

1999 SENATE JUDICIARY

SB 2039

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2039

Senate Judiciary Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
1	x		2070 - 6172
2		x	00 - 1850
2-10-99 2	x		550 - 1873
Committee Clerk Signature <i>Jackie Tollman</i>			

Minutes:

SB2039 relates to the impact of extended visitation on child support orders.

SENATOR STENEHJEM opened the hearing on SB2039 at 10:00 A.M.

All were present except Senator Bercier.

REPRESENTATIVE GLASSHEIM, Chairman of the Interim Committee, testified in support of SB2039. We looked at the fairness of child support and visitation. The Committee decided to list it in the guidelines, rather than in law, and recognize in the law consideration of the length of time a child spends with the obligor parent would be considered in the guidelines. The

Committee felt that the drafted guidelines were an interesting compromise and was a good idea.

REPRESENTATIVE DEVLIN testified in support of SB2039. My remarks are a brief echo of Representative Glassheim.

JENNIFER CLARK, Committee Counsel for the Interim Child Support Committee, explained SB2039. It specifies the Department of Human Services need to create the guidelines for child support and lays out some specifics which needs to be included those guidelines. It includes the requirements the guidelines to consider an extended length of time a child spends with a non-custodial parent. The bill draft does not specify the exact formula that should be used, it leaves it up to the Department of Human Services to incorporate that into the administrative rules. The Department has adopted some child support guideline rules to extended visitation.

DANIEL BIESHEUVEL, R-KYDS, testified in support of SB2039. The Court should be given the determination to establish the time frame on extended visitation.

ROSS HAUGEBERG testified in support of SB2039. He is in the process of trying to get his support changed under his extended visitation.

BARB SIEGEL, the Policy Administrator with the division of Child Support Enforcement, North Dakota Department of Human Services, neither supports or opposes SB2039. Testimony attached.

SENATOR STENEHJEM asked if the Committee could get a copy of the guidelines.

BARB SIEGAL said in the current guidelines there is no consideration for extended visitation and is not a reason for the Judge to deviate. The drafting committee was a compromise and not a consensus.

SENATOR LYSON asked why we need this if the Judge can do this.

BARB SIEGAL stated the Judge's have no discretion to give deductions for extended visitation. The current guidelines specifically say support cannot be reduced by extended visitation.

SHERRY MILLS MOORE, State Bar Association of North Dakota, testified to the dilemma that SB2039 embodies. Testimony attached.

SENATOR TRAYNOR wondered where the Bar Association is on SB2039.

SHERRY MILLS MOORE stated that the Bar Association does not take a position on SB2039.

It may raise another issue on tying the child to the money.

SENATOR STENEHJEM CLOSED the hearing on SB2039.

February 10, 1999 Tape 2, Side A

SANDI TABOR proposed some amendments and a Statement of Intent for the Child Support Guidelines.

STATEMENT OF INTENT

It is the intent of this amendment to direct the Department of Human Services to include in the child support guidelines consideration of extended periods of time a minor child spends with the child's obligor parent. The guidelines should consider extended periods of time to mean those situations where an obligor parent has custody of the child for 60 out of 90 consecutive days, or in instances where the parties will have joint physical custody with the child residing with each parent close to equal time. The phrase "close to equal time" shall mean where each parent has physical custody of the child at least 45% of the time.

BARB SEIGEL spoke on the Statement of Intent and is in agreement with this. Where are you going to put this Statement of Intent? The problem with the putting it in the deviations.

SENATOR STENEHJEM stated that it will be up to the Department of Human Services to put them in the guidelines.

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Senate Judiciary Committee

Bill/Resolution Number SB2039

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2-10-99

SENATOR WATNE made a motion on the Amendments and Adoption of the Statement of Intent, SENATOR BERCIER seconded. Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR TRAYNOR seconded. Motion carried. 6 - 0 - 0

SENATOR STENEHJEM will carry the bill.

