NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

CHILD SUPPORT COMMITTEE

Monday and Tuesday, November 17-18, 1997
Walnut Room, Doublewood Inn
Fargo, 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, Amy N. Kliniske, Sally Sandvig, Jim Torgerson; Senators Dwight C. Cook, Joel C. Heitkamp, Donna L. Nalewaja, John T. Traynor

Members absent: Representatives April Fairfield, Dale L. Henegar, George Keiser

Others present: See Appendix A

It was moved by Representative Belter, seconded by Representative Christenson, and carried on a voice vote that the minutes of the September 30, 1997, meeting be approved as mailed.

PROVISION OF CHILD SUPPORT ENFORCEMENT STUDY

IV-D Background Information

Chairman Glassheim called on Mr. Bill Strate, Director, Child Support Enforcement, Department of Human Services, for comments regarding the history of the IV-D program, the basics of the IV-D program, and the current service delivery structure of the IV-D program. Mr. Strate provided written testimony, a copy of which is attached as Appendix B, and he provided the committee members with a binder containing a summary of the child support enforcement program; a copy of the interagency cooperative agreement of the State Department of Human Services child support enforcement agency; a flow chart of participants involved in the delivery of the North Dakota IV-D program; a summary of expenditures incurred by IV-D service providers for the years 1993-96; and tables summarizing how IV-D programs are operated in other states. A copy of the information is on file in the Legislative Council office. Mr. Strate said the funding swap, which becomes effective January 1, 1998, will result in a variety of changes to the IV-D program.

Centralization of IV-D Services

In response to a question from Representative Glassheim, Mr. Strate said recent federal legislation mandates that IV-D services be centralized, and in 1997 the North Dakota Legislative Assembly decided to centralize non-IV-D cases along with the IV-D case centralization. He said income withholding for child support will also be centralized under the new system and centralization will require 10 new state employees. He said one of the benefits of centralization is automation and the automated system will be able to read checks and bank codes. He said the federal intent behind centralization is to streamline the system in order to be more efficient and cost-effective.

In response to a question from Senator Traynor, Mr. Strate said the federal mandates are intended to encourage a mass processing program versus a program that stresses personal contact. He said four of the new employees will do processing and four employees will deal with public comments; however, these employees will be cross-trained because workloads shift throughout a typical week and throughout a typical month. Ultimately, he said, automated telephones will be installed.

In response to a question from Representative Christenson, Mr. Strate said the new child support enforcement system will not resolve all problems with the current system but will instead create different problems, such as the decrease in the amount of personal contact and personal service.

In response to a question from Senator Nalewaja, Mr. Strate said the automated system is in the design stage. He said there is a federal requirement that 90 percent of child support payments be distributed within two business days of receipt. He said the IV-D program does not service the North Dakota Indian reservations because federal law requires that the tribal codes meet federal requirements and the current codes do not meet federal requirements. Once the Indian reservations join the program, he said, IV-D cases from the reservation will account for approximately 16 percent of the IV-D caseload.

Clerks of Court

In response to a question from Senator Heitkamp, Mr. Strate said the future of the clerks of court is not certain. He said the interim Judiciary Committee is evaluating the clerks of court, and that committee is looking at a variety of options.

In response to a question from Representative Belter, Mr. Strate said the district court system does not collect data regarding the amount of child support collected. Typically, he said, non-IV-D cases have higher child support order amounts and have better payment history than IV-D cases.

In response to a question from Representative Belter, Mr. Strate said non-IV-D cases are not tracked by the clerk of court unless a payment is missed, but the clerk does maintain records on each file.

Pro Se Representation

In response to a question from Senator Traynor, Mr. Strate said the federal government reimburses judicial referees for child support enforcement services but does not reimburse for the expenses related to district court judges. If pro se legislation is considered, he said, the committee should consider the impact on district court caseloads.

In response to a question from Representative Glassheim, Mr. Strate said pro se representation is available for child support enforcement, but changes could be made to the court rules to facilitate pro se litigation. He said pro se litigation usually is more time-consuming for judges. He said judicial referees are paid less than judges and referees are generally found in larger population centers.

In response to a question from Senator Heitkamp, Mr. Strate said judicial referees act as an arm of the court, using the same procedures and substantive law, but a judge is required to sign all orders. He stressed that a judicial referee is not a mediator.

