

**Department of Human Services  
Interim Judiciary Committee  
Senator David Hogue, Chairman  
June 6, 2016**

Chairman Hogue, members of the Interim Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services. I appear before you to provide a report on suspension of a driver's license for nonpayment of child support.

Background. States are required by federal law to have driver's license suspension processes for nonpayment of child support. Prior to 2003, suspensions were something that courts could order, but it was rarely done and therefore did not deter obligors from becoming delinquent. In 2003, a group of legislators sponsored Senate Bill 2246. The prime sponsor, Senator Tom Fischer, testified:

Right now, license suspension for failing to pay child support is available only as a remedy for contempt and can be easily avoided at the last minute by making one month's payment. Under the proposed bill, an obligor would need to continue making the required monthly payments or else face a license suspension.

Madame chairman, it is important to note that an obligor who pays his or her monthly child support obligation on time has nothing to worry about under this bill. Even if an obligor is very delinquent, the obligor can keep his or her license indefinitely as long as the obligor enters into a payment plan with the child support enforcement program. License suspension under this bill will be reserved for obligors who refuse to satisfy their monthly payment obligation under the child support guidelines and a reasonable installment on the outstanding arrears. The "down payment"

feature of the payment plan will help ensure this process is a meaningful tool for increased collections and not just a revolving door.

[Attached is a copy of the current state law.](#)

With regard to suspension of a driver's license, the key questions for the committee may be "when does Child Support take the license away" and "how does an obligor get it back?" Child Support uses this tool carefully and selectively; otherwise, making it harder for an obligor to get to work would be counter-productive. Under the law, a license can be suspended if the obligor is at least two months or \$2,000 behind, whichever is less. In practice, it would be highly unusual for child support to suspend a license if an obligor is making regular payments, even if he or she owes past-due child support.

Notice. The goal of the license suspension process is to discourage obligors from missing a payment and to encourage obligors to avoid suspension by working and paying current support on a regular basis plus an affordable amount toward the past-due child support. For this reason, a delinquent obligor receives written notice 30 days before a license is suspended. During that time, the obligor has a chance to pay the arrears in full (which happens on occasion), contact Child Support and sign a payment plan, or seek review by a court. If the obligor does not respond, or if the obligor signs and later breaches a payment plan, the license is suspended and the obligor is notified of the suspension. Each payment plan includes a notice to the obligor that a breach of the plan will lead to immediate suspension, which is an important motivation for obligors to remain in compliance with the plan. For the duration of a payment plan,

the accrual of interest is suspended, which also provides a motivation for obligors to remain in compliance with the plan.

Payment plan amounts. An obligor can avoid license suspension or get a suspended license reinstated at any time by negotiating a payment plan with Child Support. The law provides for a down payment to motivate the obligor to comply with the plan on an ongoing basis. We recognize that many obligors are unable to immediately satisfy their arrears. As a result, while we prefer to collect the full balance immediately, we generally tie driver's license suspension to our efforts to negotiate a payment plan that will enable the parent to pay off all outstanding balances in installments over a maximum 10-year period.

The amount that an obligor is required to pay each month to comply with a payment plan varies depending on the obligor's current circumstances and is negotiated on a case-by-case basis. The law requires Child Support to consider the amount that the obligor is required to pay each month by the court for purposes of income withholding. In other words, if the court order requires payment of \$200 in current support each month and 20% or \$40 per month towards the arrears, we will not agree to a payment plan of less than \$240. To do so would undermine the court. There are times when an obligor's current court order is higher than he or she can pay, and we will review those obligations, upon request, if they are at least 36 months old or meet other criteria for an earlier review.