Date: 2-10-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2039

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended w/

Motion Made By Watne Seconded Traynor
By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Stenehjem

REPORT OF STANDING COMMITTEE (410)
February 11, 1999 2:04 p.m.

Module No: SR-28-2610
Carrier: W. Stenehjem
Insert LC: 90043.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2039: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2039 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "the length" with "extended periods"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2039

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2039

House Judiciary Committee

Conference Committee

Hearing Date March 10, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature <i>Ala Guidry</i>			

Minutes:

JENNIFER CLARK (LC) This bill just adds one more item to the guidelines. The bill came out of the interim committee.

DANIEL BIESHEUVEL (R-KIDS) Presented written testimony, a copy of which is attached.

SUSAN BEEHLER (R-KIDS) My husband and I are two parents supporting two families. We are a custodial and a non-custodial parent. When non-custodial has the children he or she is paying twice for their care. This seems unfair and we want this bill to even the field some.

DOMINIC VOLESKY (Mediator) This should pass. In many cases when the non-custodial parent has paid child support there isn't enough left allow that parent to afford to have the child visit..

REP. GLASSHEIM I was chairman of the Interim Committee that developed it and am here to support it. This bill makes support more equitable. The committee tried to look at this from the

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House Judiciary Committee

Bill/Resolution Number 2039

Hearing Date March 10, 1999

point of view of "what is in the best interest of the child". The committee wanted to tell the department what to do, not how to do it. It is our thought that this may get the non-custodial parent involved in the child's life.

MARK HUFNER I am the non-custodial parent of two children who live in California. When they visit me I pay all the expenses to get them here and back. Their last visit I spent \$1300 on plane tickets, fed them and bought some clothes for them, and was given \$15 credit on my support. This is not fair, and we need this law to make it a little more fair.

BARB SIEGE (Hum. Ser.) Presented written testimony, a copy of which is attached..

DAN BERTSCH (SE Child Support Unit) Presented written testimony, a copy of which is attached.

COMMITTEE ACTION March 10, 1999

REP. DELMORE moved that the committee recommend that the bill DO PASS. Rep. Hawken seconded the motion which passed on a roll call vote with 12 ayes, 1 nay and 2 absent. Rep. Klemin was assigned to carry the bill on the floor.

Date: 3/40
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 2039

House JUDICIARY Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By [Signature] Seconded By [Signature]

Representatives	Yes	No	Representatives	Yes	No
✓ REP. DEKREY	✓		REP. KELSH		
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	✓
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 1

Absent 2

Floor Assignment Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 7:22 a.m.

Module No: HR-44-4499
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2039, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2039 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2039

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING ENGROSSED SENATE BILL 2039
March 10, 1999**

Chairman DeKrey and members of the House Judiciary Committee, my name is Barbara Siegel. I am the Policy Administrator with the Child Support Enforcement division within the Department of Human Services. The department neither supports nor opposes this bill.

Under N.D.C.C. § 14-09-09.7, the department is responsible for adopting child support guidelines consistent with requirements of the statute. Those guidelines are required to be adopted as administrative rules.

If this bill becomes law without any change by the House, the department will amend the child support guidelines to include consideration of extended periods of time a minor child spends with the child's obligor parent. The approach we would take would be consistent with the "Statement of Intent" as provided by the Senate Judiciary Committee. This "Statement of Intent" is attached to my testimony. Taking this approach would mean that an adjustment for visitation would apply in cases in which the obligor parent has custody of the child for 60 out of 90 consecutive days, or in instances where the parents have joint physical custody with the child residing with each parent close to equal time.

I would be happy to answer any questions you may have.

56th Legislative Session
Senate Bill 2039
March 10, 1999 9:00 am
Prairie Room

Chairman DeKrey and members of the Judiciary Committee. My name is Daniel Biesheuvel, President and lobbyist for R-KIDS organization of North Dakota.

