NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CHILD SUPPORT COMMITTEE

Monday, September 28, 1998
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Eliot Glassheim, Chairman, called the meeting to order at 9:00 a.m.

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

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

Others present: Dan Biesheuvel, Bill Kerzmann; R-KIDS, Bismarck

Blaine Nordwall, Mike Schwindt, Corinne Bennett, Diane Hendrickson; Department of Human Services, Bismarck

Paulette Obers, RCSAN, Bismarck

Arvy Smith, Office of Management and Budget, Bismarck

Susan Beehler, R-KIDS, Mandan

Sandi Tabor, Sherry Moore; State Bar Association of North Dakota, Bismarck

APPROVAL OF MINUTES

It was moved by Representative Devlin, seconded by Representative Sandvig, and carried on a voice vote that the minutes of the June 22, 1998, meeting be approved as distributed.

STATUS OF THE CHILD SUPPORT GUIDELINES DRAFTING ADVISORY COMMITTEE

Chairman Glassheim called on Mr. Blaine Nordwall, Child Support Guidelines Drafting Advisory Committee, for comments regarding the committee's activities. Mr. Nordwall said as a result of the Advisory Committee's work, on July 31, 1998, the Department of Human Services proposed changes to the child support guidelines. He said two public hearings are scheduled regarding the proposed rule changes, and the Department of Human Services will receive written comments through November 2, 1998.

Mr. Nordwall said the proposed changes to the child support guidelines address five general areas--clarification of 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 resulting from extended visitation, and clarification of the child support guidelines application to children in foster care. He provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Nordwall said the extended visitation provision in the proposed changes to the child support guidelines requires that a party have court-ordered visitation that meets the extended visitation requirements. He said the extended visitation provision may result in additional litigation regarding visitation, but anytime a change is made in the child support guidelines increased litigation might occur.

In response to a question from Representative Keiser regarding how employee benefits are treated under the proposed changes to the child support guidelines, Mr. Nordwall said employee benefits would be included in gross income and removed in determining net income.

In response to a question from Senator Heitkamp, Mr. Nordwall said the Advisory Committee did not intend for the proposed changes to the child support guidelines to decrease the amount of child support awards, but instead the Advisory Committee looked at the inequities under the current child support guidelines and tried to address these inequities.

In response to a question from Senator Traynor, Mr. Nordwall said he does not know how many existing court orders for visitations would be affected by the proposed child support guidelines changes.

In response to a question from Senator Cook, Mr. Nordwall said the proposed changes to the child support guidelines include employee benefits in the determination of gross income because the statutory definition of gross income seems to provide that employee benefits must be included. He said the Advisory Committee's response was to subtract employee benefits in determining net income.

In response to a question from Representative Devlin, Mr. Nordwall said the proposed child support guidelines changes to North Dakota Administrative Code Section 75-02-04.1-05(3) are meant to deal with dramatic changes in an obligor's farm income which are intended to negatively impact child support. He said there are situations in which the current practice

of using the five-year average of farm income does not work, and the proposed amendments are intended to address this inequity.

In response to a question from Representative Glassheim, Mr. Nordwall said if successful, it is probable the proposed changes to the child support guidelines will be adopted before the 1999 legislative session.

STUDY OF THE PROVISION OF CHILD SUPPORT SERVICES AND CHILD CARE LICENSING IN THIS STATE

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 in this state. Ms. Bennett said Williston is the only region that does not have an Early Childhood Services supervisor in place. She said the actual hiring and configurations of the Early Childhood Services supervisors have changed since Ms. Bennett last spoke to the committee. The configuration may make it more complicated for an Early Childhood Services office to administer the licensing program, she said, although these changes were made in response to the needs of the regional human service centers. Ms. Bennett provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Glassheim, Ms. Bennett said new legislation regarding the provision of child care licensing is not necessary.

In response to a question from Representative Keiser, Ms. Bennett said under the initial plan, each Early Childhood Services supervisor would have been a full-time employee; however, as the plan evolved, not all of the supervisors are full-time employees.

