Testimony
Senate Bill 2129 – Department Of Human Services
Senate Judiciary Committee
Senator Nething, Chairman
January 10, 2007

Chairman Nething, members of the Judiciary Committee, I am Mike Schwindt, Director of the Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of Senate Bill 2129.

This bill covers many aspects of the Child Support Enforcement (CSE) program.

- It responds to the federal Deficit Reduction Act of 2005 (DRA), which places a greater emphasis on enforcement of medical support and also requires us to impose a $25 per year fee in certain cases;
- The bill refines some of our collection tools so our efforts can be more effective and responsive to the needs of both parents; and
- The bill proposes some changes regarding our operation of the State Disbursement Unit (SDU) and the records maintained on our computer system.

Section One. Current state law allows records maintained on our automated system to be admitted into evidence in a court proceeding unless disputed by a party. A local prosecutor has suggested the law be clarified to indicate that this general rule applies in criminal prosecutions.

Section Two. Each party in a child support case is currently required to "immediately" inform the SDU of the party's address, telephone number, and certain other pieces of information. In response to a suggestion from a judicial referee, the bill proposes a ten-day timeframe for providing the

updated information (similar to updating a person's drivers license information) so the duty to provide the updated information can be enforced by a court if necessary.

Section Three. For child support to be due after a child turns eighteen, the custodial parent must file an affidavit. Currently, a custodial parent has up to one year plus 90 days after the child's eighteenth birthday to file the affidavit. Until the affidavit is returned, the obligor owes no child support. However, once the affidavit is returned, the duty of support "continues" after the child's eighteenth birthday. As a result, an obligor who paid in full and on time until the child's eighteenth birthday, and had not been required to make a payment for over a year, could now owe up to twelve months of arrears. Under the proposed amendment, the support obligation would resume when the application is received, but the obligor would not owe any arrears due to the custodial parent's delay in providing the affidavit.

> **Example:** Obligor owes a $300 monthly obligation for one child and pays in full and on time each month. The child turns 18 in June 2007, but has one year left of high school. In May 2007, the custodial parent receives an affidavit to complete to continue the obligation until the child graduates, moves out, or turns 19, whichever happens first. The custodial parent does not return the affidavit, and the obligation stops.
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> After the child graduates in May, 2008, the custodial parent decides to return the affidavit. The affidavit "continues" the obligation retroactively from the child's eighteenth birthday forward, creating an arrearage of twelve months of support from June 2007 to May

2008. If the obligor does not pay the full $3,600 at once, interest will accrue and collection actions will resume, including reporting the arrears to credit bureaus.

Section Four. We propose to clarify this section in response to an argument recently raised by an obligor who tried to avoid paying child support by assigning the right to receive estate property to a sibling.

Section Five. As indicated earlier in this testimony, the federal government is placing greater emphasis on enforcing medical support for children. State law requires the court to order the custodial parent, rather than the child support obligor, to provide health insurance for the child or children if the insurance is available to the custodial parent at no or nominal cost. The proposed new section would allow CSE to enforce this obligation against custodial parents using the National Medical Support Notice. This is the same notice we currently use to enforce health insurance obligations against obligors, and the federal government is currently changing the notice so it can be used for either parent.

Section Six. Stepparents are required to support their stepchildren as long as they live in the same family unit. Many employers, including the military and the State of North Dakota, extend health insurance coverage to dependent children of a stepparent's spouse at no or nominal cost to the stepparent. Under the proposed amendment, any coverage available at no or nominal cost to the stepparent would be considered coverage available to the custodial parent. This change would allow CSE to enforce the existing duty of the custodial parent to enroll the children in available coverage, when necessary, rather than require the obligor to provide coverage.

Section Seven. Occasionally, the SDU finds itself distributing an arrears payment to a parent who also owes a current support obligation or other debt to the Department. Rather than paying the money out and then trying to collect it back, the amendment would allow the Department to intercept the arrears payment and apply it on the parent's behalf to the parent's other obligations.

Example #1. Mom is the custodial parent and is owed arrears by Dad. Mom is convicted of a crime and goes to jail, so custody is transferred to Dad. Mom now owes current support to the children while in jail, and Dad is making arrears payments. When the arrears payment is made through the SDU, the money is now forwarded to Mom even though her current support obligation to the children is still unpaid. The change would get the money back to Dad for the children's current needs.

Example #2. Dad was the custodial parent of children with Mom #1. The children are now all over age 18, but Mom #1 still owes Dad some arrears. Dad also owes current child support to his children in a second family with Mom #2. Dad also owes the taxpayers money for a TANF (Temporary Assistance for Needy Families) payment he should not have received when he had custody of the children with Mom #1. When Mom #1 makes a payment on arrears to Dad through the SDU, the change would mean the money would be paid first to Mom #2 for current support with the balance used to reimburse taxpayers for the payment Dad should not have received.

Under the proposed amendments, the SDU would be authorized to take the sensible approach of intercepting arrears payments and applying the money to debts the Department is currently trying to collect.

Section Eight. Similar to the examples discussed above, current law allows arrears debts to be offset by a court order in certain situations. This law has worked well in a number of cases since it was enacted in 2003. However, there are times when the parties are reluctant to go to court, or when the balance remaining to offset is too small to justify the time and expense of a court action. The proposed amendment would give CSE the authority to issue an administrative order offsetting arrears owed by two parents to each other, as long as neither parent objects.

