

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2269

2005 SENATE HUMAN SERVICES

SB 2289

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2289

Senate Human Services

☐ Conference Committee

Hearing Date January 24, 2005

| Tape Number                                   | Side A | Side B | Meter #    |
|---|--------|--------|------------|
| 1   |        | X      | 4,860-End  |
| 2   | X      |        | 1-END      |
| 2   |        | X      | 3,390- END |
| 3   | X      |        | 1-700      |
| Committee Clerk Signature <i>Cathy Kinard</i> |        |        |            |

Minutes:

**Chairman Lee** opened the hearing on SB 2289. All Senators were present.

**Chairman Lee** introduced SB 2289, which relates to child support guidelines and child support reviews. The bill has to do with income shares, the income is now based on the non-custodial parent. The concept of income shares also considers the financial situation of the custodial parent.

**Senator Fischer** is a co-sponsor of the bill and reiterated the intent of the bill, covered by Chairman Lee.

**Senator Dever-** What objections have been to this bill in the past?

**Fischer-** None that I know of.

**Chairman Lee-** One of the objections that I have heard of is cost. It makes a difference for individuals who are involved in these situations, if you consider the income and assets of the household. There is some injustice if we choose to look at the income of only one side.

**James Fleming, Deputy Director and General Counsel of the State Child Support**

**Enforcement Division of the Department of Human Services** brought forth testimony and 2 sets of proposed amendments for the bill. See attached.

**Chairman Lee-** The obligation of paying health insurance premiums for a child who is in college, either would be voluntary or stated in the divorce decree?

**Jim-** You are correct, in the case mentioned the health insurance option was voluntary.

**Chairman Lee-** If a 19 year old is going to college, and the father is paying for medical insurance, there isn't child support for that 19 year old. Would that affect a younger sibling's child support?

**Jim-** Yes, that could very well be the case.

**Senator Brown-** Would it affect most obligors who are carrying single health insurance for themselves?

**Chairman Lee-** The only way it would affect is if the child is receiving child support. If the child is over 18, they do not receive child support.

**Senator Brown-** If an individual lost his high-paying job because of down sizing, and received a position with a lesser income or with a higher wage, would you reconfigure that income?

**Jim-** The guidelines provides for imputations based on a voluntary change in income. If indeed a court would determine it was a voluntary change of income, they would pay what they would pay

if they had a higher paying job. Under our amendment, the individual would receive a review after 18 months at no charge.

**Senator Brown-** The individual knows that he has the option of going to court, although that would be more expensive.

**Jim-** That is a common complaint that we come across. If you leave a person with half a paycheck, its tough to make ends meet.

**Senator Warner-** My concern has to deal with incarcerated obligors. Are we running into problems in ND where people are not getting child support, because the state might not be paying its prison labor enough money?

**Jim-** We do send income to inmates who have child support payments that are not being met, based on their pre-incarceration income. Our amendment would increase the frequency that we would look at the inmate's obligation for child support. We have inmates that are coming out of prison today, with more debt because their obligations were not changed when they went to prison.

**Chairman Lee-** I have a hard time forgiving child support to an individual who is incarcerated.

**Jim-** A review will take place 6 months after they are released from jail, if our amendment is adopted.

**Senator Dever-** If either the obligor or obligee get remarried, are their spouses incomes considered in this?

**Jim-** The income of spouses is not considered.

**Senator Dever-** So, you would not expect obligors to be relieved of child support responsibilities?

**Jim-** The obligors responsibility would still be tied to their income. If the obligee has an increase in income that would not be reflected in the obligor's child support.

**Barb Seegal, State Child Support Enforcement Division-** We start out with the gross income which we reduce by a number of things, including health insurance premiums. The non-custodial parent should get credit for that additional child coverage found in the amendment. If a non-custodial parent remarries, their family health insurance coverage might cost as much as \$300.