The impact of extended visitation has been downplayed in past. The agency itself argued in favor of reducing child support obligations by exclusion of employer provided benefits in determining net income (HB1028) Which passed 93-0 on the House floor. Yet they feel child support during extended visitation should be continued when the child isn't in the custodial home.

The ability to get reduction based on hardship, is not only in itself costly, but not guaranteed. Judges impute the income some obligors, and refuse to lower the support. Increases are an easy commodity, that are promoted and encouraged by the agencies. Yet the agencies won't identify with the cost "hardship" during extended visitation. When the obligor finally gets time to share with the children, these agencies in the past have insisted on continuing support payments during those visits.

In the interim, R-KIDS worked hard to get an exclusion or at least a reduction in support during visits. The arguments ranged from, "it would encourage spite-filled frequent and longer visits" to "the custodial's expenses are ongoing".

Reduction of child support resulting in increased visitation would be only a plus. Keeping a full support obligation, if anything, will "reduce" time spent with the children. Children don't complain that "Dad didn't make his obligation this month", they complain that "Dad didn't spend much time with me".

When obligor's children come to visit, for a day, for a week, for a month, up to six months, the expense of caring for that child travels with them. When my children get off that plane, no one reimburses my money for the airline ticket. My sedan doesn't miraculously turn into a minivan. Our family room doesn't turn into a movie theater or amusement park. The entertainment I have to provide the children does not come without cost. The children's appetites remain, and our house does not immediately grow two bedrooms and another bathroom.

During the interim, it was suggested by the DHS that it is the responsibility of the noncustodial parent to save up funds to handle those extra expenses during visitation. I rebutted by stating that if that logic is to be used, wouldn't be just as much the custodial parent's duty to save up funds to replace the child support not received during those same visits? "Child support is for the children, not the adult", as stated by the DHS recently. So part of that support money should be deducted to compensate for the extra expense during visits.

A lawyer from the Taskforce on Family Law stated that the custodial parent's expenses "do not go down during visits". I disagree. I calculated the following for me:

expense	increase per month
food bill	\$200
gas/water	\$20
automobile expenses	\$100
phone bill	\$30
airfare	\$350
school supplies	<u>\$300</u>
total	\$1000 increase in my monthly expenses

The children's mother sees a \$650 (less her share of airfare) immediate reduction in expenses.

The CS Administrative Rules committee, in their wisdom, calculates the month I have my children, and pay those expenses for time with my children would result in a reduction of \$15 to \$25. That's enough for us to go to the zoo, and get a pizza afterwards. This while my ex-wife receives her full support payment, and a \$650 deduction in expenses. It doesn't seem.....equitable.

In interim, I also argued that the "extended" definition should be spelled out to mean any time needed for extended time with the children. Be it one week, one month or six month. The reduction should be 50% of the total obligation. That way the custodial parent still has funds to pay for other ongoing expenses. The Rules committee decided that 60 of 90 days or 120 days total a year is extended visitation, yet the reduction calculations, as I stated before would be "paltry".

In the Senate Judiciary committee, Chairman Stenehjem said that in Grand Forks, he had been very successful cutting support in half during court defined visitation. I think we should apply that wisdom. It is time to make the custodial parent responsible for their share of expenses, not put the whole burden on the noncustodial parent's shoulders.

Thank you, and I will be happy to answer any questions.

STATE BAR ASSOCIATION OF NORTH DAKOTA

Testimony on SB 2039

Sherry Mills Moore

Good Morning. I am Sherry Mills Moore, an attorney in private practice in Bismarck, and the Chair of the Family Law Task Force. We come to you to present the dilemma that **SB2039** embodies.

Here is the dilemma -- currently our guidelines do not accommodate the time the paying parent has with the child in the support payment. As a result, noncustodial parents pay full support for a child even during the time that the cost of the care of the child is borne by him or her. A parent may have the child for 45% of the time yet pay as if he or she never has the child.

