

Child Support Enforcement Business Relations Task Force
October 13, 2009
10:00 a.m. – 4:45 p.m.

Task Force Members in Attendance: Bill Devlin, Jim Fleming, Harlan Fuglesten, Jim Goetz, Dale A. Haake, Senator Judy Lee, Mike Rud, Mike Schwindt, Representative Robin Weisz

Task Force Member Absent: Paula Bachmeier

Staff: Barbara Reiersen

Visitors: Don Forsberg, Pat Ward, Dan Kuntz, Jack McDonald

Welcome and Introduction (Tabs 1-2) -1

Binders were distributed to Task Force members. The materials in the binder were reviewed over the course of the meeting. Generally, these minutes involve an expansion of information included in the binder or information not included in the binder.

Schwindt reviewed the mission of the Task Force. He reported that the ND Chamber of Commerce was invited to participate in the Task Force but have not yet responded.

Program Background - 2

What's Been Happening (Tab 3) - a

Schwindt explained IV-D and nonIV-D. IV-D refers to Title IV-D of the Social Security Act.

IV-D cases:

- stem from automatic referrals from public assistance programs (Temporary Assistance for Needy Families, foster care and Medical Assistance) or
- either the custodial or noncustodial parent applying for IV-D (i.e., child support enforcement) services.

NonIV-cases:

- stem from court orders where there is no application or referral to the IV-D (i.e., child support enforcement) program or
- where people choose to close their IV-D (i.e., child support enforcement) case.

Schwindt said the cases that will be impacted by the recommendations coming out of this group will be IV-D cases. The only services the program provides for nonIV-D cases is issuing income withholding orders and processing support payments.

Schwindt relayed the following information:

- California's Child Support Enforcement program was able to locate 94% of the people they were looking for by matching with cell phone records. There is a lot of work being done on the federal level regarding accessing cell phone records as a locate source.
- Medical support regulations have been 10 years in the making. While employers are familiar with the National Medical Support Notice, something new they will be seeing is dollar specific medical support.
- Three Affiliated Tribes have a federally funded child support enforcement program. Federally funded tribal programs are required to do certain matches with the state program but because the Three Affiliated Tribes' program is so new this has not yet been pursued.
- When working with obligors, the program starts with less restrictive measures with the hope that more restrictive measures will not be needed.
- The program can do public disclosure of delinquent obligors but has not done so.
- In ND 13% of the cases do not have orders. In comparison, South Dakota has orders for 93-96% of their cases.
- \$122 million of support was collected in 2008. Total collections have exceeded \$1 billion.
- Collections per case have increased. Changes to the guidelines haven't really been a factor in this change.
- The increase in collections for filled FTEs shows that enforcement methods are paying off.
- The national average for percent of current support collected is 62%. ND is ranked number 2 in the country in this category.
- The chart that shows payment on arrears means that we have received at least one dollar on a case. The stimulus payments affected this. Child Support was first in line for those.

Schwindt said there are \$280 million in receivables and this is growing. Representative Weisz asked if interest has helped or hurt receivables. Schwindt said there is a debate about this. He thinks it helps for these reasons: before there was interest obligors sometimes chose to pay bills that did charge interest before paying support, interest can be suspended when there is a payment plan, it is a good bargaining chip, and obligors may be motivated to pay their support debts they so don't accrue interest. Interest does increase receivables so it is a double edged sword. McDonald asked who gets the interest. Schwindt said interest follows the principal (i.e., whoever gets the support payment (e.g., custodial parent, federal government) gets the interest payment). The ND Child Support Enforcement program does not get the interest.

What's Been Done So Far in ND (Tab 4) - b

Fleming discussed the arrears registry. Prior to the arrears registry different enforcement methods had different timeframes and triggers. Because some tools didn't come into play for quite some time obligors could amass large debts and feel they had

no choice but to run from the program. The arrears registry provides a consistent and earlier trigger point for enforcement tools. The program looks at what tool will work best for a given obligor. The arrears registry criteria are met if as little as two months of arrears exist. This helps prevent obligors from amassing large and unmanageable debts. The arrears registry criteria were phased in for license suspension. This phase-in process has been completed.