**Chairman Lee-** Why is the \$300 viewed as a lump sum?

**Barb-** It would be proportioned out, rather than a lump sum.

**Senator Lyson-** So, if someone gets divorced, and has 3 children and a health insurance coverage of \$300 through his employment. He gets credit for that \$300 after he gets divorced?

**Barb-** Yes. The benefit for the children would be prorated. Also, the word dependent in the amendment is used to signify dependent health insurance coverage, not relating to someone who is under 18.

**Sherry Mills Moore, appeared on behalf of the State Bar Association of ND,** with a neutral position on the bill. See attached testimony.

**Chairman Lee-** What do you think about the amendment regarding the 18 month review?

**Sherry-** I hear a lot more complaints from my clients, because some of them can't afford to hire a lawyer when their salary changes. If you allow for discounts with the child support system, then you start to water down what's available for minor children.

**Sheila Keller, an attorney with the Bismarck Regional Child Support Enforcement Unit** appeared before the committee with neutral testimony. See attached.

There was no testimony in favor of the bill.

**Brad Davis, child support administrator** of the Southwest area child support enforcement unit in Dickinson, appeared in opposition to the bill. See attached.

**Chairman Lee-** Did you have a chance to look at the hog house amendment, that would have allowed 18 months review?

**Brad-** Yes, I have looked at it, if we want to put the money where it makes a difference to people, we will be affecting the lives of far more people.

**Chairman Lee closed the hearing on SB 2289.**

**Chairman Lee** called the committee to order to discuss on SB 2289.

**Chairman Lee** inquired on what the feelings of the committee members were on in regards to the income shares discussion and changing the rules on when reviews could be conducted.

**Chairman Lee-** You said in your testimony this morning, that you collected half a million dollars in interest. I understand that there is a bill that could eliminate interest on child support.

**Jim Fleming-** We prefiled a bill that will allow us to make interest negotiable with an amnesty provision. There is another bill that would eliminate judgement interest on child support. We have spent \$400,000 to get interest operating on our system.

**Chairman Lee-** Are all the bills going to be heard by the same committee?

**Jim-** This committee will hear the amnesty bill, while the Judiciary committee will likely hear the others.

**Senator Brown-** I got the feeling you are not interested in income shares. Is that true?

**Jim-** We plan on bringing forth an alternative proposal that would serve the same goals and have a more substantive outcome.

**Senator Brown-** Why did you put in a hog house amendment?

**Jim-** We are still struggling to do the best with the resources we have. If the committee is willing to invest a certain amount of new money, we will have an alternative ready on how we believe it can be done better.

**Chairman Lee-** I don't think its a bad idea to review that option. It will allow us to look at the bigger picture, and plan for something that may be implemented over a period of time. We are looking at interest being charged on child support intending it to be an incentive to encourage people to pay.

**Senator Warner** informed the committee about his concerns on incarcerated obligors relating to prison labor wages and child support. Consideration of a prevailing wage standard for prison labor across the state would be a good idea.

**Senator Dever-** I am curious on how much latitude a judge has when someone comes before them on child support?

**Mike Schwindt, Director of the Child Support Enforcement Division of the Department of Human Services-** We have flexible regulations on this, the guidelines are based on income and the number of children. The full cost of day care is not including in the guidelines for a working parent. Sometimes you depart upwards because of the needs of the child, and other times you depart downward because the obligor doesn't have the funds available.

**Senator Dever-** In the case of an inmate that goes before a judge with zero income, what happens?

**Mike-** In that situation, the court would be applying the guidelines to the net income of the inmate. A \$168/month obligation would be likely. The cases we are concerned about are those with inmates that come into prison with a \$300-\$500/month obligation.

**Senator Warner-** It seems that there are three different classes of inmates when it comes to prison labor. Do they all get the same amount of income to generate \$168/month for child support?

**Mike-** They would not be able to generate that type of income, depending on the job in prison. Each situation has to be examined on an individual basis.

