if income is imputed the income is imputed at the lower amount. He said imputation of income is determined on a case-by-case basis and several factors are considered.

In response to a question from Senator Traynor, Mr. Strate said in the situation of a noncustodial parent who earns minimum wage and who then takes a job earning twice as much money, the amount of child support

approximately doubles. However, he said, the noncustodial parent benefits from earning more money because the amount of money available after child support is paid also is increased.

Chairman Glassheim called on Ms. Marge Kottre, an interested person, for comments regarding child support models. Ms. Kottre said she is a stepmother and mother of two children. She said the obligor child support guidelines model is not fair to the obligor parent; the multi-family provision under North Dakota's obligor model forces the spouse of a noncustodial parent to disclose income information that is none of the custodial parent's business; there are problems with lack of accountability regarding how child support is spent by the custodial parent; the child support guidelines are problematic in how they treat extended visitation situations; the child support guidelines are problematic in how they deal with transportation expenses related to visitation; and overall the child support guidelines encourage the wrong things of parents.

Chairman Glassheim called on Ms. Rebecca Banker, an interested person, for comments regarding child support models. She said she is a custodial parent and a full-time student. The custodial parent, she said, is equally as responsible as the noncustodial parent to provide for a child's need. She said the child support system gives the custodial parent all the rights, and the custodial parent is also able to take the noncustodial parent to court at any time. She said the child support payments she receives from her ex-husband are based on Washington's child support guidelines, and she invited the committee to evaluate her case and child support order in order to create a comparison scenario based on her case.

In response to a question from Representative Glassheim regarding the statistic that 75 percent of custody case parties stipulate as to the custody of the children, Ms. Banker said it is not right to punish a noncustodial parent for stipulating to a custody agreement. Representative Glassheim said the perception that judges are in favor of custodial parents might actually be a reflection that judges are in favor of children. Ms. Banker said custodial parents who complain about custodial duties have the choice of giving the other parent custody of the children.

In response to a question from Senator Heitkamp, Ms. Banker said she is able to make ends meet as a full-time student due to receipt of student loans, income from a part-time job, and financial assistance from her boyfriend.

Ms. Banker provided committee counsel with a copy of her Washington child support file. The committee requested that at the next committee meeting Mr. Strate present a comparison of Ms. Banker's Washington child support calculation and the amount of child support that would be ordered under the North Dakota child support guidelines.

Definition of Gross Income

Chairman Glassheim called on committee counsel to present a memorandum entitled *Child Support Guidelines - Definition of Gross Income*. She said North Dakota Century Code Section 14-09-09.7(1) directs the Department of Human Services to consider gross income in determining child support orders; North Dakota Administrative Code Section 75-02-04.1-01(5) defines gross income for child support purposes; and North Dakota Supreme Court decisions in *Shipley v. Shipley*, *Shaver v. Kopp,* and *Hendrickson v. Hendrickson* illustrate how the courts interpret the definition of gross income in determining the amount of child support.

Mr. Strate said the Department of Human Services is filing an amicus brief with the Supreme Court in the case *Lawrence v. Delkamp*. A copy of *Lawrence v. Delkamp* is on file in the Legislative Council office. He said the department wants the court to narrowly interpret the term "gross income" as it applies to child support determinations.

In response to a question from Representative Glassheim, Mr. Strate said three ways to address the definition of gross income are to wait for a favorable Supreme Court definition, revise the child support guidelines, or amend current law.

Pro Se Representation

Chairman Glassheim called on committee counsel to distribute copies of examples of child support pro se forms used in other states. Committee counsel provided examples of pro se forms used in South Dakota, Wisconsin, and Michigan. A copy of each form is on file in the Legislative Council office.

In response to a question from Senator Traynor, committee counsel said she is not aware of any state requiring a party to a domestic action to be represented by an attorney, but there may be constitutional issues related to requiring a party to have legal counsel as a condition of getting into court. Senator Traynor said pro se representation takes up valuable court resources.

In response to a question from Senator Heitkamp, committee counsel said some states have established specialized court systems, such as family law courts, and some states that use pro se

forms have created a special agency designed to assist pro se litigants. Senator Heitkamp said specializing courts is counter to the state's efforts to streamline the judicial system.

Representative Devlin said because over 70 percent of district court cases are domestic relations cases, encouraging pro se representation may result in lessening the burden put on judges and allowing courts to increase nonjudicial positions such as judicial referees.