Fleming said that to be successful the program needs the cooperation of the business community in a number of areas, including:

- Income withholding – Income withholding is no longer delinquency based. All obligors are categorically subject to income withholding. The federally mandated income withholding order can cross state lines. This is called direct income withholding.
- New Hire Reporting – All employers must report all new hires within 20 days. The information is transmitted from the State Directory of New Hires to the National Directory of New Hires.

Fleming said new hire reporting is key because the program uses new hire reports to issue income withholding orders and locate obligors. New hire reports are not always submitted because, for example, a new business may be unfamiliar with the requirement, the requirement is forgotten, or there is conspiracy between an income payer and an obligor (e.g., underground economy). Fuglesten asked if there are any employees who do not have to be reported. Reiersen said all employees – full time, part time, temporary, adults, and minors – must be reported. Fleming said the general rule is that if an employer gives an employee a W-2 form that employee must be reported. Reiersen will send materials to group members who are not familiar with new hire reporting requirements. Fuglesten asked why the W-2 didn't contain a note about this requirement. Schwindt said the W-2 is a federal form and the Treasury Department and the Department of Health and Human Services have different sets of forms. Fuglesten suggested the federal government be asked to add this to the W-2 form.

Schwindt said there has been a push at the federal level to require employers to also report the amount the employee will be paid for the first day of work.

McDonald said the Secretary of State's office includes new hire reporting requirements in their packets for new businesses.

Reiersen said the program uses information from Job Service ND to assess compliance with new hire reporting requirements.

Goetz suggested that the program pay employers to report new hires. Fleming said another idea is to charge an obligor (e.g., withhold a fee for processing a deduction order).

Terms of art were discussed. For example, the child support program finds the term 'deadbeat' to be derogatory and, therefore, doesn't use it.

Fuglesten asked how the income withholding amount is determined and if there are limits to how much can be withheld. Schwindt said the amount keys off the court order. The group had a number of questions about who is subject to income withholding and why all obligors are subject. Fleming explained this is per law. Autopay is an option for obligors. This allows money to come directly from an obligor's checking account.

Fleming explained that the guidelines are used to set the amount of the order. The income withholding order is then issued for that amount. The income withholding order has a breakdown for a variety of pay cycles. The maximum amount that can be withheld is 50% of disposable income. Questions were raised about overpayments when obligors have multiple jobs and too much support is collected. Fleming said that when there are multiple employers the case worker determines if income withholding orders need to be issued to all employers (e.g., full amount may be able to be withheld from one employer). Excess money is refunded to the obligor. Haake asked about the turnaround time for refunds. Schwindt said the State Disbursement Unit (SDU) has a two day turn around for getting payments out the door. Payments to custodial parents are made via debit or direct deposit.

It was asked if an employer will get into trouble if they ask an employee if they are an obligor. Fleming said this can be a danger area if the information is used to discriminate against the obligor. All employees do need to be reported via new hire reporting. The program will proceed from there and contact an employer if necessary (e.g., send an income withholding order).

In response to a question Fleming said the average order is for \$250.

Fuglesten asked how much that is collected is public assistance payback. Forsberg ask how much money other states send to us. Schwindt said he did not bring those statistics to the meeting. The program also sends payments to and receives payments from tribes.

Schwindt said that an employer can withhold \$3 a month to cover the cost of remitting income withholding payments. This money is withheld from the employee and is in addition to the withholding amount.

Goetz asked for clarification of what a case is. Schwindt provided the example of a case that is composed of a mother, father and children. If the program is enforcing the order, it is a IV-D case.

