

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.