

CHILD SUPPORT: DETERMINATION OF INCOME AND SUPPORT OBLIGATIONS AND ENFORCEMENT - BACKGROUND MEMORANDUM

Section 9 of 2009 House Bill No. 1012 ([Appendix A](#)) directs a Legislative Management study of the Department of Human Services' child support enforcement program, including a review of arrearages in terms of total owed and interest accrued and child support enforcement activities in other states. Section 1 of 2009 Senate Bill No. 2420 ([Appendix B](#)) directs a Legislative Management study of child support determination of income and support obligations, the feasibility and desirability of the establishment of an ombudsman program, and the coordination of services and resources for parents. Because of the similarity of the studies directed by House Bill No. 1012 and Senate Bill No. 2420, the two studies will be combined into one comprehensive study.

NORTH DAKOTA CHILD SUPPORT LAWS

Child support is a parental obligation to provide financial and medical support for their children. It commonly refers to the money paid by the noncustodial parent to the custodial parent to assist in meeting the continuing needs of the children. Child support is often one of the most contentious aspects of a custody arrangement and rarely considered fair by either parent. Divorce or separation does not end the legal obligation for child support. Although the bond of marriage or other relationship has been broken, each parent still retains a legal responsibility to provide adequate support for the children. The duty of parents to support their children is provided for in North Dakota Century Code Section 14-09-08, which provides that "[p]arents shall give their children support and education suitable to the child's circumstances. The court may compel either or both of the parents to provide for the support of their children."

Establishment of Child Support

Section 14-09-09.7 provides that the establishment of child support obligations must be calculated using child support guidelines. The guidelines are based, in part, upon federal requirements regarding the establishment of child support guidelines.

Federal Statutory Provisions

The 1996 federal welfare reform legislation (42 U.S.C. 602(a)(2)) provided that a state's eligibility to receive a block grant for temporary assistance for needy families (TANF) is in part dependent on "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the state plan approved under" the Child Support Enforcement Act.

The Child Support Enforcement Act requires states to enact certain remedies and procedures to improve child support collections. The Child Support Enforcement Act is found in Sections 651 through 669 of Title 42 of the United States Code.

Federal law regarding state guidelines for child support awards provides in 42 U.S.C. 667(a) and (b):

(a) Establishment of guidelines; method
Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case. (emphasis supplied)

North Dakota Child Support Guidelines

As previously discussed, North Dakota's child support guidelines law is found in Section 14-09-09.7. This section was enacted in 1983 when the Legislative Assembly patterned North Dakota's child support program after Utah law. A portion of Section 14-09-09.7, as created in 1983, required the Department of Human Services to assemble information and create a scale of suggested minimum contributions to be used in determining the amount a parent might be expected to contribute in child support. The scale was not obligatory and the department testified that it anticipated the vast majority of administrative child support orders would be entered as a consequence of the agreement of the parties involved. This law was amended in 1987, but in 1990 the resulting guidelines were ruled invalid

because the guidelines had not been adopted in accordance with Chapter 28-32. *Huber v. Jahner*, 460 N.W.2d 717 (1990).

In 1989 the Legislative Assembly enacted Senate Bill No. 2245 to implement the 1988 amendments to federal law. The bill was drafted by the Department of Human Services with substantial advice from the Juvenile Procedures Committee of the Judicial Conference.

Section 14-09-09.7, as created in 1983 and amended in 1989, 1993, 1997, 1999, 2001, 2007, and 2009, in part, provides:

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 parent.
 - f. Authorize a rebuttal of the presumption provided in subsection 4 based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.
 - g. Include consideration of an obligated party's responsibility for health insurance coverage or other medical support under section 14-09-08.10.
2. The guidelines may not take into consideration cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.
3. The department shall accept and compile pertinent and reliable

information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.

4. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the child support agency which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
 - a. State the child support amount determined through application of the guidelines;
 - b. Identify the criteria that rebut the presumption of correctness of that amount; and
 - c. State the child support amount determined after application of the criteria that rebut the presumption.

Section 14-09-08.4 provides for the periodic review of child support orders. This section, as created in 1989 and amended in 1991, 1993, 1997, 1999, 2003, 2005, and 2007, in part, provides that:

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. 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 order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the child support agency determines 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, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.

North Dakota Administrative Rules

The Department of Human Services has established child support guidelines to be used by courts in determining the amount a parent is expected to contribute toward the support of a child. The guidelines apply in any action in North Dakota in which a child support obligation is being established or changed. The current guidelines, which became effective on October 1, 2009, are contained in North Dakota Administrative Code Chapter 75-02-04.1.

Paternity Establishment

North Dakota law relating to the establishment of paternity is contained in Chapter 14-19, which provides for the acknowledgment of paternity, and Chapter 14-20, the Uniform Parentage Act. A child support order cannot be established for a child who is born to unmarried parents until the alleged father is determined to be the father. This determination may be made through an acknowledgment of a parent or by involvement of a court. If the alleged father denies he is the father, or is not sure he is the father, genetic testing of the mother, child, and alleged father may be conducted. Genetic tests are highly accurate; their results indicate a probability of paternity and can establish a legal presumption of paternity.

Child Support Enforcement Program

The federal child support enforcement program was established in 1975 under Title IV-D of the Social Security Act. This federal program was a response by Congress to reduce public expenditures on welfare through aid to families with dependent children, foster

care, and Medicaid. Title IV-D requires each state to provide a statewide child support enforcement program that establishes and maintains case records, offers locate services for finding the legally responsible parent, establishes paternity, establishes legal orders requiring child support, provides for enforcement of child support obligations, and provides for collection and distribution of child support payments. These services are automatically offered to families receiving public assistance and are available through an application to families that are not receiving public assistance. Additionally, Title IV-D requires each state to designate a single and separate organizational unit of state government to administer the state's child support enforcement program. Sections 50-06-01.4 and 50-09-02 designate the Department of Human Services as the official agency of the state in the administration of the state's child support enforcement program and medical support enforcement program in conformity with Title IV-D. Section 50-09-02 provides that in administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.

