

2021 SENATE HUMAN SERVICES

SB 2132

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

SB 2132
1/20/2021

A BILL for an Act to amend and reenact section 14-09-09.38 of the North Dakota Century Code, relating to suspending a child support obligation of an incarcerated parent.

Madam Chair Lee opened the hearing on SB 2132 at 10:43 a.m. All members present: Senator Lee, Senator K. Roers, Senator Clemens, Senator Hogan, Senator Anderson, Senator O. Larsen.

Discussion Topics:

- Docket congestion
- Reverting V.S. Re-establishment
- Operational process

[10:44] Senator Kreun, District 42. Introduced SB 2132

[10:51] Jim Fleming, Director, Child Support Division, Department of Human Services. Provided testimony #1919 in opposition.

[11:13] Pat Bohn, Director, North Dakota Parole and Probation, Department of Corrections. Provided oral testimony in opposition.

[11:15] Senator Kreun, District 42. Provided clarification on docket congestion and the need for an attorney when adjusting child support.

Additional written testimony: N/A

Madam Chair Lee closed the hearing on SB 2132 at 11:24 a.m.

Justin Velez, Committee Clerk

Testimony
Senate Bill 2132 - Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman

January 20, 2021

Chairman Lee and members of the Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here today to testify in opposition to a provision in Senate Bill 2132 and to offer some information for the committee's consideration.

For those serving on this committee in 2017, you may recall that 2017 Senate Bill 2277 enacted section 14-09-09.38 of the North Dakota Century Code. 2017 Senate Bill 2277 was originally considered and recommended by this committee. As described by the Department during the 2017 hearing, the purpose of the law is "addressing uncollectible child support arrears rather than reducing the amount of money that is actually collected and distributed to families."

During the 2017 hearing on the bill, the committee specifically discussed whether the obligation of a parent who is released from jail should revert to the amount owed prior to incarceration or be determined based on the parent's post-incarceration ability to earn. On this point, I testified:

In discussing the bill with private attorneys, a question was asked why an incarcerated parent's obligation simply didn't revert back to the amount due prior to the incarceration. Our division had a similar internal discussion when developing the bill. This was addressed in the preamble to the federal rule:

We strongly encourage States to review child support orders after the noncustodial parent is released to determine whether the parent has been able to obtain employment and to set the orders based on the noncustodial parent's ability to pay. States should not automatically reinstate the order established prior to incarceration because it may no

longer be based on the noncustodial parent's ability to pay, especially if the noncustodial parent is not able to find a job or find a job similar to pre-incarceration employment. A recent study found that incarceration results in 40 percent lower earnings upon release [footnote omitted]. Instead, the order should be reviewed and adjusted according to the State's guidelines under § 302.56.

Federal Register Volume 81, No. 244, page 93539 (December 20, 2016).

Under current law, for cases receiving full services from our program, Child Support will proactively start an action to re-establish a child support obligation once the parent is released without the other parent needing to request the re-establishment or hire a private attorney. This minimizes the burden on the parent with primary residential responsibility for the child yet recognizes the realities a parent faces in trying to rebuild his or her earning ability after a period of incarceration. A recent article indicated that over half of formerly incarcerated individuals are still unemployed one year after release and almost 70% are re-arrested within three years. 5 New Policy Ideas for Fixing Life After Prison, Politico Magazine (12-30-2020).

On lines 12 and 13 of Senate Bill 2132, there is a provision that the Department needs to oppose because it appears to prevent a periodic review of the obligation as required by Title IV-D of the Social Security Act. This provision in the bill states that after the pre-incarceration obligation recommences, the obligation will remain in place unless modified "upon motion of the obligor." Title IVD requires a state's child support program to review obligations periodically (at least every 36 months upon request) or upon a change in circumstances. A perhaps unintended consequence of the provision in the bill is that North Dakota would not be in compliance with the Title IV-D requirement if a child support obligation which reverts to the pre-incarceration level can only be modified if requested by the obligor.