In response to a question from Senator Traynor, Ms. Bennett said the child care licensing system includes an extensive background check for licensed child care providers. She said sometimes the Department of Human Services denies applications for child care licenses. Ms. Bennett provided statistics regarding child care licensing in the state, a copy of which is on file in the Legislative Council office.

Child Support Enforcement Services

Chairman Glassheim called on Mr. Mike Schwindt, Acting Director, Child Support Enforcement, Department of Human Services, for comments regarding the status of the state disbursement unit. Mr. Schwindt said one reason for the delay in implementing the automated central disbursement system of the state disbursement unit is that federal changes necessitated changes in data elements of the automated system which had already been designed. He said distribution changes and design and planning changes necessary for the state disbursement unit are projected to be completed and tested in 1998. Upon completion of testing, he said conversion of the clerks of courts can begin. He said conversion of demographic data for IV-D cases to the automated system has been underway since January 1998 and is now essentially complete. He said the conversion will be implemented on a county-by-county basis rather than by a universal, statewide change. The current plan, he said, is to begin with pilot counties in the northwest portion of the state, beginning with Williams and McKenzie Counties. He said the conversion plan will begin training Williams County and McKenzie County staff, along with regional unit and state disbursement unit staff in mid-October. He said training for the other counties in the state will continue through May 1999.

Mr. Schwindt said the Department of Human Services is exploring a variety of technological solutions and services to meet the legal requirement of using technology to the greatest extent possible to achieve an efficient state disbursement unit. He provided written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Sandvig, Mr. Schwindt said the federal deadline for implementation of the state disbursement unit was September 30, 1998. As a result of the state not meeting this deadline, he said, the state will incur a penalty of approximately $150,000. However, he said, some states that did meet the federal deadline are now in the position of incurring substantial costs in an attempt to accommodate the federal changes regarding system requirements. He said North Dakota has tried to implement the welfare reform and state disbursement unit system requirement changes in such a way that the approved system will already address these issues instead of having to modify an approved system.

In response to a question from Representative Glassheim, Mr. Schwindt said new legislation is not needed regarding the services provided by the child support enforcement unit. He said the $150,000 penalty will likely come out of the child support enforcement budget.

Chairman Glassheim called on Mr. Dan Biesheuvel, President, Bismarck-Mandan R-KIDS, for comments regarding the state disbursement unit. Mr. Biesheuvel said the public was not allowed to attend meetings of the Child Support Guidelines Drafting Advisory Committee. He said an Attorney General's opinion was requested regarding whether the open meeting laws apply to meetings of the Advisory Committee, but it was not until the last meeting that the Attorney General's opinion was made stating the open meeting laws apply.

Representative Glassheim said that for some unknown reason, some of the Advisory Committee meetings were closed. He said the public will have an opportunity to comment on the proposed child support

guidelines changes at public forums held in Bismarck and Fargo.

Mr. Biesheuvel said obligor parents from across the state have been receiving letters from the child support enforcement unit regarding arrearages owed on child support orders. He said typically arrearages are garnished from an obligor's wages. The problem, he said, is that the amount of arrearages reported by the child support enforcement unit is often incorrect.

Mr. Schwindt said 33,000 letters were sent out to obligors regarding federal income tax interception for arrearages. He said there have been many problems with the amount of arrearages stated on the federal income tax intercept letters, although legal proceedings are not required to fix errors in arrearages amounts because the amount can be changed informally. He said he agrees that implementation of the state disbursement unit should decrease the number of arrearages errors, although there will be a certain amount of reconciliation problems during the transition to the state disbursement system. He said interest is not charged on arrearage late payments, and there is a provision at the bottom of the federal income tax intercept letter regarding what to do if there is a problem in the amount of arrearages calculated by the child support enforcement unit.

Representative Devlin said the Child Support Guidelines Drafting Advisory Committee met the legal requirements for providing legal notice of meetings and the media is in part responsible for the lack of news articles on the meetings.

