

Testimony
Senate Bill 2363 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 6, 2013

Chairman Lee, members of the Senate Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here to testify on Senate Bill 2363.

Senate Bill 2363 requires Child Support to study and develop a plan for converting North Dakota's child support guidelines from an obligor model to an income shares model.

Under an income shares model, a basic child support obligation is computed based on the combined income of both parents. This basic obligation is then prorated in proportion to each parent's income and adjusted to account for work-related child care costs and often any extraordinary medical expenses. A child support order is then entered with respect to the obligor's share of the basic child support obligation and child care costs.

Impacts of changing to an income shares model:

First, in order for income shares to lead to a reduction in an obligor's support amount, the obligor must earn substantially less income than the parent with primary residential responsibility. Even though the child support guidelines provide the presumptively correct amount of support, the presumption may be rebutted for certain reasons listed in the guidelines. In 2007, the law was changed to require the child support guidelines to include a rebuttal criteria "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.” In essence, North Dakota already uses an income shares model in this circumstance when use of that model results in a reduced child support obligation.

There are additional provisions in the current guidelines that are designed to promote fairness and responsiveness to obligors. The guidelines also include a deduction for when an obligor is authorized by the court to have extended periods of parenting time, and take into account when an obligor owes support to multiple families. These provisions would no longer exist if North Dakota changed to an income shares model.

One of the challenges in an income shares model is how to account for the contribution of the parent with primary residential responsibility in caring for the child a greater portion of the time, particularly overnight. Although this is a responsibility that most parents gladly bear, it has undeniable value. In addition, in an income shares model, child care costs are often added proportionately to each parent’s obligation. This is not information that Child Support currently gathers from either parent.

Under the current guidelines, when the parents share equal or split residential responsibility, the income of each parent is considered and an obligation is determined for each parent. As above, this results in an outcome that closely resembles an income shares model.

Second, establishing child support orders in the amount provided by the child support guidelines using an income shares model, and periodically reviewing those obligations using current income information, would

increase administrative costs for Child Support. The Department's fiscal note for an income shares model bill in 2005 estimated that changing to an income shares model would require an additional 10 full-time equivalent positions (FTE), along with at least \$150,000 in computer programming costs (which is in 2005 dollars and would be higher today) and the operating costs associated with additional staff and mailings to parents. The need for additional staff is the result of the time required to review income information from both parents, rather than only the obligor, and to take the necessary actions to obtain such information from unwilling or unresponsive parents with primary residential responsibility. If the study called for in Senate Bill 2363 results in legislation to move to an income shares model, additional administrative funding (FTE and operating expenses) would be needed in the 2015-2017 biennium.

Senate Bill 2363 will also require considerable analysis and report preparation time, either through a contractor who is familiar with income shares models in other states or through existing Child Support staff. Child Support has not been asked to provide a fiscal note on Senate Bill 2363, and we are hoping to learn from this hearing how extensive and detailed the study and plan may be.

When the income shares model was last considered in 2005, Child Support offered a substitute amendment listing the targeted circumstances under which a review of the obligor's obligation would occur outside the normal three-year review cycle. At the time, I informed the committee that I had asked our customer service manager, who has been handling customer calls daily for many years, what she thought was the cause of more obligor complaints: the fact that the obligation was determined without regard to the custodial parent's income, or that the

obligor had changes in his or her income but could not obtain help from us in changing the ongoing child support obligation outside the three-year review cycle. She told me that without a doubt, the much more common complaint was that the obligor lost a job or experienced some other change in income that made it hard to afford the current child support obligation.

In response to Senate Bill 2363, I posed the same question to our customer service manager, and the response above is still accurate.

In May 2006, Child Support voluntarily began reviewing obligations outside the three-year review cycle. Please see the attached list of exceptions to the three-year review cycle ([Attachment 1](#)). Although these accelerated reviews are not mandated by the federal or state government, we believe providing these reviews upon request promotes a comparable perception of greater fairness as an income shares model, but in a much more tangible way. In fact, we are currently assessing whether we are able to streamline the review and adjustment process with the goal of abandoning the lengthy list of exceptions and, instead, shortening the normal review cycle to something less than three years.

The accelerated review process is only one example of the enhanced services offered by Child Support to promote fairness to obligors. Others include:

- The economic downturn project, which was a temporary project under which a motion to amend the ongoing child support obligation based on a lay-off or substantial reduction in work hours

was considered by Child Support and prioritized on the court's docket.

- Suppression of judgment interest for as long as the obligor honors a payment plan to retain a driver or hunting license and pay down the total arrearage.
- PRIDE – a parental employment project, often initiated as part of the contempt of court process, that connects obligors with Job Service North Dakota to improve job skills and find employment.
- Filing motions to stop the current support from accruing when the obligor is now taking care of the child, rather than waiting for one of the parents to file the motion.
- A web-based child support calculator (under development) which allows courts, attorneys, and parents to complete their own guideline calculations and prepare appropriate court documents showing how the guideline amount was calculated.

In addition, a significant body of case law has developed on the meaning of the current guidelines, and the number of appeals regarding the guidelines has dropped to only one or two per year. The value of that case law would be completely lost with a new guidelines model, and the calculator above will be rendered obsolete just a few short years after it is made available.

The Department is concerned about the timing of the study. Federal law requires Child Support to review the child support guidelines every four years. Under state law, the quadrennial review process begins with Child Support convening a drafting advisory committee, including two legislators. Child Support must issue a notice of proposed rulemaking by August 1, 2014. Following the schedule of prior quadrennial reviews, one

would expect Child Support to schedule three to five meetings of the advisory group in May and June 2014. This means that if Senate Bill 2363 is enacted, Child Support would be attempting to complete the study and develop a plan for income shares at the same time it is conducting the four-year review of the existing obligor-model guidelines.

Compliance and Monthly Support

For the last federal fiscal year, over 75.09 percent of the current support that accrued was collected on time, which is the highest compliance rate in the history of the North Dakota Child Support program. This level of compliance is directly related to the proactive customer service described earlier in my testimony, and suggests that the perception of fairness is not as much of a concern today as it perhaps once was.

The average monthly amount of child support per child that is due in North Dakota is \$333.28. For more information, attached to my testimony is the table of presumptive amounts in the current child support guidelines ([Attachment 2](#)), and the United States Department of Agriculture data ([Attachment 3](#)) used by the drafting advisory committee to verify the appropriateness of the amounts in the guidelines. In addition to the average monthly per-child obligation, [Attachment 4](#) to my testimony is a chart showing the breakdown of child support obligations at various income levels. As indicated in the bottom of the chart, the obligations in the chart reflect an overall average of 1.38 children per obligation. We believe these three attachments show that the current amounts due under the obligor-model guidelines are fairly reasonable, considering the overall cost of raising children and the income of the obligor parent.

For comparison purposes, the North Dakota Child Care Resource and Referral 2012 survey on the cost of licensed child care in the state shows that the average cost at a child care center for an infant in Burleigh County was \$153.62 per week (\$665.69 per month). The weekly rate was not quite that high in Ward (\$149.87) and Williams (\$152.10), but much higher yet in Cass (\$171.59), Grand Forks (\$174.10), and Stark (\$180). The rates drop roughly \$10 per week, depending on the county, as the child reaches 18 months and again when the child reaches three years of age.

Madame Chairman and members of the committee, this concludes my testimony on Senate Bill 2363, and I would be glad to answer any questions the committee may have.