Services Provided by Regional Child Support Enforcement Units

Chairman Glassheim called on Ms. Kathy Ziegelmann, Administrator, Southeast Regional Child Support Enforcement, for comments regarding the IV-D services provided by the regional child support enforcement unit offices. Ms. Ziegelmann provided written testimony, a copy of which is attached as Appendix C.

Ms. Ziegelmann introduced the regional child support enforcement unit administrators in attendance: Mr. Brad Davis, Administrator, Southwest Regional Child Support Enforcement Unit; Mr. Colin Barstad, Administrator, Lake Region Regional Child Support Enforcement Unit; Mr. Rick Olson, Administrator, Northeast Regional Child Support Enforcement Unit; Ms. Rosemary Shasky, Administrator, South Central Regional Child Support Enforcement Unit; and Ms. Barbara Johnson, Administrator, Northwest Regional Child Support Enforcement Unit. Ms. Ziegelmann also introduced Mr. Alon Wieland, Cass County Commissioner.

In response to a question from Senator Nalewaja, Mr. Strate said as the counties become responsible for funding child support enforcement, they will want more autonomy, which may result in larger variation between the services offered from region to region. He said nonconformity between the regions is not necessarily a bad thing because one size does not always fit all. He said in regions with more people it reasonably follows that there are more IV-D cases, and the concentration of IV-D cases is larger in communities with larger welfare populations. He said the regional child support enforcement unit offices are responsible for paternity cases, but the state does help locate parents.

In response to a question from Representative Christenson, Ms. Ziegelmann said whether a IV-D case is a public assistance case does not impact the treatment the case gets. She said the number and characteristics of caseloads are not uniform from region to region.

In response to a question from Representative Torgerson, Ms. Ziegelmann said child support enforcement services are available to custodial parents and noncustodial parents for no fee.

In response to a question from Representative Glassheim, Ms. Ziegelmann said under the system, the child support enforcement attorneys initiate legal proceedings, but the court is ultimately responsible for determining the correct amount of the child support order. She said the child support enforcement units have set certain requirements that must be met before they will pursue a child support modification; however, a parent may hire a private attorney at any time and pursue a modification that way.

In response to a question from Senator Traynor, Ms. Ziegelmann said the IV-D program has federal authority to charge an applicant for services, but North Dakota law does not address the issue of application fees. Mr. Strate said $25 is the highest amount child support enforcement could charge for services, and if this is done the federal government is entitled to 66 percent of that application fee.

In response to a question from Senator Nalewaja, Ms. Ziegelmann said self-employment child support cases are difficult because when the obligor is in the position of employer, the obligor can dictate what information is made available to the unit. She said other problematic child support cases are out-of-state cases and unemployment cases.

In response to a question from Representative Belter, Ms. Ziegelmann said child support enforcement units have access to state tax records.

In response to a question from Senator Nalewaja, Mr. Daniel Bertsch, Assistant State's Attorney, Fargo, said the child support order amount of an obligor who is in prison typically is established by imputing income at the rate of minimum wage.

In response to a question from Representative Belter regarding whether inherited money is considered when establishing a child support order, Mr. Bertsch said trust money may be considered, but a one-time receipt of money is usually not considered unless it is very large because if it is very large it will generally provide ongoing income.

Hypothetical IV-D Child Support Case

Chairman Glassheim called on Mr. Brad Davis, Administrator, Southwest Regional Child Support Enforcement Unit, for comments regarding the typical IV-D case. Mr. Davis provided written testimony, a copy of which is attached as Appendix D. He explained the procedure a typical IV-D case follows from beginning to end.

Mr. Davis said the child support enforcement system has developed over a long period of time, and although it is not perfect, it is the result of a lot of work. He said child support enforcement units are not biased, but obligors and obligees are biased. He said the child support enforcement unit will initiate proceedings to modify child support orders up or down.

In response to a question from Senator Nalewaja, Mr. Davis said he did not have data regarding the number of teen obligors in the IV-D system, but teen obligors do have child support obligations. He said a child's interests are not met by discouraging an obligor from furthering education to increase earning ability. Mr. Strate said although North Dakota does not consider a teen obligor's parents' income in setting child support amounts, aid to families with dependent children teen recipients' parents are held financially responsible and parents of a teen obligor may be pursued for the teen's obligation.