Representative Keiser said the federal income tax intercept letter is not customer-oriented and perhaps the Department of Human Services should provide some sort of public education to help in the transition to the state disbursement unit. Mr. Schwindt said he is not aware of any public education moneys appropriated for the state disbursement unit transition. He said one problem with the federal income tax intercept letter is that due to federal requirements there was very little opportunity for the Department of Human Services to change the contents and format of the letter.

In response to a question by Senator Heitkamp regarding what the Legislative Assembly can do to help with the transition to the state disbursement unit, Mr. Biesheuvel said there is concern regarding the data used in determining arrearages.

Chairman Glassheim called on Ms. Susan Beehler, Bismarck-Mandan R-KIDS, for comments regarding the proposed changes to the child support guidelines. Ms. Beehler said the changes proposed by the Department of Human Services are superficial and are only intended to pacify obligors. She said more changes are needed. Under the proposed changes to the child support guidelines, she said any child support received by an obligor parent is counted as gross income in determining child support. She said there was a lack of public notice and involvement in the Child Support Guidelines Drafting Advisory Committee process. A significant problem with the transition to the state disbursement unit, she said, is that mistakes may result in an obligor losing a driver's license or professional license.

Representative Glassheim said the proposed change in the child support guidelines regarding extended visitation is intended to address one of the concerns Ms. Beehler raised regarding noncustodial parents.

In response to a question from Representative Devlin, Mr. Schwindt said he is not sure whether an existing law requires clerks of court to distribute child support payments within a certain period of time.

STUDY OF THE ISSUE OF FAIRNESS AND EQUITY AS THEY RELATE TO THE CHILD SUPPORT GUIDELINES AND THE ISSUANCE AND ENFORCEMENT OF CHILD CUSTODY AND VISITATION ORDERS

Child Support Guidelines

The committee reviewed a bill draft regarding the definition of gross income as it applies to child support.

Senator Cook said he is concerned the proposed changes to the child support guidelines relating to income do not adequately address the issue of how to treat employee benefits; therefore, he supports this bill draft.

It was moved by Senator Cook and seconded by Representative Christenson that the bill draft, relating to the definition of gross income as it applies to child support, be approved and recommended to the Legislative Council.

Representative Belter said he has concerns about treating an obligor with employee benefits the same as an obligor who does not have employee benefits.

It was moved by Senator Traynor, seconded by Senator Cook, and carried on a voice vote that the bill draft, relating to the definition of gross income as it applies to child support, be amended on page 1, line 9, to refer to lawful liquidation without income tax penalties.

It was moved by Senator Cook, seconded by Representative Christenson, and carried on a roll call vote that the bill draft, as amended, relating to the definition of gross income as it applies to child support, be approved and recommended to the Legislative Council. Representatives Belter, Christenson, Devlin, Fairfield, Keiser, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." Representative Glassheim voted "nay."

The committee reviewed a bill draft relating to the creation of child support trusts.

In response to a question from Representative Keiser, committee counsel said courts might already have the power to order creation of a trust funded by a portion of a child support payment; however, this bill

draft would provide express authority and provide guidelines for the creation of a trust.

Representative Keiser said he prefers to keep student college fund money separate from child support.

Senator Heitkamp said the bill draft provides the court with discretion regarding the creation of a trust. Representative Keiser said when a trust is created, typically a trust department of a bank has control of the trust. Committee counsel said the bill draft provides that the court would specify the terms of the trust and the circumstances under which a trust is created.

Mr. Biesheuvel said the law should provide that the entire amount of all child support obligations must be put in trust and require an obligee to justify how all of the child support amount is used.

It was moved by Senator Traynor, seconded by Senator Heitkamp, and carried on a voice vote that the bill draft, relating to the creation of child support trusts, be amended to clarify that the court is responsible for approving the terms of the trust rather than for actually managing the trust.