**Senator Warner-** My understanding is a job in prison is a reward for good behavior, correct? If they have bad behavior they are denied a job?

**Mike-** The inmate would be figured in at \$168/month, which does not include whether or not they have a job in prison. Income withholding is maxed out at 50% of disposable earnings.

**Senator Dever-** Does the balance continue as an obligation?

**Mike-** Yes, when it is due and becomes unpaid, it is a judgement and accrues judgement interest.



**Chairman Lee asked Jim Fleming** to refresh the committee on section 7.

**Chairman Lee-** If we did not adopt the hog house amendment, and didn't go with income shares, what would happen?

**Mike-** The guidelines are scheduled to be reviewed every 4 years. We have held the rule making open during the legislative session. Any legislation that passes during the session needs to be implemented and finalized the following summer.

**Senator Brown-** I would like to have Representative Devlin come in and talk to us about income shares. The testimony I have seen so far hasn't really convinced me, the funds aren't available.

**Chairman Lee-** It seems like the income shares idea is not sitting well with the committee. We see some validity to the hog house amendment. Our committee has the responsibility to get feedback on this bill before sending it to Appropriations, if that is what our intent is.

**Chairman Lee closed the committee meeting on SB 2289. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2289

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 1, 2005

| Tape Number                                   | Side A | Side B | Meter #  |
|---|--------|--------|----------|
| 3   | x      |        | 960-1450 |
|   |        |        |          |
|   |        |        |          |
| Committee Clerk Signature <i>Cathy Minard</i> |        |        |          |

Minutes: Chairman Lee reopened the discussion on SB 2289.

**Jim Fleming, Deputy Director and General Counsel of the State Child Support**

**Enforcement Division of the Department of Human Services:**

For background, Mr. Fleming gave a primer of sorts on how the Department handles child support now with emphasis on obligor and obligee responsibilities.

Chairman Lee mentioned that the committee had been looking at the testimony and a significant number of STDs and reprogramming of cases that would be required and we'd end up with a zero sum game as far as the dollars coming out. If our whole goal is to look at what's good for the child, do we want to add a whole lot more staff and reprogramming the kid still gets the same amount of money.

Senator Brown moved DO NOT PASS on SB 2289, seconded by Senator Lyson

Vote: 5 yeas, 0 nays, 0 absent Carrier: Senator Dever

Chairman Lee closed the discussion on SB 2289.

# FISCAL NOTE

Requested by Legislative Council  
01/24/2005

Bill/Resolution No.: SB 2289

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                | 2003-2005 Biennium |             | 2005-2007 Biennium |             | 2007-2009 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    |             |                    | \$925,709   |                    | \$854,588   |
| Expenditures   |                    |             |                    | \$150,000   |                    |             |
| Appropriations |                    |             | (\$775,709)        | \$150,000   | (\$854,588)        |             |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2003-2005 Biennium |        |                  | 2005-2007 Biennium |        |                  | 2007-2009 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  | \$1,252,590        |        |                  | \$1,294,830        |        |                  |

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill changes the guidelines used to determine the expected contribution of child support by a parent to an income shares model. If this model is used it is estimated the Regional Child Support Enforcement Units (RCSEUs) would incur costs for an additional 10 FTEs and operating costs, resulting in additional retained funds for the Department of Human Services. The department would incur costs related to re-programming FACES.

The appropriation affected would be the agency's regular appropriation.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The RCSEUs increased expenditures would result in the department realizing increased retained dollars based upon the SWAP legislation passed in 1997. The amount of the increased funds would be 66% of the increased county costs for the RCSEUs.

The department would also receive federal funds of \$99,000, which is 66% of the \$150,000 of expenditures the department would incur for the re-programming of FACES.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The department would incur \$150,000 in operating costs to re-program FACES to support the income shares child support guidelines model.