Temporary licenses. The law gives Child Support the authority to approve temporary restricted licenses so an obligor is able to drive to work, but the law provides so much flexibility to Child Support in

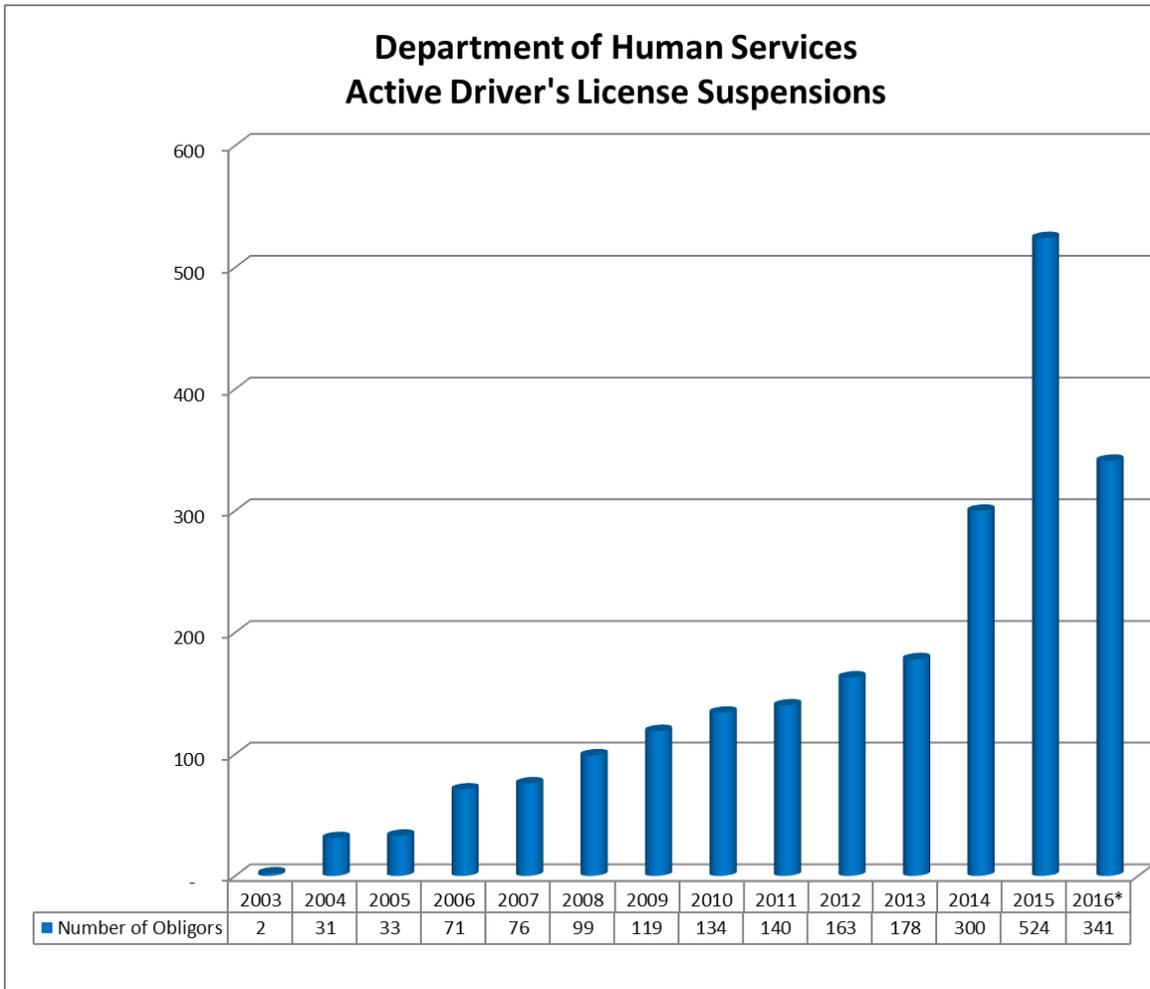
negotiating payment plans with cooperative obligors that we rarely need to authorize a temporary restricted license. We are almost always able to refrain from suspending a license or reinstate any suspended license without restrictions. This allows the obligor to return to normal activities with a minimum amount of government oversight.

Down payments. In negotiating payment plans, the law requires an immediate payment of 5% of the arrears balance or \$500, whichever is greater, but also gives us some discretion to waive or reduce the down payment in certain circumstances. We do not insist on full satisfaction of the arrears unless for some reason the obligor can afford to pay it, such as if we have identified a savings account containing sufficient funds. As a general rule, we are more willing to negotiate the down payment for low income obligors and those who are entering their first payment plan. If need be, we will spread out the down payment over the first few months of the payment plan.