In response to a question from Senator Cook, Mr. Davis said although an obligor can open an IV-D case or initiate modification, cases in which an obligee opens the case or request for modification are more common. He said occasionally in an IV-D case each parent is represented by a private attorney.

In response to a question from Representative Sandvig, Mr. Davis said under North Dakota law the amount of child support withheld from an obligor's income will not exceed 50 percent of the income, although an obligor may be ordered to pay more than 50 percent of the obligor's income.

In response to a question from Senator Nalewaja, Mr. Davis said on occasion a child support enforcement unit will initiate the closure of an IV-D case for reasons such as noncooperation or an out-of-state move.

CHILD SUPPORT EQUITY AND FAIRNESS STUDY

Child Support Guidelines

Chairman Glassheim called on Mr. Philip Papineau, President, R-KIDS, Fargo-Moorhead Chapter, for comments regarding proposed changes to the child support guidelines. Mr. Papineau provided written testimony, a copy of which is attached as Appendix E. He said the child support guideline changes proposed by the Fargo-Moorhead Chapter of R-KIDS are based on Utah's child support guidelines.

In response to a question from Representative Glassheim, Mr. Papineau said although the cost of raising a child is not a set amount of money, the income shares model takes into account each parent's ability to pay. If a parent's desire to have custody of a child is based on profitability, he said, the needs of the child are distorted.

In response to a question from Representative Kliniske, Mr. Papineau said requiring accountability for how child support is used does not need to be an administrative nightmare. He said the parties can stipulate to a set amount of money required to raise a child, and any accounting can be limited to the amount of child support received in excess of the stipulated amount.

In response to a question from Senator Heitkamp, Mr. Papineau said the animosity between divorced parents typically continues over time. He said the divorce process leaves very little opportunity for parents to work out details of the divorce. Although some child support obligors may intentionally do things to avoid paying child support, he said, sometimes it is the system that is unfair to the obligor.

In response to a question from Representative Belter, Mr. Papineau said although the R-KIDS organization proposes an income shares model, requiring parents to put a portion of child support into a trust would be a step in the right direction.

Chairman Glassheim called on Mr. Strate for comments in response to the R-KIDS' proposal. Mr. Strate said the most recent changes made to the child support guidelines were in 1995, and these changes focused on fairness to the obligor. He said Mr. Papineau's examples using Utah's income shares model are not complete.

In response to a question from Senator Traynor, Mr. Strate said the North Dakota bench and bar's response to the guidelines has been positive. He said increasing the discretion of judges will result in increasing the amount and expense of litigation because the child support guidelines encourage settlement.

In response to a question from Representative Glassheim regarding possible legislative ideas, Mr. Strate said visitation guidelines may be a good idea, but the devil may be in the details. Although expedited visitation enforcement procedures may be helpful, he said, there may be problems with access to the courts. He said how overtime pay is considered in determining gross pay may merit further consideration, and giving a noncustodial parent a credit for exercising visitation may motivate a custodial parent to discourage visitation.

Child Support Survey

Chairman Glassheim presented results of a 32-topic survey he distributed to members of the committee and other interested persons. The focus of the survey was to clarify the committee's direction regarding its study of the fairness and equity of the child support guidelines, custody orders, visitation orders, and enforcement of these orders. He distributed copies of written comments he compiled from the survey results, a table indicating how each of the classes of interested persons responded to the survey topics, and the chairman's proposal to draft, discuss, or drop specific survey issues relating to the study. A copy of the distributed documents is on file in the Legislative Council office.

The committee reviewed Chairman Glassheim's proposal relating to whether the committee should

drop specific topics from further consideration, further consider specific topics, or draft legislation on specific topics. The committee reviewed the 32 survey topics. The number of the survey topic and the committee's action follows:

Topics to Be Dropped

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

5. There should be requirements, by legislation or by agency rules, for how custodial parents may or should spend their child support payments.
6. Recurring and unjustified withholding of visitation rights by the custodial parent should result in loss of child support.
7. Visitation should be withheld if child support is willfully withheld.
17. The obligor should get a state tax dependent deduction for regular payment of court-ordered child support.
14. We should make funds available to colleges or other facilities to train mediators.
17. We should request the Department of Human Services or district courts to do a random satisfaction survey of divorced or separated parents.
18. We should request funding to contract with an outside agency or firm to do a survey of divorced parents to find out levels of satisfaction with child support, best interest of children, visitation, and other issues.
22. There should be annual adjustments in child support to take inflation into account.
28. Child support arrears should accrue interest.