The RCSEUs would incur increased expenditures related to the 10 additional FTE and related operating costs for the implementation of the income shares child support guidelines model.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

*budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The Department of Human Services would need additional appropriation authority of \$150,000 in the 2005-07 biennium for the computer re-programming changes. The additional retained funds received in both the 2005-07 and 2007-09 biennia would replace general fund moneys.

|                      |                 |                       |            |
|----------------------|-----------------|-----------------------|------------|
| <b>Name:</b>         | Brenda M. Weisz | <b>Agency:</b>        | DHS        |
| <b>Phone Number:</b> | 328-2397        | <b>Date Prepared:</b> | 01/27/2005 |

Date: 2-1-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2289

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

Motion Made By Sen. Brown Seconded By Sen. Lyson

| Senators                        | Yes | No | Senators         | Yes | No |
|---------------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee - Chairman        | ✓   |    | Sen. John Warner | ✓   |    |
| Sen. Dick Dever - Vice Chairman | ✓   |    |                  |     |    |
| Sen. Richard Brown              | ✓   |    |                  |     |    |
| Sen. Stanley Lyson              | ✓   |    |                  |     |    |
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Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2005 5:04 p.m.

**Module No: SR-21-1621**  
**Carrier: Dever**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2289: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2289 was placed on the Eleventh order on the calendar.**

2005 TESTIMONY

SB 2289

Prepared by the North Dakota  
Department of Human Services  
January 24, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, line 1, remove "to create and enact a new subdivision to subsection 1 of section 14-09-09.7 of"

Page 1, line 2, remove "the North Dakota Century Code, relating to child support guidelines;"

Page 1, line 4, after the second comma, insert "subsections 1 and 4 of section 14-09-09.7,"

Page 1, line 6, after "reviews" insert "and child support guidelines"

Page 5, replace lines 10 through 13 with:

**"SECTION 7. AMENDMENT.** Subsections 1 and 4 of section 14-09-09.7 of the North Dakota Century Code are amended and reenacted as follows:

1. The department of human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
  - a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
    - (1) That benefit may be liquidated; and
    - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.
  - b. Authorize an expense deduction for determining net income.
  - c. Designate other available resources to be considered.
  - d. Specify the circumstances that should be considered in reducing support contributions on the basis of hardship.
  - e. Include consideration of ~~extended~~ periods of time a minor child spends with ~~the child's obligor~~ each parent.



- f. Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor or obligee does not have significant influence or control.
  - g. Consider the income of both parents, using an income shares child support guidelines model.
  - h. Authorize a rebuttal of the presumption provided in subsection 3 for a portion of health insurance premiums for a dependent expended and not otherwise considered when determining net income.
4. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998 ~~2008~~, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council."

Renumber accordingly

**TESTIMONY  
SENATE BILL 2289 - DEPARTMENT OF HUMAN SERVICES  
SENATE HUMAN SERVICES COMMITTEE  
JUDY LEE, CHAIRMAN  
JANUARY 24, 2005**

Chairman Lee, members of the Senate Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the State Child Support Enforcement Division of the Department of Human Services. I am here to testify on Senate Bill 2289.

We do not oppose Senate Bill 2289. The concept of income shares has not been discussed in a legislative hearing for four years, and with the discussion you just had on the overall structure of our program, it is understandable to consider how a change to an income shares model might fit in a state-administered program. We also recognize that the sponsors of the legislation have long been supporters of effective child support enforcement.

We all support the sustained collection of affordable child support, because of the benefit to kids and taxpayers. These concepts go hand in hand – you cannot collect what the obligor cannot afford to pay. While we do not oppose Senate Bill 2289, some of the reasons the Department did not support income shares legislation in the past still exist. Therefore, we have prepared a substitute amendment that addresses these areas but also maintains the concept of fairness in the original bill.

Before discussing our substitute amendment, I'll summarize three of the past concerns with income shares.