It was moved by Senator Heitkamp, seconded by Representative Christenson, and carried on a roll call vote that the bill draft, as amended, relating to the creation of child support trusts, be approved and recommended to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." Representative Keiser voted "nay."

The committee reviewed a bill draft relating to consideration, for purposes of child support, of the income from overtime and second jobs.

Representative Christenson said there have been cases where a court has ordered a noncustodial parent who is a teacher to take a summer job. She questioned whether this was in the best interest of a child. Committee counsel said the term "best interest of the child" is defined under statute and includes consideration of a variety of factors.

Representative Glassheim presented a bill draft, relating to a modified version of the committee's bill draft relating to income from overtime and a second job. The difference between his bill draft and the committee's bill draft, he said, is that the evaluation of how to treat income from overtime is separated from the evaluation on how to treat income from a separate job. He said income from overtime or from a second job may be deducted from gross income if the deduction is not detrimental to the child and the obligor's employment has not been changed for the purpose of effecting child support. Additionally, he said, in order for income from overtime to be excluded, the overtime employment must be voluntary and not a condition of employment; the obligor must be employed in excess of a 40-hour workweek; and the overtime employment must be in the nature of employment compensable by the hour or fraction of an hour. He said an additional requirement to deduct income from a second job is the obligor's total employment must be in excess of a 40-hour workweek.

It was moved by Senator Heitkamp, seconded by Representative Christenson, and carried on a voice vote that Representative Glassheim's bill draft, relating to income from overtime and a second job, be adopted as a committee bill draft.

It was moved by Senator Heitkamp and seconded by Representative Christenson that the committee's original version of the bill draft, relating to the consideration of income from overtime and a second job, be approved and recommended to the Legislative Council. In response to a question from Representative Keiser regarding when more money is not in the best interest of a child, committee counsel said the determination of the best interest of a child provides for a weighing and balancing of a variety of factors, and it is possible that the sum of the factors may tip the balance in favor of decreasing the amount of child support. Senator Heitkamp said allowing a parent to exercise meaningful visitation with a child may be more important than increasing child support. **The motion carried on a roll call vote.** Representatives Glassheim, Christenson, Fairfield, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." Representatives Belter, Devlin, and Keiser voted "nay."

It was moved by Senator Cook and seconded by Representative Sandvig that the committee reconsider its action to approve and recommend to the Legislative Council the bill draft relating to the consideration of income from overtime and second jobs.

Senator Cook said the bill draft Representative Glassheim presented to the committee regarding deducting income from a second job or overtime from gross income refers to the deduction not being to the detriment of the child versus being in the best interest of the child. He said he prefers the use of the term "detriment."

Representative Christenson said use of the term "best interest" is more positive than the use of the term "not detrimental." She said the use of the term "best interest" would require an obligor to establish the requirement has been met; whereas, the use of the term "not detrimental" would seem to require a custodial parent to show how exclusion of income from a second job or overtime is detrimental to the child.

Representative Sandvig said use of the term "not detrimental" seems to allow more consideration of the needs of the obligor. **The motion carried on a voice vote.**

It was moved by Senator Cook and seconded by Representative Keiser that the bill draft the committee previously approved and recommended to the Legislative Council, **relating to the**

consideration of income from overtime or a second job, **be amended to incorporate the language of the bill draft presented by Representative Glassheim.** Representative Keiser said consideration of whether a job is paid by the hour should not apply to consideration of income from a second job. Senator Heitkamp agreed. **The motion carried on a voice vote.**

It was moved by Representative Devlin, seconded by Senator Cook, and carried on a roll call vote that the bill draft, as amended, relating to the consideration of income from overtime and a second job, be approved and recommended to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, Keiser, and Sandvig and Senators Cook and Traynor voted "aye." Senator Heitkamp voted "nay."

Child Custody and Visitation Orders

Committee counsel presented a concurrent resolution draft regarding the work of the North Dakota Supreme Court Joint Task Force on Family Law. She said the substance of this concurrent resolution draft is identical to the version Representative Glassheim presented to the committee at the last meeting, except this draft reflects sponsorship by the Child Support Committee.