As a practical matter, this provision may also lead to an artificially low child support obligation. Assume that an obligor got a new job for higher pay a few months before

committing the crime and being convicted, and was able to return to that job upon release. Assume further there was not enough time before incarceration to increase the child support obligation. Under lines 12 and 13 of the bill, the parent with primary residential responsibility and Child Support would both be precluded from pursuing a modification to reflect the obligor's actual earnings upon release or even years later. We suggest that this provision be deleted from the bill.

This concludes my testimony, and I am happy to answer any questions you may have.

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

SB 2132
1/26/2021

A BILL for an Act to amend and reenact section 14-09-09.38 of the North Dakota Century Code, relating to suspending a child support obligation of an incarcerated parent.

Madam Chair Lee opens the discussion on SB 2132 at 3:21 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Font on child support notice of termination
- Medical support obligation termination
- Land income / additional income while incarcerated

[3:22] Jim Fleming, Director, Child Support Division, Department of Human Services. Provided the committee with an overview of proposed amendment (testimony #5988).

Senator Hogan moves to **ADOPT AMENDMENT** [LC 21.0622.01001] proposed by the Child Support Division.

Senator K. Roers seconded.

Voice vote- motion passed.

Senator K. Roers moves **DO PASS, AS AMENDED.**

Senator Clemens seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	N

The motion passed 5-1-0.

Senator Clemens will carry SB 2132.

Additional written testimony: N/A

Madam Chair Lee closed the discussion on SB 2132 at 3:39 p.m.

Justin Velez, Committee Clerk

SA
1/24

January 26, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2132

Page 1, line 2, replace "suspending a" with "the"

Page 1, line 8, remove the overstrike over "expires"

Page 1, line 8, remove "is suspended"

Page 1, line 8, remove the underscored comma

Page 1, line 9, remove "and until sixty days after release,"

Page 1, line 10, remove "The"

Page 1, remove lines 11 through 13

Page 1, line 22, remove the overstrike over "expiration"

Page 1, line 22, remove "suspension"

Page 1, line 23, remove the overstrike over "expiration"

Page 1, line 23, remove "suspension"

Page 1, after line 24 insert:

- "5. The child support agency shall notify the obligor and obligee of the expiration of a monthly support obligation under this section, including a description of how the obligation can be re-established after the obligor is released from incarceration.
6. If a monthly support obligation has expired under this section and is still being enforced by the child support agency when the obligor is released from incarceration, the child support agency shall re-establish a monthly support obligation as provided in this chapter without requiring a request or application for services.

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2132: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2132 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "suspending a" with "the"

Page 1, line 8, remove the overstrike over "expires"

Page 1, line 8, remove "is suspended"

Page 1, line 8, remove the underscored comma

Page 1, line 9, remove "and until sixty days after release."

Page 1, line 10, remove "The"

Page 1, remove lines 11 through 13

Page 1, line 22, remove the overstrike over "expiration"

Page 1, line 22, remove "suspension"

Page 1, line 23, remove the overstrike over "expiration"

Page 1, line 23, remove "suspension"

Page 1, after line 24 insert:

- "5. The child support agency shall notify the obligor and obligee of the expiration of a monthly support obligation under this section, including a description of how the obligation can be re-established after the obligor is released from incarceration.
6. If a monthly support obligation has expired under this section and is still being enforced by the child support agency when the obligor is released from incarceration, the child support agency shall re-establish a monthly support obligation as provided in this chapter without requiring a request or application for services."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL 2132

Page 1, line 2, replace "suspending a" with "the"

Page 1, line 8, remove the overstrike over "~~expires~~", remove "is suspended", and remove the underscored comma

Page 1, line 9, remove "and until sixty days after release."

Page 1, line 10, remove "The"

Page 1, remove lines 11 through 13

Page 1, line 22, remove the overstrike over "~~expiration~~" and remove "suspension"

Page 1, line 23, remove the overstrike over "~~expiration~~" and remove "suspension"

Page 1, after line 24, insert:

5. The child support agency shall notify the obligor and obligee of any expiration of a monthly support obligation under this section, including a description of how the obligation can be re-established after the obligor is released from incarceration.
6. In a case in which the monthly support obligation has expired under this section and is still being enforced by the child support agency when the obligor is released from incarceration, the child support agency shall re-establish a monthly support obligation as provided in this chapter without requiring a request or application for services.