Topics to be Considered

The committee decided to continue to consider the following survey topics:

1. The committee should draft legislation that would set out clearer definitions and rules for "shared parenting," i.e., joint legal custody, joint physical custody, and extended visitation.
4. The custodial parent should be required to account for expenditure of child support.
10. We should have statutory advisory visitation guidelines.
12. Because North Dakota cannot do much to affect federal taxes, the state should allow an obligor who regularly pays court-ordered child support to deduct that amount from the obligor's taxable income.
15. We should legislatively define family law mediators to include attorneys with certain specific additional training and licensed counselors, social workers, and psychologists with specific additional training.
20. 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.
21. We should require the Department of Human Services (and anyone else in a position of collecting money in child support matters) to give a quarterly (or monthly) accounting to the obligor of moneys received and moneys paid to whom and for what.
23. There should be minimums and maximums of amounts of income used in calculating child support.
24. We should recommend creation of a Joint Legislative Committee on Family Law or Senate and House standing committees on family law in the legislative session.
25. We should recommend the creation of a system of family law courts with practitioners having specific training in family law.
29. The obligor child support guidelines model should be changed to an income shares child support model.
30. The child support guidelines should continue to be created by rulemaking.
32. Overtime or second jobs should be excluded from a noncustodial parent's income.

Draft Legislation

The committee requested the Legislative Council staff to prepare bill drafts to address the following survey topics:

5. Noncustodial obligors should receive credit on their child support for extended time the children spend in their care.
6. Both parents should be guaranteed access to children's medical, legal, and educational records unless a court finds otherwise.
8. Visitation rights should be more stringently enforced.
9. We should have an expedited visitation enforcement procedure.
19. Noncustodial parents should receive credit on their child support for travel expenses made necessary when the custodial parent moves away from the noncustodial parent.
26. 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.
27. Judges should be given the authority to phase in large modifications of child support orders.
31. Both parents should be responsible for medical, dental, and eye care insurance.

Committee members decided to wait to consider topics Nos. 13 and 16, relating to mediation, until further information is gathered.

The committee accepted the Joint Task Force on Family Law's offer to prepare the bill draft addressing the issue in survey topic No. 3.

The committee requested that the bill drafts in response to topic Nos. 8, 9, and 26 encourage pro se representation and the bill draft in response to topic No. 8 provide for visitation enforcement tools that

mirror the tools available for enforcement of child support.

CHILD CARE LICENSING STUDY

Child Care Licensing Funding--Other States

Chairman Glassheim called on committee counsel to present information relating to how other states fund child care licensing services. Committee counsel distributed a document entitled *Child Care Center Licensing*, which indicates whether a state charges a child care licensing fee and, if so, where the proceeds from the licensing fee go.

State Funding for Services Provided by Counties and Alternative Structural Options

Chairman Glassheim called on Ms. Corrine Bennett, Administrator, Early Childhood Services, Department of Human Services, for comments regarding how child care licensing is being funded at the county level and alternatives to the provision of child care licensing services currently offered by regional human service centers. Ms. Bennett provided written testimony, a copy of which is attached as Appendix F.

Ms. Bennett said the Department of Human Services is processing the counties' funding option decisions. She said the funds from the federal child care development fund are distributed approximately 70 percent to income qualified individuals, four percent to qualified child care services, and five percent to administrative costs. She said the Department of Human Services recently proposed a plan to have four early childhood services supervisors replace the current system of eight regional decisionmakers.

In response to a question from Representative Glassheim, Ms. Bennett said although there are some problems in the current child care licensing system, the implementation of quadrant supervisors should result in improving the current system. She said the options that allow up to 50 percent reimbursement by the state to the county should also address some of the existing problems with the system.