It was moved by Representative Keiser, seconded by Representative Christenson, and carried on a roll call vote that the concurrent resolution draft, regarding the work of the North Dakota Supreme Court Joint Task Force on Family Law, be approved and recommended to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, and Keiser and Senators Cook and Traynor voted "aye." No negative votes were cast.

Committee counsel presented a concurrent resolution draft regarding the study of pro se representation in family law matters. She said the substance of the concurrent resolution draft is identical to the version presented to the committee by Representative Glassheim at the last meeting, except this draft reflects sponsorship by the Child Support Committee.

It was moved by Representative Devlin, seconded by Representative Christenson, and carried on a roll call vote that the concurrent resolution draft, regarding the study of pro se representation in family law matters, be approved and recommended to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, and Keiser and Senators Cook, Heitkamp, and Traynor voted "aye." No negative votes were cast.

Committee counsel presented the fourth draft of a bill draft relating to the rights and duties of parents in child custody and visitation proceedings and to the enforcement of child visitation. She said the substantive change in this version of the bill draft is on page 2, lines 1 through 4. This version, she said, requires that the court, when establishing or modifying a visitation order, shall include in the order the rights granted and duties imposed by the court to the parents. She said the purpose of requiring the court to include the rights and duties in the order is that then the enforcement remedies in Section 2 of the bill draft can be used to enforce the duties in a visitation order.

Representative Sandvig said on page 1, line 22, of the bill draft it does not seem clear whether a parent has a duty to inform the other parent of both changes--if a residence changes and a telephone number changes. Committee counsel said her understanding of the Legislative Council's form and style is that the use of "and" will require notification of both changes if both occur, although she will review this and make a grammar change if necessary before putting the bill into final form.

Representative Sandvig said on page 1, line 21, the term "immediately" should be replaced with "twenty-four hours."

It was moved by Senator Cook, seconded by Representative Keiser, and carried on a roll call vote that the bill draft, relating to parental rights and duties and visitation enforcement remedies, be approved and recommended to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, Keiser, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." No negative votes were cast.

The committee reviewed a bill draft regarding consideration of extended visitation in determining child support. Senator Heitkamp said he is concerned about mixing visitation and child support because a parent may use visitation or child support as leverage in a divorce action.

Representative Glassheim said although the Department of Human Services is proposing to adopt child support guidelines that consider the total number of days a child spends with a noncustodial parent, there is no guarantee the proposed rules will pass. Representative Devlin said this bill draft is a good safety net in case the proposed changes to the child support guidelines are not approved.

Senator Traynor said he supports this bill draft.

It was moved by Representative Keiser and seconded by Representative Fairfield that the bill draft, relating to consideration of extended visitation in determining child support, be approved and recommended to the Legislative Council. Mr. Biesheuvel said he supports the bill draft requiring the Department of Human Services to address extended visitation, but he does not agree with how the Department of Human Services is addressing extended visitation in the proposed changes to the child support guidelines. He said the Department of Human Services should define extended visitation differently from how it is defined in the proposed child support guidelines.

Senator Heitkamp said the proposed changes to the child support guidelines regarding extended visitation would only apply to court orders that provide for visitation that meets the definition of extended visitation. **The motion carried on a roll call vote.** Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, Keiser, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." No negative votes were cast.

COMMITTEE BUSINESS

It was moved by Representative Keiser, seconded by Senator Cook, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council. Representatives Glassheim, Belter, Christenson, Devlin, Fairfield, Keiser, and Sandvig and Senators Cook, Heitkamp, and Traynor voted "aye." No negative votes were cast.

It was moved by Senator Heitkamp, seconded by Representative Keiser, and carried on a voice vote that the meeting be adjourned sine die. Chairman Glassheim adjourned the meeting at 1:40 p.m.

_____

Jennifer S. N. Clark
Committee Counsel