Bill Drafts

Income From Overtime and Second Jobs

Chairman Glassheim called on committee counsel to present the first draft of a bill draft allowing courts to exempt from gross income income from overtime or a second job if specific criteria are met.

Senator Traynor asked whether the committee wanted to exclude income from hobbies and said sometimes the income from a hobby can exceed the income from a traditional job.

Mr. Strate said the Department of Human Services neither supports nor opposes the basic intent of the bill draft, but he expressed concerns over the language of the bill draft. He said further clarity is needed to achieve the desired effect. Mr. Strate provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Devlin, committee counsel said it may be in the best interest of a child to exclude income from an obligor's second job if the obligor parent cannot afford to exercise visitation due to the cost of child support. Mr. Strate said an additional example might be if an obligor is an entrepreneur beginning a new business and the business will flourish if given the opportunity to get off the ground.

Representative Glassheim said the bill draft should allow for situations in which the obligor enters into a second marriage and has a hard time making ends meet.

In response to a question from Senator Heitkamp, Ms. Sheri Moore, Attorney, Joint Task Force on Family Law, said the current child support system does not allow a court to exclude overtime income and income from second jobs. She said a bill draft excluding income from overtime and second jobs would provide judges with more choices.

It was moved by Senator Cook and seconded by Representative Christenson that the committee consider the bill draft at a future meeting. Representative Devlin said the bill draft has the possibility of being an administrative nightmare. Representative Christenson said the issue of income from second jobs and overtime is too important to let die in this committee. After this discussion, **the motion carried on a voice vote.**

Extended Visitation

Chairman Glassheim called on committee counsel to present the second draft of a bill draft providing that the child support guidelines created by the Department of Human Services must include consideration of the length of time a minor child spends with the child's obligor parent.

Mr. Strate said the department neither supports nor opposes the bill draft, but considering visitation in determining child support interjects a monetary element into visitation determinations. He said earlier versions of the guidelines have not included provisions to reduce child support based on exercise of visitation. Additionally, he said, consideration of visitation may result in visitation occurring for solely financial reasons and there is risk of increasing litigation due to providing parties another issue to dispute. He provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Glassheim, Mr. Strate said the bill draft instructs the Department of Human Services to consider visitation in determining the amount of child support under the guidelines. He said administrative rulemaking allows for greater flexibility, and rules can be changed easier than laws.

In response to a question from Senator Traynor, Mr. Strate said the term "noncustodial parent" and the term "obligor" are interchangeable terms under the North Dakota child support guidelines.

The committee decided to consider this version of the bill draft at a future meeting.

Annual Summaries

Chairman Glassheim called on committee counsel to present the second draft of a bill draft relating to child support enforcement annual summaries. Committee counsel pointed out that existing law requires the department to provide an annual summary.

In response to a question from Senator Heitkamp, committee counsel agreed that the bill draft provides that the parent has the burden of requesting an annual report while under current law the department has the burden to provide annual reports.

Mr. Strate said this bill draft would require a redesign of the automated system, and a fiscal

note should be prepared to reflect the cost of redesigning and reprogramming the system to meet the new requirements. He provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Cook, Mr. Strate said the copy of the annual report received by an obligee will include the amount of child support withheld to reimburse the state for public assistance; whereas, the obligor's report will not provide this information because of confidentiality laws.

In response to a question from Senator Heitkamp, Mr. Strate said the reason current law requires the department to report annually is because the 1997 Legislative Assembly wanted to increase the reports available to obligors. He said the federal government requires reporting to obligees, which is in excess of state law.

Chairman Glassheim called on Mr. Daniel Biesheuvel, President, R-KIDS, for comments regarding the bill draft. Mr. Biesheuvel said the annual report upon request is adequate.

In response to a question from Senator Cook, Mr. Biesheuvel said obligors would like to know if child support money is going to reimburse past welfare payments. Mr. Strate said public assistance records are confidential by law.

Representative Glassheim said it might be necessary to include language in the bill which specifies an annual summary must include arrearage information.

Senator Heitkamp said the added cost of changing the automated system may result in death by fiscal note.

Representative Keiser said he is willing to take the risk of death by fiscal note, and he prefers optional reporting upon payment of a reasonable fee.