In response to a question from Senator Traynor, Ms. Bennett said there are approximately 2,000 licensed child care providers and 1,200 self-certified child care providers in the state. She said that in response to the 1997 flood, the Wish Foundation provided a gift of $350,000 to assist in child care in the Red River Valley. She said Fargo and Grand Forks child care providers offer child care services to Minnesota residents who work in North Dakota.

In response to a question from Representative Torgerson, Ms. Bennett said the recent trial of the British au pair brought national awareness to the issue of child care. She said rules are being drafted to require infant and toddler training as well as entry-level training to child care providers for little or no cost.

In response to a question from Representative Glassheim, Ms. Bennett said the Department of Human Services is trying to help parents distinguish between licensed day care providers and self-certified day care providers. She said federal legislation requires that there be some type of check on providers if the provider receives federal money. She said, for example, Minnesota has chosen to license all child care providers, whereas North Dakota does not do this in part because of the increased expenses associated with licensing all providers.

In response to a question from Representative Sandvig, Ms. Bennett said the Department of Human Services is drafting new rules that address weaknesses in the program.

In response to a question from Senator Traynor, Ms. Bennett said under the current system child care complaints are reported to the county level and the county investigates. With the new requirements associated with the funding of the counties, she said, a county will need to visit a child care facility two times per year and this may result in an increase in the number of licenses taken away for failure to meet requirements. She said there may be some fear of reporting complaints regarding child care providers because there is a child care provider shortage in the state. She said proof of liability insurance is only required of child care centers; past attempts to require all child care providers to have liability insurance were unsuccessful.

In response to a question from Representative Glassheim, Ms. Bennett said the Department of Human Services has considered creating a specific licensing unit within the department. She said there is a concern that social workers are not fully qualified to evaluate fire safety, health safety, and food preparation.

In response to a question from Representative Christenson, Ms. Bennett said in response to the high volume of turnover in the child care field, the department is in the process of creating a tracking system to try to determine why child care providers leave the market.

Chairman Glassheim called on Ms. Betty Keegan, County Director, Rolette County Social Service Board, for comments regarding the funding of child care licensing at the county level and alternatives to the provision of services offered by regional human service centers.

Ms. Keegan said counties are concerned about liability issues. Because the county employee who actually inspects a location is not a fire marshal or electrician or health care worker, she said, it is important for the county employee to have some special training in these areas. She said county employees who do the licensing inspection are being upgraded to early childhood specialists in an attempt to improve the quality at the county level. She said individuals in these positions who are not early childhood specialists will be grandfathered into their positions. Under the newly proposed plan, she said,

the quadrant supervisor should have to be an early childhood specialist, although the plan does not require this.

In response to a question from Senator Traynor, Ms. Keegan said North Dakota State University offers a four-year program in early childhood education, and this would satisfy the early childhood specialist training requirement.

In response to a question from Representative Glassheim, Ms. Keegan said the law has always required state reimbursement at the county level; however, this reimbursement is going to happen for the first time in January 1998. She said the law should be amended to impose a penalty for failure to reimburse.

Chairman Glassheim called on Ms. Kathy Hogan, Director, Cass County Social Service Center, for comments regarding child care licensing.

Ms. Hogan said she has concerns regarding the legal liability of counties because they are acting as a regulatory agency. Under the current system, she said, the county has all the liability and the region or the quadrant is given all the authority. She said the quadrant supervisor should be at least as qualified as the county early childhood specialist.

In response to a question from Representative Belter, Ms. Hogan said state forms require child care providers to disclose HIV status. She said the counties have taken the position that this request for information is illegal. Although licensing by nature results in liability, she said, licensing is meant to protect a very vulnerable class of people. She said licensing ensures that minimum standards are met, but licensing does not ensure quality.

In response to a question from Representative Christenson, Ms. Hogan said it may be possible that a parent could sign a legal waiver that waives county liability.

Chairman Glassheim said the next meeting of the committee is scheduled for February 9-10, 1998. He said the topics of discussion will include mediation and child support. He said future meetings are tentatively scheduled for April 13, June 2, and September 28, 1998. Chairman Glassheim adjourned the meeting at 11:35 a.m.

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Jennifer S. N. Clark
Counsel

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Jay E. Buringrud
Assistant Director

ATTACH:6