First, in 1999, Mike Schwindt said to the Senate Judiciary Committee "We see little to be gained by switching to income shares except the perception of greater fairness." We believe this is still true. Based on the interim committee analysis leading up to the consideration of similar legislation in 1999, we do not expect any

substantial change in ongoing child support obligations as a result of switching to an income shares model for the guidelines.

Second, the fiscal effect of the bill is significant, calling for the addition of roughly 10 FTEs and significant reprogramming of FACSES. This does not include the hundreds of hours of staff time, and the time of the Child Support Guidelines Advisory Committee, to completely rewrite the guidelines. We also have years of helpful court precedent interpreting the existing guidelines. The teaching in these cases would be rendered obsolete and the learning process would start all over again.

Third, some of the refinements that were made in our existing guidelines to address obligors' concerns, such as deductions for multiple families and extended visitation, would be lost.

Nevertheless, we hear the same complaints you do. We struggle with the impression many obligors still have today that the goal of the child support enforcement program is simply to collect the maximum amount of child support possible. It is a reputation that is hard to shake. Many people, including legislators, are not aware that an obligor can apply for our services, request review and adjustment services, and that if the obligor's income warrants a reduction, the necessary court documents will be filed by the regional child support enforcement unit.

We also want to address areas where we feel the program can be more fair and responsive to everyone. If the State is interested in investing additional resources in the establishment of child support obligations to be more responsive or "fair" to obligors, we support that change, but would like to propose a substitute amendment for the committee's consideration. We believe our amendment would cost roughly the same as the bill as introduced, if not less, but would produce a tangible improvement in the affordability of child support obligations. In addition,

by establishing and maintaining obligations that more closely track changes in an obligor's actual income, we would expect our performance to improve on at least two of the five federal performance measures: collection of current support and the number cases with a collection on arrears.

As with income shares, the focus of our amendment is on how much an obligor has to pay. However, rather than comparing an obligor's income to the obligee's income, which rarely results in a change in the obligation, we propose to review obligors' incomes more frequently in targeted areas where we see real differences between what obligors owe and what those obligors can actually afford.

Madame Chairman, in preparing this testimony, I spoke to our customer service manager, who has been handling customer calls herself every day for many years. I asked her what she thought was the cause of more obligor complaints: the fact that the obligation was determined without regard to the custodial parent's income, or that the obligor had changes in his or her income but could not obtain help from us in changing the ongoing child support obligation outside the three-year review cycle. She told me that without a doubt, the much more common complaint was that the obligor lost a job or experienced some other change in income that made it hard to afford the current child support obligation. We believe this experience is important for the committee to know as it reviews this legislation and our proposed amendment.

This concludes my testimony. I would be happy to answer any questions the committee may have.

Prepared by the North Dakota  
Department of Human Services  
January 24, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 14-09-08.4 of the North Dakota Century Code, relating to child support reviews.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 2 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:

- a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
- ~~b.~~ The ~~the~~ order provides for no child support and was based on a finding that the obligor has no ability to pay child support; or
- b. More than eighteen months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later, and:
  - (1) The obligor is incarcerated, provided that the obligor is not expected to be released for at least six months after the date the review is requested and agrees to an additional review to be initiated within six months of the obligor's release;
  - (2) The current monthly support obligation was established based on imputed income;
  - (3) The obligor or obligee has presented income information to the child support agency indicating that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7 as a result of a change in the obligor's net income resulting from:
    - (a) Activation for, or release from, military duty of at least one year in duration;
    - (b) The receipt or termination of benefits to the child as a result of the obligor's disability; or
    - (c) The enrollment of the child in health insurance coverage required by the court, or discontinuation of health insurance coverage for the child;

- (4) The current monthly support obligation was established by default and either the obligor or obligee has presented income information to the child support agency indicating that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7; or
- (5) The obligor has experienced a job loss or demotion that is involuntary and is expected to result in a decrease in net income of at least twenty-five percent per year, or a job change or promotion that is expected to result in an increase in net income of at least twenty-five percent per year."