One of the reasons the Department can be flexible in entering a payment plan is because any breach of the plan is easy to identify since all payments are required to be paid through our State Disbursement Unit.

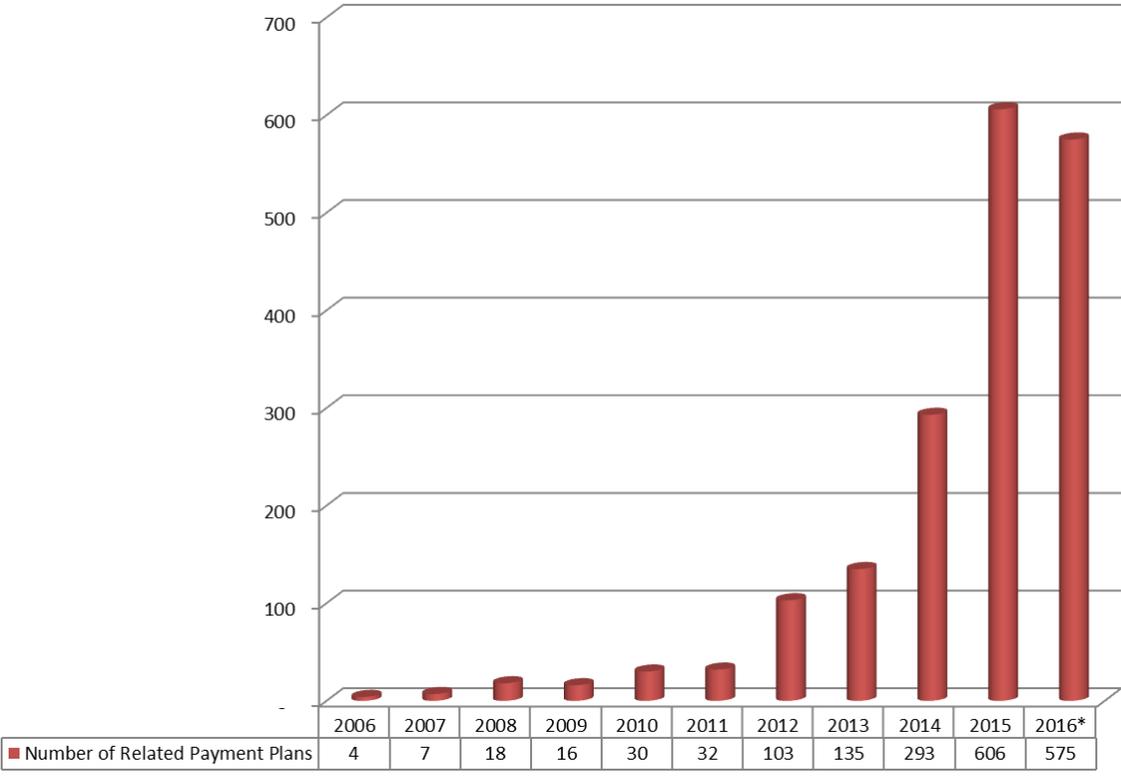
The potential for a down payment in future payment plans, even if waived for the first plan, is important for motivating obligors to comply with a payment plan. If there was no down payment, or if an obligor could regain a suspended license after skipping a month or two simply by resuming payments without signing a new payment plan, the deterrent effect of the process is significantly reduced and the process would become the same "revolving door" that the Legislature intended to avoid.

Duration. There can be multiple suspensions and payment plans during the life of a child support case, and a number of licenses or registrations can be suspended in each administrative action. There are currently 2,211 driver's license suspensions in place.