Renumber accordingly

2021 HOUSE JUDICIARY

SB 2132

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2132
3/15/2021

Relating to the child support obligation of an incarcerated parent.

Chairman Klemin called the hearing to order at 9:00 AM

Present: Representatives Klemin, Karls, Buffalo, Christensen
K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter, and Roers
Jones. Absent: Rep. Becker and Rep. Cory

Discussion Topics:

- Uncollectable child support arrears
- Child support orders

Senator Kreun: Introduced the bill. 9:01

James Fleming, Child Support Director of Human Services. Testimony #
9051 9:09

Pat Bohn, Director of Patrol and Probation. Verbal testimony 9:36

Chairman Klemin closed the hearing at 9:40

Rep. Roers Jones: Moved to adopt amendment 21.0622.02001

Rep. T. Jones: Seconded

Voice vote carried.

Rep. Karls: Do Pass as Amended motion

Rep. Satrom: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	A
Rep. Cory	A
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

12-0-2 Carrier: Rep. Karls

Stopped at 9:42

DeLores D. Shimek
Committee Clerk

March 15, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2132

Page 2, line 1, after "and" insert "the child support case"

Page 2, line 1, remove "being"

Page 2, line 2, replace "enforced by" with "open with"

Re-number accordingly

REPORT OF STANDING COMMITTEE

SB 2132, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2132 was placed on the Sixth order on the calendar.

Page 2, line 1, after "and" insert "the child support case"

Page 2, line 1, remove "being"

Page 2, line 2, replace "enforced by" with "open with"

Renumber accordingly

Testimony
Engrossed Senate Bill 2132 - Department of Human Services
House Judiciary Committee
Representative Lawrence Klemin, Chairman

March 15, 2021

Chairman Klemin and members of the Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). I am here today to testify in support of Engrossed Senate Bill 2132.

As reflected in the legislative history of the 2017 bill enacting Section 14-09-09.38, the purpose of the law is “addressing uncollectible child support arrears rather than reducing the amount of money that is actually collected and distributed to families.” The 2017 bill was introduced by legislators and supported by both the Department of Corrections and Rehabilitation and the Department of Human Services.

During the 2017 hearings on the bill, the legislative committees in both houses agreed it would be better for the obligations of former inmates to be reestablished based on the parent’s post-incarceration ability to earn rather than revert to the amount owed prior to incarceration. On this point, the federal Office of Child Support Enforcement offered this advice to states:

We strongly encourage States to review child support orders after the noncustodial parent is released to determine whether the parent has been able to obtain employment and to set the orders based on the noncustodial parent’s ability to pay. States should not automatically reinstate the order established prior to incarceration because it may no longer be based on the noncustodial parent’s ability to pay, especially if the noncustodial parent is not able to find a job or find a job similar to pre-incarceration employment. A recent study found that incarceration results in 40 percent lower earnings upon release [footnote omitted]. Instead, the order should be reviewed and adjusted according to the State’s guidelines under § 302.56.

Federal Register Volume 81, No. 244, page 93539 (December 20, 2016).

A recent article indicated that over half of formerly incarcerated individuals are still unemployed one year after release and almost 70% are re-arrested within three years. 5 New Policy Ideas for Fixing Life After Prison, Politico Magazine (12-30-2020).

Engrossed Senate Bill 2132 requires the Department to communicate proactively with both parents to explain how a child support obligation can be re-established when the incarcerated parent is released from jail. The engrossed bill also requires the Department to take steps to re-establish a child support obligation once the parent is released without the other parent needing to request the re-establishment or hire a private attorney. This minimizes the burden on the parent with primary residential responsibility for the child yet recognizes the realities a parent faces in trying to rebuild his or her earning ability after a period of incarceration.

These amendments to current law reflect the Department's current practices and we support adding them to state law. This concludes my testimony, and I am happy to answer any questions you may have.