

Testimony
Senate Bill 2201 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 19, 2011

Chairman Lee, members of the Senate Human Services Committee, I am Jim Fleming, Director of the Child Support Enforcement Division of the Department of Human Services. I am here to provide background information related to equal residential responsibility (formerly known as equal physical custody) and Senate Bill 2201.

The child support guidelines currently include a provision that applies to cases with equal residential responsibility. Under the guidelines in such cases, each parent is considered both an obligor and an obligee. As a result, the net income of each parent is used to determine a child support obligation for the parent, and each obligation is recorded separately on the state's child support records. For payment purposes, as a general rule, the smaller obligation is subtracted from the larger obligation and only the net difference is paid through the state disbursement unit. Today, a monthly offset credit is applied to roughly 400 cases in which the parents have equal residential responsibility.

Child support obligations in equal residential responsibility case are established based on the 50-50 division in the court order. However, if the child actually spends more time with one parent than the other, the parent who cares for the child the majority of the time may be eligible to receive benefits on the child's behalf under TANF or Medicaid. In those cases, since the right to support is assigned to the state, the offset is temporarily suspended and each parent is liable to pay his or her full obligation.

Section 3 of the bill applies the new presumption of equal residential responsibility to all pending and past civil actions. From the payment records maintained by our state disbursement unit, we estimate there are approximately 22,800 such actions in North Dakota, with roughly 80% of those actions being enforced by our program as IV-D cases. If the bill is passed, one can expect that the new division of residential responsibility will be accompanied or followed by a court motion to modify the parent's child support obligations. With the retroactivity clause and emergency clauses in the bill, this means that thousands of civil actions could be re-opened immediately if the bill becomes law.

In IV-D cases, even if our program is not submitting the motion, our program will still be a party to the action and have a responsibility to review the proposed new child support obligation to ensure the child support guidelines have been followed, particularly if the parents are not represented by attorneys. Alternatively, a 50-50 division of residential responsibility may be established in court under the bill without setting a new child support obligation, and then a parent will ask our program to conduct a review and seek a modification of the obligation based on the new arrangement. In either case, we can expect a significant demand on the resources of our program as a result of the bill.

Madame Chairman, this concludes my testimony and I would be glad to answer any questions the committee may have.