Renumber accordingly

**STATE BAR ASSOCIATION OF NORTH DAKOTA  
TESTIMONY ON SB 2289 (INCOME SHARES)  
SHERRY MILLS MOORE**

I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota. The Association wants to point out the concerns this bill creates.

Before doing so, however, I think it would be helpful for you to know that I am and have been an attorney in private practice in Bismarck for the last 26 years. While my practice is varied, the vast majority of my time is spent handling family law cases, and I do so by preference. Family law is an extremely important area of the law that allows me the opportunity to work with all kinds of people, with all kinds of problems, and to influence a branch of the law that deals with that which is most dear to us all -- our families. I am also the Past President of the Family Law Section of the Bar Association, chair of the Family Law Task Force, served with Senator Fisher and Representative Devlin on the child support guideline advisory committee to the Department of Human Services resulting in the most recent proposed changes to the guidelines as well as in 2000 and in 1995. Currently I serve as the President of the State Bar Association of North Dakota.

My primary concern with this bill is the requirement that the child support guidelines be based upon an income shares model. Perhaps some more background will better illuminate this concern. As a part of my practice I represent mothers and fathers and grandparents in every configuration, that is, custodial parents, noncustodial parents, obligors, obligees, those who are undergoing a divorce, a separation, a modification of child support, and support outside the marital arena. Most of the people I represent would be subject to this bill and its provisions because they are dual income families. It is not mere theory to them. They will need to live with it. I have and will have clients who might benefit from an income shares system, as well as be hurt by them.

The basic concept behind income shares is commendable -- to create the most equitable system of child support possible. Sometimes the most laudable goal has to be subrogated to practicality. The income shares model increases the opportunities for dispute. Family litigation, perhaps more than any other litigation, is absolutely prone to fractious nitpicking, dispute over minutiae. People embroiled in divorce need more certainty and less expense; more avenues for resolution and fewer arenas for dispute. If you pass this bill you may be sacrificing peace of mind for the appearance of equity.

Simplicity and Consistency

We have had an obligor system firmly in place for about thirteen and one-half years. I am concerned that by scrapping it we will be left with less not more. Under our current guidelines, when someone comes in to see me, whether they look to be the obligor or the obligee, I need some basic information after which I can give a ballpark figure on support. Better yet, I know that the other parent will be getting very similar information. We are all reading from the same playbook. This time of year, before the 2004 tax

returns are in, I ask for pay stubs that show year-to-date totals, for prior tax returns, and whether they have any abnormal expenses or revenues. Now I even have computer software which eliminates easy error. I can then tell them about what they are going to have to pay or going to receive. When they see a chart, they are enormously comforted by its uniformity. When they see the number, they plan accordingly. Often with that information, the parents themselves are able to work out the other details and a relatively peaceable divorce results.

Income shares models magnify the opportunities for honest differences of opinions, let alone the less commendable sort. Perhaps an example would illustrate this. I represented a mother in a divorce. The parties agreed on everything. He acknowledged his salary and would pay according to the chart. Because his salary exceeded that of the IRS deduction tables we could not simply turn to their chart and we could not agree on the computation. His attorney was someone for whom I have great respect and a good working relationship, but we had an honest difference of opinion that was only resolved by hiring a CPA. Granted it didn't take the CPA a great deal of time but the point is, that even under the best and most congenial of circumstances under our very simplified current guidelines we have problems.

#### Court Clogging

At the present time, support can be adjusted after a year if it is not being paid in conformance with the guidelines and all support has the opportunity to be reviewed every three years. If it is based upon the income shares model, even if just on income alone without any adjustments for child care costs and other factors commonly considered in income shares models, the review will be triggered twice as often -- that is by changes in either party's income. If other equalizing factors, such as child care costs, are included, the opportunities grow again. There are twice as many reasons for a review, and the change will engender many more requests for review. This means more of the very things that bother clients the most about the process of divorce -- delay and cost.