While this seems, at first blush, to entail significant inequity there is good policy reason for not tying child support to the time the child spends with the paying parent, and that is the other horn of the dilemma. First, as a practical matter many of the costs borne by the custodial parent continue even when the child is with the other parent. The custodial parent cannot move to a smaller home, reduce the insurance, lessen the utilities, cut back on phone service, fire the child care provider, during visitation. This aspect of the dilemma exists even in the scenarios when the child is blessed parents who are both pure of heart. The dilemma darkens significantly, however, when one or both are not so pure.

As long as money is tied to time with the child, our courts will be faced with parents who seek more visitation simply to lower their child support payments and, conversely, with parents who withhold visitation simply to increase the child support.

When considering this bill please keep in mind we have not seen a good solution to this dilemma. If the guidelines remain as they are (not as proposed to be changed but as they currently exist) inequity results for the parent who has long periods of time with the child but pays full support even during those times. If this bill passes, the time with the child will come back into the fore of the courtroom battle not always as a sincere expression of what that child really needs but because of the price tag that accompanies that time. As this legislation is written the Department of Human Services is given a fair amount of leeway to continue to try to find a better fit for the visitation and the support. Without any change, however, the need to keep children out of the battlefield is the prevailing policy.

In summary, because this is a seemingly innocuous piece of legislation we wanted to point out the problems which result from any solution, including this one. If you have any questions I would be happy to try to answer them.

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL NO. 2039**

January 11, 1999

Chairman Stenehjem and members of the Senate Judiciary Committee, my name is Barbara Siegel. I am the Policy Administrator with the division of Child Support Enforcement and appear on behalf of the North Dakota Department of Human Services. The department neither supports nor opposes this bill.

Under section 14-09-09.7, the department must establish child support guidelines and must periodically review them as well. In 1998, we reviewed the guidelines, and a drafting advisory committee recommended changes, including a provision to adjust the child support amount in cases involving extended visitation. The drafting advisory committee had debated this issue at length. In the end, the proposal upon which we sought public comment represented a compromise and not a consensus.

The department requested public comment on the proposed changes to the guidelines. The comments we received showed there is virtually no agreement concerning the amount of adjustment appropriate or the factors upon which that calculation would be based. We have concluded that in the absence of any consensus on how to treat extended visitation, it may be appropriate to allow a limited deviation from the guidelines amount at the judges' discretion, perhaps using a table suggested by a district judge.

If Senate Bill No. 2039 becomes law, in its present form, the department would take that approach. If Senate Bill No. 2039 does not become law, I think we would continue to study the issue, including taking a detailed look at how other states have addressed this issue.

I would be happy to answer questions you may have.

Amendment to SB 2039

Page 1, Line 14, delete "the length" and insert after the first "of" the words "extended periods".

With the amendment Subparagraph (e) will read:

- (e) Include consideration of extended periods of time a minor child spends with the child's obligor parent.

Brief Prepared for Testimony for the 56th Legislature
Child Support Guidelines
Human Services Committee

Mark Hafner

My name is Mark Hafner and I am from Beulah ND where I have lived all my life. I am married to Denise and we have a 6 month old son, Josten. I work for the Coteau Properties Company and Denise works as a transcriptionist at Missouri Slope Clinic in Beulah

I was divorced from my first wife in 1991. Her name is Brenda and we have two daughters Kara now 13 and Deanna now 11. They moved to Tehachapi, CA shortly after our Divorce to live with her parents there. Brenda was originally from Hazen, ND and had lived in ND all her life but her parents had moved to CA shortly after we were married.

I will try to show in this brief, different parts of my divorce story and will tie them into different aspects of how legislation being looked at affects these situations.

HB 1346 Mandatory Mediation.