Section Nine. In the DRA, the federal government has required the CSE program to impose a fee of $25 per year in every child support case enforced under Title IV-D of the Social Security Act in which collections in the year are at least $500. This requirement does not apply to cases where TANF had been expended at some point. Unless federal law is changed, the anticipated deadline for imposing this fee is October 1, 2007.

Assuming federal law is not changed, the DRA gives the State four options:

1. Collect the fee from the obligor,
2. Collect the fee from the obligee,
3. Deduct the fee from payments made through the SDU to the obligee, or
4. Pay the fee out of state general funds.

The proceeds of the fee must be used to offset the expenses of the child support enforcement program.

We request legislative direction on the appropriate option for collecting the fee.

- Between Option #2 and Option #3, we prefer Option #3 because it ensures the fee is collected. Under Option #2, the child support payment is made to the obligee and then the obligee is required to return a portion of the payment as the fee. The State would be liable to the federal government for any uncollected fee.
- We assume Option #4 would not be preferred due to the state general fund impact.
- Thus, the choice appears to be between imposing the fee on the obligor (Option #1) and deducting the fee from payments to the obligee (Option #3).

The Department recommends the language in Section Nine as a balance between the interests of each parent. The amount of the fee imposed on an obligee is relatively modest ($25 per year), especially considering the cost of hiring an attorney or bill collector to collect the child support. At the same time, the language authorizes a court to pass on the cost of the fee to the obligor as an arrearage. Through the court process, an obligor is given notice and an opportunity to pay the fee, rather than being surprised with an annual "arrearage."

There is also another complication. The federal government shares in the cost of the collection and distribution services provided by the child support enforcement program in IV-D cases. The State pays the full cost of such services in nonIV-D cases. Accordingly, since a fee must be

imposed in certain IV-D cases, we believe it would be appropriate to impose a fee in nonIV-D cases as well. However, the fee should be higher since the State is funding the full cost of those services. If a parent wants to take advantage of the lower fee, he or she can apply for IV-D services.

Section Ten. Another scenario commonly faced by the CSE program is an ongoing monthly child support obligation "payable to the obligee on behalf of the children" in one court case, but custody of the children has been placed with a guardian or other third party (e.g. grandparents) in a different court case. Often, the monthly support payments are still payable to the former custodial parent even though someone else now has legal custody of the children. Rather than make the parties go back to court to change the payee, the proposed amendment would authorize the payee to be changed as an administrative matter as long as none of the parties object. As with the offsets proposed in Section Eight, this change would allow us to provide a greater level of customer service without making the parties go to court, as long as everyone is in agreement with the proposed change in payee.

Section Eleven. We maintain the official payment records of all child support obligations in North Dakota, not just those currently being enforced under Title IV-D. This is different from some other states which only monitor obligations that are being enforced under IV-D.

The changes are intended to address two situations where the accuracy of the state's payment records could be improved. First, when an obligation is enforced by another state's IV-D program, North Dakota may no longer receive information regarding payments made to the other state. This

can lead to the situation where an obligor appears to owe arrears according to our records when in fact the obligation has been fully paid in another state. The change would allow us to remove the debts from our records until one of the parties asks for the obligation to be enforced in North Dakota and we can obtain up-to-date payment information from the other state.

Second, there is no longer a statute of limitations for child support obligations. As a technical matter, arrears can be owed forever, even many years after an obligor has died and any estate has closed. Under the proposed change, after a sufficient period of time has passed since the death of the obligor to know there are no assets in the obligor's estate to pay child support, then the arrears could be removed from the state's records. That way, even though the debt is still legally owed, the state's payment records do not include totally uncollectible arrears.

Section Twelve. This section is proposed to clarify the existing authority of the CSE program to obtain information from public utilities including cellular and wireless telephone companies. As more people move from traditional telephone service to cellular or wireless service, other states have found a match with those providers to be an effective way of locating people, which leads to successful establishment and enforcement of child support obligations.

Section Thirteen. This change is made to comply with changes in federal law under the DRA. The process described in state law is not currently used by any state, and the federal law was changed to encourage states to use automated administrative enforcement processes.

Section Fourteen. This change amends a provision inadvertently omitted from legislation enacted last session to create the arrears registry, which includes all obligors who owe arrears greater than two times the current or most recent monthly support obligation or $2,000, whichever is less.

Section Fifteen. Current law requires the child support enforcement program to maintain a list of all obligors who have ever been held in contempt of court for nonpayment of child support or who have been convicted of nonpayment of support. The proposed change would confirm our authority to remove from the list any obligor who is deceased, who no longer owes any child support, or whose obligation is being enforced in another jurisdiction and we are unsure whether or not the child support has been paid.

Section Sixteen. As indicated earlier in my testimony, the federal government is placing greater emphasis on enforcement of medical support for children. CSE currently has authority to obtain information from health insurers in North Dakota. We are proposing the new section to clarify that all health insurers in North Dakota are expected to participate in the data match program.

This concludes my testimony. I would be happy to answer any questions the committee may have.