Gross Income

Chairman Glassheim called on committee counsel to present a bill draft relating to the child support guidelines definition of gross income. She said the bill draft results from the committee's adoption of Senator Cook's bill draft at a previous committee meeting. This bill draft, she said, requires that the child support guidelines provide that gross income does not include any income or benefit that is received by an employee as part of an employee benefit package if the income or benefit is out of the immediate control of the employee.

Mr. Strate said the department neither supports nor opposes the bill draft, but the language should be revised to clearly define the types of benefits intended to be excluded from gross income. He provided written testimony, a copy of which is on file in the Legislative Council office.

Representative Keiser said he is concerned about how "immediate control" will be defined.

Senator Cook asked whether a bonus is considered out of the immediate control of an employee.

Ms. Sandi Tabor, Attorney, Joint Task Force on Family Law, said what an employee gets may be either an employee benefit or employee compensation. She said a bonus is probably compensation and it may be helpful to consider whether what the employee receives is immediately taxed.

Mr. Strate said there are problems with following the intent of the tax code because the tax code changes for reasons unrelated to child support. He said it would be logical to exclude from gross income employer contributions and mandated employee contributions.

Representative Keiser said he is concerned about how the child support guidelines might treat a true cafeteria plan in which an employee has money to spend on benefits as the employee sees fit.

It was moved by Senator Cook, seconded by Senator Traynor, and carried on a voice vote that the Legislative Council staff be requested to draft a new version of the bill draft to more specifically define gross income for consideration at a future meeting.

Child Support Effective Dates

Chairman Glassheim called on Representative Sandvig to present a bill draft requiring judges to make child support order modifications effective as of the date a motion to modify is filed and served.

Committee counsel said currently the effective date of modification of a child support order depends upon the facts of the case and a modification may be effective the date the motion is filed, any date the motion was pending, the date the court issues its order, or some later date. She said there may be situations, such as anticipatory motions to modify child support, in which it is more appropriate to have a modification order effective the date an event occurs, as long as that date is after the date the motion is filed and served.

Mr. Strate said the modification order should be effective the first day of the month following the date of the modification order, and reference should be made to the date the motion is filed or the date the motion is served but not both filed and served.

In response to a question from Representative Glassheim, Mr. Strate said the length of time

between when a motion is filed and an order is made varies based on a variety of factors, including discovery; however, the court calendar generally allows for scheduling of a hearing within two to three months.

In response to a question from Representative Glassheim regarding the issue of arrearages accruing without the obligor knowing the child support order will be increased, Mr. Strate said the other side of the coin is that this bill would encourage both parties to quickly resolve modification issues.

Ms. Moore said for child support modification cases that accompany a change of custody, it may be more appropriate to provide that the effective date triggering factor is the date of the change of circumstances instead of the date the motion is filed or served. She said typically a judge wants an order effective from the date of filing and the respondent wants the order effective from the date of service.

It was moved by Representative Keiser, seconded by Senator Cook, and carried on a voice vote that the Legislative Council staff be requested to redraft the bill draft to address the concerns raised and to prepare the bill draft as a committee bill draft for consideration at a future meeting.

STUDY OF THE EQUITY AND FAIRNESS OF THE DETERMINATION AND ENFORCEMENT OF CHILD CUSTODY AND VISITATION ORDERS

Mediation

Chairman Glassheim called on Ms. Tabor to present the proposed local court rules relating to mediation. A copy of the proposed local court rules for family law mediation is on file in the Legislative Council office.

Ms. Tabor said the local court rules are being presented to each of the judicial districts and each district can determine whether to adopt the rules, adopt a modified version of the rules, or not adopt the rules. She said Judge Benny Graff, South Central Judicial District; Judge John Paulson, Southeast Judicial District; and Judge Bruce Bohlman, Northeast Central Judicial District, have agreed to adopt the mediation rules as local rules.

Ms. Tabor said the proposed rules do not mandate mediation but do mandate mediation orientation. She said the rules would apply to all family law matters, and the intent is to make orientation videos available to all courts.

In response to a question from Representative Glassheim, Ms. Tabor said mediators are available in the eastern portion of the state, but mediators are less available in the western portion of the state. She said the local rules should encourage more individuals to enter the mediation field as mediators, and she hopes to set up pro bono boards of mediators to assist parties who cannot afford mediators.

In response to a question from Senator Traynor, Ms. Tabor said mediation is more informal than family law courts. She said she anticipates more states will be encouraging mediation. Representative Glassheim said 11 states currently mandate mediation.