When we, meaning Brenda and myself first got divorced it was agreed that we did not want a big fight in court that would in turn hurt the kids and cause more problems between the two of us. Although we both had attorneys, almost all aspects of our divorce were agreed to between us. This aspect of our divorce went fine and seemed to be working fine until, and this is the problem with this idea, the spring of 1998 after she found out Denise was pregnant she decided she needed more money for Child Support and filed for such. I had assumed when our Divorce was settled and everything had been agreed to that this stipulation was binding and would be for the term of the children's eligibility. This was as I found out later not to be true. Child support as I found out can be changed later even though she knew what the guidelines required at the time of our Divorce and she admitted to knowing in court in October, under oath. My recommendation for this bill is that it would pass with the addition that this is a legal obligation by both parties and cannot be broken in a court of law or by the Child support Enforcement Unit at a later date for either persons purposes.

HB 1280 Child Support Income Shares Guidelines.

I recently went to Court for a raise in Child Support brought on by Brenda by the Child support Enforcement Unit. A few things should be mentioned here about incomes for the benefit of this bill. I work for the Coteau Properties Company and work a 40 hour week Guaranteed with a base salary of \$50386 a year. Denise works 30 hours a week at her job and will have a base salary of \$10875. As noted before we have a child from the two of us. In our case Denises salary is now figured into the basis of my support for my two Daughters. By the guidelines now in place I am paying Brenda \$991 a month in support for two children I see once a year. Brenda currently works a 40 hour a week job and is paid about \$7.50 an hour for a base pay of \$15600. Brenda is remarried and her husband works as a civilian aircraft mechanic at Edwards Airforce Base making over \$50000 a year. They are also still living with Brenda's parents who are both claiming disability and don't work. Add their incomes up and they make about \$65000 a year plus the \$12000 I send them a year. Living with Brendas parents, she only pays half the expense of the household and does not require any day care expenses. For the purpose of my case and all other cases I strongly believe that Shared Guidelines should be in place no matter how large the cost to the state, even though it would not be as large a cost as previously testified, because it is the right thing to do to fix a very unfair practice to the obligor of the children.

HB 1028 & 1029 Employee Benefits, Overtime and Second Job Exclusions.

Up until July of 1998 overtime at Coteau was very easy to come by for those that wanted to go outside their own departments to work it. Up to that point I was working overtime in my own department as well as picking up overtime in other departments. The day I am writing this is January 31, and from this day back to July 17, 1998 I have not worked any overtime, in any department. Although I am willing to work overtime it is not available anymore. Why is this important to know? When I went to Court in October I entered evidence that my income for 1998 would fall far short of what I made in 1997 and would even be less in 1999. The attorney for the Child Support Enforcement Unit turned my numbers around and added and subtracted and probably multiplied to come up with her own figures to suit their own needs. She came up with numbers showing that I would earn \$57853 in 1998 and 1999 and claimed that my figures were and I quote [Speculative and self serving to better my own interest] un-Quote. Recently I just received my W-2 for 1998. During court I testified under oath that I would make \$55000 in 1998. Guess what. My total wages for 1998 were \$54892.17. I also testified that in 1999 my wages because of the lack of overtime would continue to drop and with a possible raise in March of that year I would probably make \$52000, with again the same response from the Child Support Enforcement Unit. This figure will be what I will make this year and I will more than likely be back in court to have my case refigured in July. I leave this issue with these two thoughts, with my wage set at \$52000 which is a true and accurate figure I would not have to waste the courts time to reassess my support and the children would have been fine. And second who is being speculative and self serving to better their own interest. Please pass this bill on.