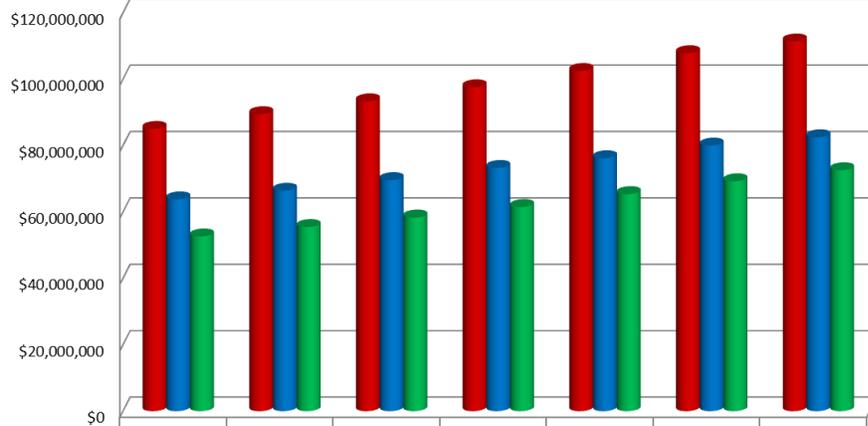
The goal of the license suspension process is to motivate obligors to avoid suspension or obtain license reinstatement by entering into a payment plan (assuming payment of the full arrears is not feasible). Currently, there are 1,819 payment plans in effect.

**Department of Human Services  
Active Driver's License Related Payment Plans**



Effectiveness. As a tool to motivate obligors to cooperate with Child Support, including making payments and reporting new employment, the effectiveness of driver’s license suspension can be measured in several ways. First, in the amount of current support collected in order to avoid suspension, which has increased nicely over the last decade.