Senator Heitkamp said he supports the mediation work the Joint Task Force on Family Law and the State Bar Association of North Dakota have done, and if an individual has the right to perform a marriage, that same individual should have the right to act as a mediator or refer a married couple to a mediator. Ms. Tabor said the proposed local rules are broad enough to allow a party to go to a clergy member to receive mediation.

Mr. Biesheuvel said the R-KIDS organization supports mediation and supports marriage and family counseling.

Bill Drafts

Parental Rights

Chairman Glassheim called on Ms. Moore to present the bill draft regarding parental access to records. Ms. Moore said the bill draft is based on language the task force provided to committee counsel. She said the bill draft provides that a parent has the right to access certain information and the duty to provide certain information unless a court takes away a parent's rights or duties. She said this bill draft covers very basic matters, but these are matters that are often litigated.

In response to a question from Representative Christenson, Ms. Moore said the bill draft requirement that a parent notify the other parent of an illness or accident does not create joint parental decisionmaking for medical care. She said courts may address how medical care decisions are made on a case-by-case basis; however, medical decisions are usually made by the custodial parent.

In response to a question from Representative Keiser, Ms. Moore said failure to follow the provisions of the bill draft could result in civil contempt proceedings for the noncomplying party. She said courts already have the authority to order a noncomplying parent to pay court costs and attorneys' fees associated with enforcing the provisions of the bill draft, and the bill draft has

adequate teeth for enforcement. Under the current system, she said, the law encourages litigation.

Representative Keiser said he is concerned courts will allow parents to violate provisions of the bill draft and the party requesting enforcement will be out of pocket for the expense of going to court to enforce the law.

It was moved by Senator Heitkamp, seconded by Representative Christenson, and carried on a voice vote that the committee consider this bill draft at a future meeting.

Joint Custody

Chairman Glassheim called on Ms. Moore for comments regarding the need to draft legislation that defines "joint custody" as it relates to family law matters. Ms. Moore said the recommendation of the Joint Task Force on Family Law is that the term not be defined in statute. The task force's reasoning, she said, is that it is better to allow courts to define joint custody on a case-by-case basis and the bill draft regarding parental access to records adequately protects parents' rights.

Visitation Enforcement

Chairman Glassheim called on committee counsel to present a bill draft increasing court enforcement remedies to include revocation or suspension of professional and recreational licenses and to allow the enforcement remedies to expand if the child support enforcement rules expand in the future.

Mr. Biesheuvel said the bill draft is reasonable.

Ms. Moore said it is possible the bill draft would allow courts to implement income withholding if visitation orders are violated. She said courts already have the power to order monetary penalties for violation of a visitation order, but this bill might allow penalties to be collected via income withholding.

Representative Devlin said he supports the bill draft.

It was moved by Senator Cook and seconded by Representative Devlin that the Legislative Council staff be requested to consolidate this bill draft with the bill draft relating to parental access to records. Senator Cook said consolidation would clarify that parental interference with visitation is not allowed. **The motion carried on a voice vote.**

Domestic Abuse

Chairman Glassheim called on Senator Cook to present a bill draft relating to claims of domestic abuse. Senator Cook said the bill draft provides that if a party to a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding makes a false allegation of domestic violence, the court may order the party making the false allegation to pay court costs and attorneys' fees for the falsely accused party.

Mr. Biesheuvel said false allegations of abuse are emotionally harmful as well as detrimental to a legal proceeding. He provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Fairfield, committee counsel said there is a difference between a civil finding that a statement made in court is false and not made in good faith and a criminal perjury proceeding. As a criminal offense, she said, perjury has a stricter standard of proof, although a civil determination that a statement is false and not made in good faith may help lay the foundation for a prosecutor to bring a criminal perjury proceeding.

Representative Fairfield said she supports the idea of the bill draft but is concerned that the bill draft may have a cooling effect on the reporting and pursuing of domestic violence.

Ms. Bonnie Palecek, North Dakota Council on Abused Women's Services, said she shares the concerns of Representative Fairfield, and she will further research the issue.

It was moved by Senator Traynor, seconded by Representative Keiser, and carried on a voice vote that the committee adopt Senator Cook's bill draft as a committee bill draft for consideration at a future meeting.

Chairman Glassheim said the next meeting of the Child Support Committee is scheduled for June 22, 1998. No further business appearing, Chairman Glassheim adjourned the meeting at 4:10 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:1