SB 2039 Child Support Guidelines and Extended Visits

My two children, Kara and Deanna live in CA with their mother, new dad and Grandma and Grandpa. I have visitation rights to see them for 6 weeks in the summer in 1999 and 2000 and 8 weeks from then on. I am required from the before mentioned agreement to pay all travel expenses to and from Ca to ND. These travel expense add up to more than \$1500 and are figured into my Child Support, but only amount to a deduction in support of \$15 a month. Being my children live in CA, when they step of that plane what they bring with them in their one small suitcase apiece is what they will have for the time they are with us. We can't just drive back to moms later and pick something up. We will have to by whatever they need to get by with, and in most cases their mother does this on purpose just so the girls will get new things. Also now that my girls are here we now have to pay daycare, which as noted she doesn't have to pay anyway, we now have to run all over to keep them entertained, feed them, etc. Which are all things she no longer has to do. I strongly urge the passage of this bill.

Required Benefits

As mentioned above I am required to pay almost \$1500 in travel expenses to get my girls back to CA. Although \$1200 of this is deducted in my Child Support it only comes of my net monthly income and gets me a \$15 break on my support. Spend \$1500 get a break of \$180. I am also required By my divorce to provide Life Insurance policies on both Kara and Deanna for \$25000 apiece that would also accrue interest and be made available to them when they go to college. I am also required to have \$100000 life insurance policy with the same effect that lists Kara and Deanna as beneficiaries. These three policies are required by divorce and cost me \$100 a month with no consideration on my Child Support. In reality then I am paying \$991 for support plus \$225 for travel expenses and insurance with a total of \$1216. Someone else whose children lived nearby and was not required to have Life Insurance policies which by the way is not a requirement would then only be paying \$991. This is a good bill and should definitely be passed

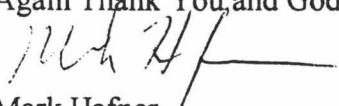
SB 2197 False allegation of Domestic Violence

As noted before I just finished going through courts on Child Support and myself going for more visitation. On the issue of more visitation the judge did rule in our favor for more visitation. My X- wife did not like this. After everything was completed and I thought over for now I received in the mail a copy of a letter sent to the judge from her attorney disagreeing with his finding for longer visitation and claiming Domestic Violence In our previous marriage and my current marriage. No mention of Domestic Violence was ever mentioned in our first divorce or in the courtroom while arguing case points for longer visitation. The reason being that it could never be proven by her because it didn't exist and was only made as a allegation in a desperate measure for a change that I could now not defend myself against. This Bill will not keep people that are involved in a domestic situation from reporting it but it will deter false accusations from being made or at least give the accused the protection that they need.

In closing I would like to say that I know these are only a few of the bills being looked at but I think they are all a good start to Make the Child Support System more fair than it is. It would eliminate most of the complaints, problems and injustices brought on by a system that is totally for the well being of the custodial parent with no rights at all to the non-custodial parent regardless of how good a parent they are. I also firmly believe that this system of Child Support Enforcement that is in place only affects those people who are as good of parents as they can be by continually going after these people for more and more things while those people who could care less about their kids, continue to not support their children and never see their children continue to be looked over, pampered to and basically don't have any thing happen to them. I also believe the Department of Human services and especially the Child Support Enforcement Units need to learn to be more fair and understanding in their methods and should not be speculative and self serving just to fit their needs.

I Thank You for taking the time to read this description of my case, how these bills affect me and how I feel about them and this system in North Dakota. I have tried to keep as much of my negativity about this system as it is now, out of this description and in no way mean to offend anyone if it did. I believe North Dakota is an excellent place to live and raise children and I know that you people are doing your best to make it a fair and equal place for all people to live.

Again Thank You, and God bless you and your work here,



Mark Hafner
5840 4th St NW
Beulah ND 58523

**SOUTHEAST REGIONAL
CHILD SUPPORT ENFORCEMENT UNIT**
Serving Cass, Ransom, Richland, Sargent, Steele and Traill Counties

in Association with

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David L. Carlson
Investigator

March 8, 1999

Representative Duane DeKrey, Chairman
House Judiciary Committee
North Dakota State Capitol
Bismarck, ND 58505

RE: SENATE BILL 2039

Dear Representative DeKrey:

The Southeast Regional Child Support Enforcement Unit opposes Senate Bill No. 2039 and the accompanying Statement of Intent relating to the child support guidelines and extended visitation.