The state's child support enforcement office is located in Bismarck and is responsible for the overall supervision of the program, policy development and issuance, and financial and statistical reporting. Additionally, the state office includes the state disbursement unit, as provided for in Section 14-09-25, for centralized collections and distributions of child support payments. Under the supervision of the state office, the majority of the Title IV-D services are provided through eight regional child support enforcement units located throughout the state.

Enforcement Tools

State law provides for a number of tools that can be used to enforce the child support amount that is ordered by the court. Section 14-09-09.11 provides that a judgment for the payment of child support may be enforced by an income withholding order. Section 14-09-09.6 authorizes an obligor to execute a document voluntarily authorizing income withholding from income in an amount sufficient to meet the child support obligation imposed by the court or otherwise.

Other child support enforcement tools include lottery prize setoff authority under Section 53-12.1-12; the authority to report child support arrearages to credit bureaus under Section 50-09-08.4; the authority to suspend occupational, professional, and recreational licenses under Section 14-08.1-06 and motor vehicle operator's licenses under Section 14-08.1-07; and the authority to seize real and personal property as the result of a judgment under Section 14-08.1-05. In addition, child support may be enforced by means of federal and state tax refund

offset, passport denial, and referral for state or criminal prosecution.

Child Support Arrearages

Section 14-09-25, which defines arrearage as "an unpaid child support obligation that was due in a month prior to the current month," provides that the public authority is required to enter in its records judgment interest on child support obligations that first became arrearages after July 1, 2002. This section also provides that the public authority is required to enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, only if a court has ordered the interest amount calculated by a person other than the public authority and approved the calculated amount. Section 28-20-34 provides for the interest rates on judgments. This section provides that beginning January 1, 2006, the interest on judgments is payable at a rate equal to the prime rate published in the *Wall Street Journal* on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point and may not be compounded. For calendar year 2009, the interest rate is 7 percent.

PREVIOUS STUDIES

The 1997-98 interim Child Support Committee conducted a study of the provision of child support services and child care licensing in the state. The committee made no recommendations regarding this study.

During the 1999-2000 interim the Judiciary Committee studied the family law process in the state with a focus on the review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The committee did not recommend any bills related to the issue of child support.

The 2001-02 interim Family Law Committee studied the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state. The committee recommended a resolution to provide for a Legislative Council study of state and local funding obligations for social services.

The 2003-04 Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the status of recommendations included in the Department of Human Services child support enforcement performance audit. The original performance audit report was presented to the Legislative Audit and Fiscal Review Committee in October 2000. The followup report indicated 8 of the original recommendations had been fully implemented, 16 of the original recommendations had been partially implemented, 25 of the original recommendations were determined to be not implemented, and 7 recommendations were no longer applicable. The report concluded that 13 of the 25 audit recommendations determined to be not

implemented were not implemented because the child support program was not being state-administered, rather than the current state-supervised, county-administered structure.

The 2007-08 interim Judicial Process Committee studied the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. The committee recommended 2009 Senate Bill No. 2042, which provided for changes in the terminology used in family law; required that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan is required to be developed and filed with the court; added several best interest factors; clarified several current best interest factors; and established a parenting coordinator program. The committee also recommended 2009 House Bill No. 1038, which authorized the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours. Both bills were enacted by the Legislative Assembly in 2009.

2009 CHILD SUPPORT-RELATED LEGISLATION

House Bill No. 1038 authorized the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours.

House Bill No. 1175 amended and updated various provisions with respect to child support enforcement. The bill also provided that if an obligee is deceased, the order in which any past-due child support that is received is disbursed must include a refund to the obligor if the court determines that the past-due child support cannot be disbursed to those parties that precede the obligor in the order of disbursement under Section 14-09-25(9). This bill amended existing law related to mandatory data sharing agreements with financial institutions, the authority to issue administrative subpoenas, and the right to access records of government entities and public utilities to be in compliance with federal mandates and to preserve funding for the TANF and child support enforcement programs.

House Bill No. 1329 provided that the child support guidelines may not take into consideration cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control. The bill also provided that if an income payer makes an error in the remittance information the income payer provides to the state disbursement unit, the income payer has not complied with Section 14-09-09.3 and is responsible for the error but has a cause of action for reimbursement against any person that receives funds from the

disbursement unit as a result of the error and refuses to return the funds upon request.

Senate Bill No. 2072 codified the amendments to the Uniform Interstate Family Support Act approved by the National Conference of Commissioners on Uniform State Laws in 2008. The amendments modify the current version of the Act's international provisions to comport with the obligations of the United States under the 2000 Hague Convention.

SUGGESTED STUDY APPROACH

The committee, in its study of the Department of Human Services' child support enforcement program and determinations of income and child support obligations, may wish to approach this study as follows:

- Review the laws relating to the establishment and the enforcement of child support contained in Titles 14 and 50, select those areas most in

need of review, and prioritize the order in which the selected categories should be reviewed;

- Receive information from the Department of Human Services regarding the state's child support laws with respect to issues involving arrearages in terms of total owed and interest accrued;
- Receive information and testimony from attorneys, parenting advocacy groups, and other interested persons regarding child support enforcement concerns;
- Review the child support enforcement mechanisms used in other states;
- Develop final recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:2