**Department of Human Services  
Current Child Support  
Federal Fiscal Year**

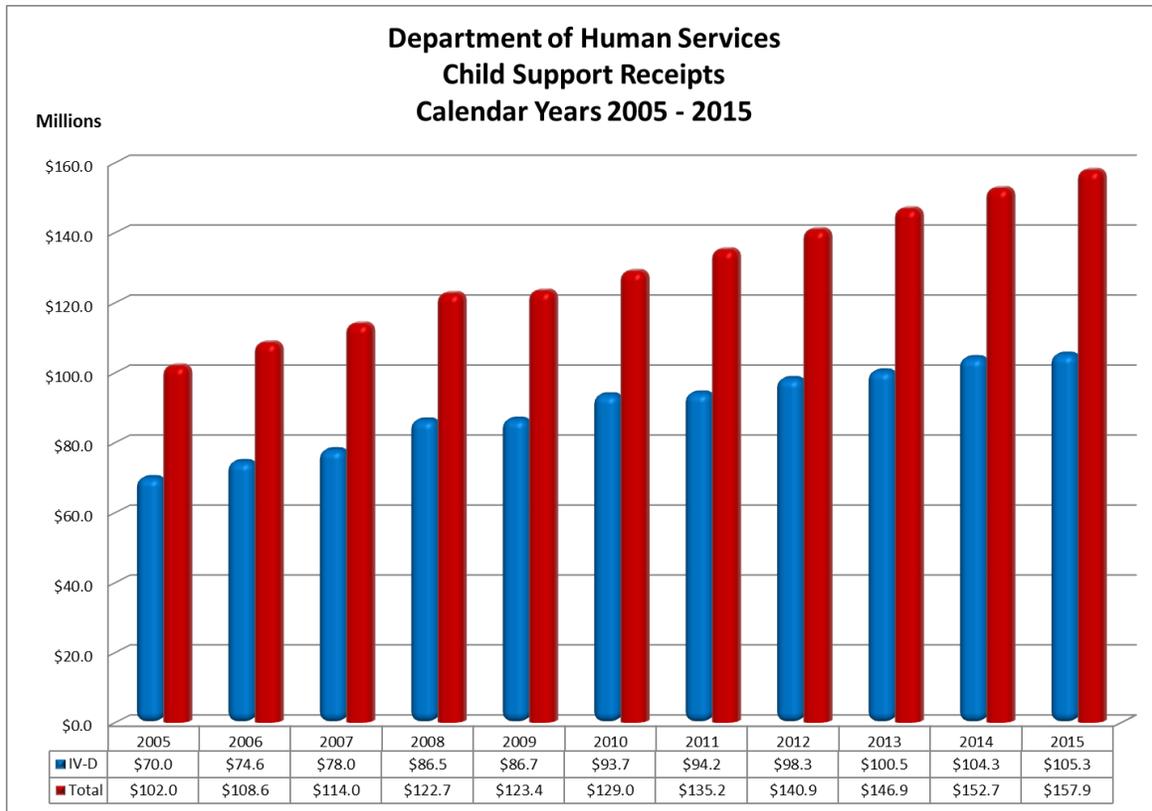


|                             | 2009         | 2010         | 2011         | 2012         | 2013          | 2014          | 2015          |
|-----------------------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|
| North Dakota Due            | \$85,023,184 | \$89,457,161 | \$93,328,728 | \$97,570,081 | \$102,479,909 | \$107,838,996 | \$111,363,799 |
| North Dakota Collected      | \$63,804,776 | \$66,388,583 | \$69,599,364 | \$73,266,692 | \$76,186,870  | \$80,000,982  | \$82,495,635  |
| National Average Collected* | \$52,629,351 | \$55,463,440 | \$58,330,455 | \$61,469,151 | \$65,382,182  | \$69,243,419  | \$72,564,651  |

\*National average performance applied to North Dakota's current support due.

|                  | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  |
|------------------|-------|-------|-------|-------|-------|-------|-------|
| North Dakota     | 75.0% | 74.2% | 74.6% | 75.1% | 74.3% | 74.2% | 74.1% |
| National Average | 61.9% | 62.0% | 62.5% | 63.0% | 63.8% | 64.2% | 65.2% |

Second, the amount of total collections, including current support and arrears, continues to increase.



Last, for current payment plans that were originally signed from November 1, 2013, through October 31, 2015 (a total of 405 plans), we compared the number and amount of payments for the six months before and after the plan commenced. For the first six months after each plan became effective, there was an average increase of 54% in the number of months in which there was a collection and an average increase of 58% in total collections. This shows that the driver's license suspension process is very effective, particularly when you consider that this population of obligors includes those from whom it is most difficult to collect child support.

Approach of other rural states. In preparation of this report, I contacted the state child support directors in Wyoming, South Dakota, and Montana to compare the license suspension processes in their states.