I thank you for the opportunity to speak to this bill. If you have any questions, I would be happy to try to answer them. If any arise in the future you may contact me by telephone at 222-4777 or e-mail address of Thank you.



TESTIMONY ON SB 2289  
BEFORE THE SENATE HUMAN SERVICES COMMITTEE  
JANUARY 24, 2005

Madam Chairwoman and Senators--Good Morning. My name is Sheila K. Keller, and I am an attorney with the Bismarck Regional Child Support Enforcement Unit. I am here to provide comments to Senate Bill 2289 as it concerns requiring the department of human services to establish child support guidelines which consider the income of both the obligee and the obligor.

Child support guideline models which require the use of income of both the obligor and the obligee in a case are often referred to as income-shares models. There is no doubt that using a description such as "income shares" or requiring consideration of the incomes of both parents leaves an impression of being more fair than looking at only one parent's income. However, we must not be swayed by the illusion that is created if one looks to just a title or concept. We need to look deeper and ensure that the result of such a requirement is actually more fair than North Dakota's current model.

The current North Dakota Child Support Guideline model has evolved over the past many years. Each revision has been influenced by factual scenarios not previously considered, case law issued by the North Dakota Supreme Court, and concerns raised by the public, the legislature, trial courts and the legal bar. This evolution must be a factor when considering whether a complete overhaul of the Guidelines is necessary.

When considering the results of a certain method or formula for calculating income and a child support obligation, the number that results, in and of itself, cannot be

the deciding factor of whether one model is more fair than another. There are intangibles that must be considered, which would include the types of non-monetary contributions that should be considered, and the amount of time and resources that the private bar, government attorneys and the judiciary will need to spend on the new method of calculating child support obligations.

Our current child support guideline model recognizes that the custodial parent provides non-monetary support for a child. The Guidelines recognize that there is value to providing things to which a dollar amount cannot immediately be attached, such as the support a custodial parent provides to a child who is sick or had a bad dream. Requiring that both parents' incomes be considered when calculating an obligation may initially be seen as removing consideration of these non-monetary contributions of the custodial parent. Of course it is possible to draft an income-shares model so as to require the consideration of such contributions, but this then raises the question of how to determine the value to be placed on said contributions. A dollar value can be calculated for food, rent and gasoline, but how do you attach a value to washing clothes, packing a lunch or attending a Girl Scout or Cub Scout meeting?

Additional time spent by the parties, their and/or government attorneys and the judiciary must also be considered prior to requiring a change in models. This is especially true if a comparison of the child support obligation which results from applying a scenario to both our current model and an income-shares model shows a small difference in obligations. I am unable to give you an estimate of how much additional time would be required but, based on calculations we currently perform in equal custody

and split custody cases, I believe there would be a noticeable increase. There would be more time spent on gathering the requisite financial information and documentation from both parents. There would also be more time spent on the calculation of incomes, including determining non-monetary contributions and their values. I would also anticipate additional litigation, especially if a possible result is that the custodial parent would have a higher obligation than the non-custodial parent.

I have touched on just a few things which are important to consider in making sure there is more than an illusion of fairness. Many more issues could come to light during a more detailed look at the differences between our Guidelines and a proposed income-shares model. Again, merely requiring the use of an income-shares model does not ensure that the resulting child support calculations will be more fair than what would result under our current model. Children, and the parents who support them, deserve better. The courts and the legal bar deserve better. If a change is truly warranted, then the time and effort will be worth it. But we should not assume that a label placed on a particular method of calculation warrants a change to the current model. We should not off-handedly throw out the time and effort that has been given to thoughtful debate and changes made to our current Guidelines, merely to create an image of fairness. Let's be sure that the change will actually result in a more equitable result.