It is our opinion that a child support guideline that forces a specific calculation of time spent with each parent would further alienate parents who are struggling to cooperate in their parenting responsibilities. Such a system would place the children in the middle of a controversy and put an additional burden on the child support enforcement system and the court system.

The Statement of Intent directs the Department of Human Services to consider periods of time when an obligor parent has "custody". In order to determine which parent has custody, attorneys, the Court and child support personnel would have to obtain custody information from each parent, or other sources. If the information provided is not consistent, and the parties fail to agree, a Court hearing would have to be scheduled in order for a factual determination to be made as to which parent had "custody" at any given time. This would be laborious and, most likely, contentious. Moreover, this process would result in a tremendous increase in the volume of legal work for the regional child support enforcement units in North Dakota. We are not authorized, funded or staffed to handle custody/visitation disagreements, which are inevitable when we are forced to review visitation calendars for both parents to ensure appropriate credit is given. This bill would also add several steps to the guideline calculation itself, requiring additional regional staff to process these cases in a timely fashion in order to meet federal requirements.

Representative Duane DeKrey, Chairman
House Judiciary Committee

March 8, 1999

Additional problems would be created if the parents did not follow the dictates of the Court order. Many Court orders specify a certain "quantity" of time that the non-custodial parent may visit the child(ren). If a Court order specifies that a party is to have "close to equal time" with a child, but the visitation ordered is not exercised (either voluntarily or involuntarily), how should this affect the child support calculation? What if a judgment does not specify a visitation schedule, but provides for "reasonable visitation", a common provision. The parties would be especially burdened in these situations as it would be our responsibility to establish a support obligation which considers credit for visitation, but the parties would be responsible for the expenses associated with visitation enforcement, as we have no authority in this area. If visitation matters cannot be clarified or agreed upon by stipulation, as is the process usually used under the current guidelines, the child support process itself will be much more time consuming for both the parties and child support enforcement.

Consideration of extended periods of time spent with a parent could place children in the middle of a dispute between their parents. A child should not be placed in a situation where he or she would be asked which parent had physical custody at any given time. Furthermore, do you really want to place a dollar value on the amount of time a child would spend with one parent or the other? What if it is the child who refuses to visit a parent?

If extended visitation must be included in the child support guidelines, we propose adding extended visitation as a deviation. It would not be automatically calculated in the guideline calculations, but can be raised by either or both of the parties as a reason for the court to deviate from the normal guideline calculation. The parties would present arguments at a court hearing on the visitation credit issue and the regional child support enforcement unit would not be involved. It would then be treated like other deviations, such as travel expenses for visitation, private school costs, and the cost of child care.

There are cases in which parties have shared custody of children and a deviation from the child support guidelines is incorporated into the findings to accommodate this situation. We believe that allowing the Court to consider "co-parenting" through the process of guideline deviation will alleviate the concerns of this committee about unrecognized extended periods of visitation.

RCSEU

FAX NO. 2415748

ative Duane DeKrey, Chairman
diciary Committee

8, 1999

Please call us at any time if you have any questions. Thank you for your consideration.

Sincerely,

Adair R. Boening
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Assistant Cass County State's Attorney

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KMZ/tma

cc: House Judiciary Committee Members

STATEMENT OF INTENT

It is the intent of this amendment to direct the Department of Human Services to include in the child support guidelines consideration of extended periods of time a minor child spends with the child's obligor parent. The guidelines should consider extended periods of time to mean those situations where an obligor parent has custody of the child for 60 out of 90 consecutive days, or in instances where the parties will have joint physical custody with the child residing with each parent close to equal time. The phrase "close to equal time" shall mean where each parent has physical custody of the child at least 45% of the time.