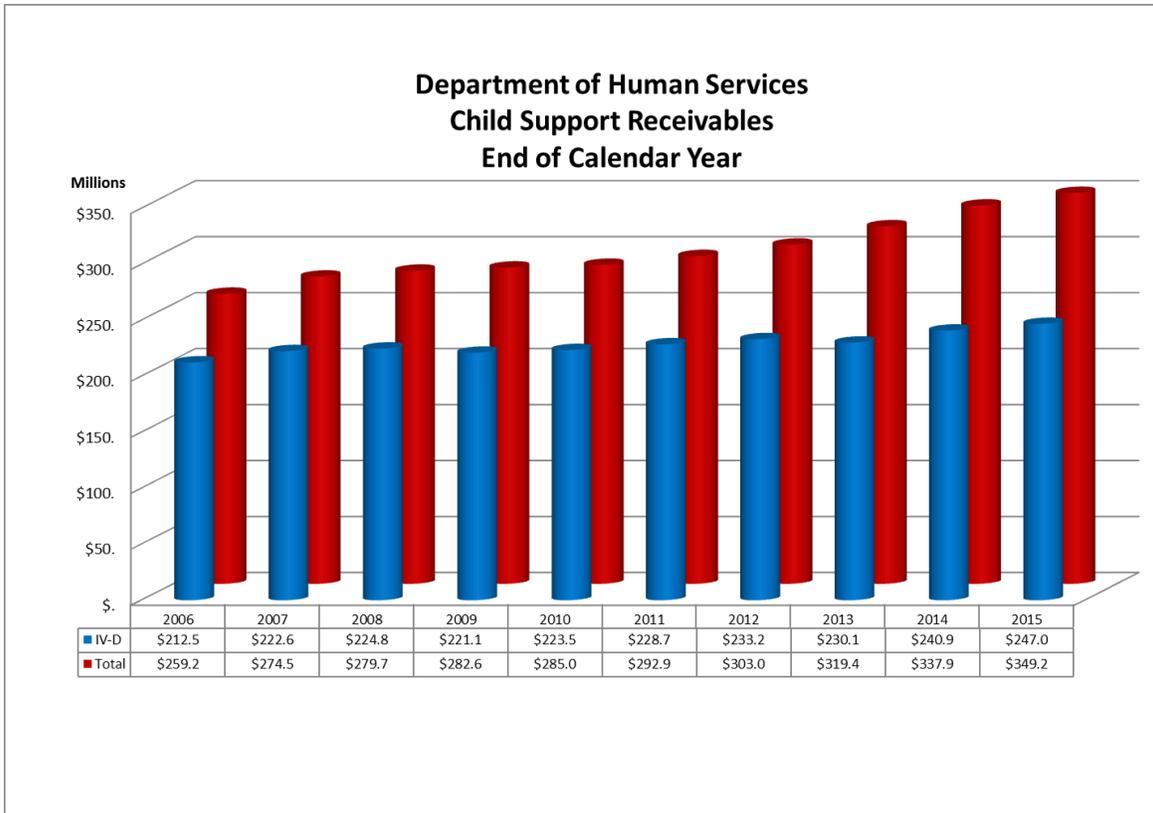
Wyoming. Several years ago, Wyoming suspended licenses judicially and not administratively, with similar lack of success as North Dakota prior to our law change in 2003. They used North Dakota's law as a pattern for its own approach in changing the law to authorize administrative suspensions. Similar to our own experience, some obligors in Wyoming are motivated by the potential for license suspension, while others are willing to drive without a license. A significant difference in Wyoming's approach is that they start with a letter to the obligor and then send a notice of intent to suspend with a 65-day period in which the obligor needs to respond to avoid suspension. Wyoming collects 68.2% of current support on time and is ranked #1 overall in the country.

South Dakota. South Dakota suspends licenses administratively and feels its process is effective. As part of their payment plans, South Dakota requires verification that the obligor is employed. As with North Dakota, South Dakota is fairly lenient with a first-time payment plan but applies a "three strikes and you're out" approach to multiple plans where the full arrears balance must be paid in order for a license to be reinstated. A temporary license is available, but only one time and only for six months. If a payment plan is breached, South Dakota sends a notice of nonpayment and if there is no response, sends an additional notice of intent to suspend with a 13-day deadline. South Dakota collects 67.87% of current support on time and is ranked #2 overall in the country.

Montana. Montana suspends licenses administratively and feels its process improves total collections. In recognition of the need for

transportation in rural areas, Montana utilizes the obligor's interest in transportation as a way to attach significance to both the need to pay child support and the need to have a driver's license. As with North Dakota, Montana views license suspension as a great opportunity to open a dialogue with an obligor about complying with the support obligation. There is no temporary license option, which is why Montana "bends over backwards" to get the obligor into a payment plan. The suspension process takes 90 days in Montana, and the threshold for pursuing suspension is six months of arrears. Montana collects 63.5% of current support on time and is ranked #17 overall in the country.

Conclusion. The license suspension process is a proven, effective enforcement technique. It results in improved collections of current support and arrears. However, despite the best efforts of the program, including the selective use of license suspension, the amount of arrears owed in North Dakota continues to grow.



Upon review of other state laws, we have no suggestions to offer for amending North Dakota’s law. There are several areas where North Dakota law differs from other rural states and provides more flexibility to reduce the impact of license suspension on obligors. The key with implementation of the license suspension process is to be firm but fair. With the rising arrears amount and the demonstrated effectiveness of driver’s license suspension, the Department would not recommend adding restrictions on the use of license suspension as a collection tool.

Mr. Chairman and members of the committee, this concludes my testimony and I would be glad to try to answer any questions.