There are available existing income-share models, in use in other states, which can be used as an initial reference point in a review of our current Guidelines. It is possible to use factual scenarios to compare results under our current model and those from selected income-shares models. This would give all a better idea of what real differences

result. There would also be a better idea of the amount of time that each involves, and whether or not sufficient consideration is given to such things as intangibles and non-monetary contributions. Before requiring the creation of an income-shares model we should be sure that such a model is more equitable to a sufficient degree that it outweighs the time and effort that will be spent in revising our Guidelines, as well as the additional time and money expended in implementation in future cases. I do not believe there are sufficient facts before us to make this determination and would suggest that this needs to be investigated further before requiring the change be made.

**Testimony before the  
Senate Human Services committee  
Regarding Senate Bill NO. 2289  
January 24, 2005**

Chairman Lee and members of the Senate Human Services Committee, My name is Brad Davis. I am the Child Support administrator of the Southwest area Child Support Enforcement Unit in Dickinson. I appear before you today in opposition of Senate Bill No. 2289 that would require the Child Support division of the department of Human Services to create an Income Shares Child Support Guidelines.

As a regular part of my job I spend considerable time using the child support guidelines to calculate child support obligations. I have been conducting child support guidelines calculations for almost 20 years and have watched and participated in the changes and developments of North Dakotas child support guidelines for all of those years. In October 1997, I had the opportunity to participate on a panel of child support professionals to present and discuss different models of child support guidelines at the Western States Child Support Enforcement Conference. As a result of this I have had some experience studying various guidelines models, including income shares.

The idea of an income shares guidelines model has been studied and debated by North Dakota legislature many times, in fact a 1997 – 1999 interim committee completed a study which included consideration of an income shares model guidelines and no bill was introduced.

As part of that study the previous State Child Support Director Bill Strate, Blaine Nordwall and I, conducted several comparisons of various states child support guidelines compared to North Dakotas Guidelines at the request of the committee. The results of those comparisons showed little or know difference in the eventual support amount regardless of the model, even though some of the income shares models required us to collect and consider twice as much financial information as our current guidelines do.

Ever since North Dakota's child support guidelines evolved from a simple one page table of suggested minimum contributions, they have maintained the premise that one parent acts as the primary care giver for the child or children and the other parent contributes a payment of child support to the child or children's care.

This is an extremely important concept as it recognizes the value of the in-kind support given by the custodial parent.

When we first hear the term "Income Shares" it conjures up a notion of fairness. Both parents should contribute to the care of their children and what could be more fair than calculating the amount of that support proportional to their individual incomes.

The truth is that the income shares models that I have had an opportunity to work with totally ignore the value of the in-kind contribution of support provided by the custodial parent. In essence income shares require a custodial parent to provide a proportional share of the financial support of the child and all or nearly all of the in-kind support for the child.

I'm not at all sure how one would determine the financial value of in-kind support, perhaps it would be the amount of money it would cost to hire someone to perform all of those things that a custodial parent does for their children. If so, very few non-custodial parents in ND have child support obligations of an amount that would equal the financial value of the in-kind support provided by the custodial parent.

The idea that a guidelines model would require custodial parents to provide a proportional share of the financial support and continue to provide all or nearly all of the in-kind support of a child is simply not fair.

An income shares guidelines would cost more money and be more work for those of us that do the calculations. This has to be considered, but please don't get the impression that I am simply opposed to doing more work. That isn't the case.

Income shares guidelines give an illusion of fairness. I can appreciate the legislatures desire to have a guidelines that look fair, but at what cost. I have been very successful in the past of explaining the differences between the guidelines and the logic behind ours to individuals who have questioned it in the past and suggest that it is a much better what to handle those complaints than remodeling the guidelines.

I would like to suggest that this committee conduct an exercise similar to the one conducted by the 97 – 99 interim committee and study a comparison of scenarios to see the difference between how the various models are calculated and what the results are. I would be more than happy to help perform and present calculations comparing whatever scenarios with whatever state's guidelines you would like.

I'd be happy to try to answer any questions you might have.

Prepared by.  
Brad Davis  
Child Support Administrator