There was further discussion about IV-D vs. nonIV-D cases. Ward asked if all IV-D and nonIV-D cases pay to the state. Fleming explained that IV-D and nonIV-D payments are made to the State Disbursement Unit (SDU). The SDU has the official books for all child support payments. In contrast, South Dakota's SDU processes only IV-D

payments. This means that if a nonIV-D case becomes a IV-D case at some point in time, there is no formal record of payments made by the obligor while it was a nonIV-D case. The obligor is then in the position of having to gather proof that payments were made. Because the ND SDU process both IV-D and nonIV-D payments there is a complete payment record, regardless of whether a case is IV-D or nonIV-D. This is a protection for obligors in ND.

There was discussion about whether a divorcing couple has to have a formal agreement or if they can do something informally outside the court system regarding child support. McDonald said the courts require a formal agreement. Parties cannot choose to have an informal agreement regarding support. Fleming said this is because the support is the right of the children.

Schwindt explained that there can be small credit balances. For example, support is paid out at the beginning of the month. Fleming said most of the program's cases include one child. Fuglesten asked what percent of cases receive a payment in a given month. Fleming said 25% is not collected in the month it is due. Kuntz asked if enforcement tools and economic conditions have affected this. Schwindt said it is hard to track and prove the impact of enforcement tools and economic conditions. Some states had originally reported increases in collections associated with drivers license suspension, of two to four percent.

Ward asked how much of current support is collected each month. Schwindt said that 76 cents on the dollar is received for current support. For cases with arrears, at least one dollar was collected on 72% of those cases. It is a coincidence that these two figures are similar.

There was discussion about whether special efforts were made or should be made for the small percentage of people who owe large percentages of the arrears.

Fleming discussed some of the tools available to the program (e.g., matches with utility companies, financial institutions and insurance companies). Ward asked if jail time is used as a tool. Fleming said this varies because some obligors can't be located, the courts may provide some obligors with multiple opportunities to pay their obligations before imposing jail time, states attorneys may not prioritize these cases, and the US Attorney for ND has interpreted intent differently than the child support enforcement program does. Seizures from financial institution have increased. Fleming explained the difference between liens (i.e., freeze the asset), demand letter (i.e., seize the asset) and the deduction order (i.e., seizes assets held by financial institutions and seizes lump sums paid by income payers).

Lunch break

Effectiveness of Tools (Tab 5) - c

Schwindt said that payments from unemployment compensation are up 200% this year. Passport denial has also been an effective tool. In response to the question of whether passport denial also applies to the document needed to travel to Canada, Schwindt said that it does.

Fleming talked about the following tools:

- Financial Institution Data Match (FIDM) program – This tool involves matching the obligor file to accounts held by financial institutions.
- High Intensity Enforcement Unit – This unit was established to do special projects and matches (e.g., capital credits).
- Insurance matches – The program participates in the insurance matches done through the Child Support Lien Network and the federal Office of Child Support Enforcement. The program generally does not take action on property claims because it is generally a benefit for the property to be repaired.
- Payment plans – There was discussion about whether and what enforcement actions are taken when a payment plan is in place. Fleming said that it would depend on the individual situation. For example, the program may seize the savings account of an obligor even if the payment plan is being complied with; the program might choose not to seize the checking account of an obligor if the payment plan is being complied with.

Goetz expressed the opinion that reimbursement for participation in the Financial Institution Data Match program should be increased. He said the current reimbursement of \$25 per quarter is far less than the \$1,000 maintenance cost his financial institution would incur. Senator Lee said that during the last legislative session some legislators objected to the \$25 reimbursement because they felt that there should be no reimbursement. They felt the match should be a cost of doing business.

Fleming talked about the following tools:

- License suspension – License suspension is used as a deterrent. Representative Weisz brought up work permits. Schwindt said a temporary license provision was authorized during the last legislative session. Concerns were expressed by the group about the negative impact of license suspension on employment. Schwindt said that if an obligor is under income withholding and we are receiving current support plus arrears, the program would not be suspending the license. Obligor do have to work with the program to get even a temporary license (e.g., enter into a payment plan). Fuglesten asked if the program matches with professional licensing bodies. Schwindt said it does not but generally workers know if an obligor has a professional license. Suspending a professional license can be counter productive with earnings. It is also harder to reinstate professional license. Recreational licenses are also a part of the license suspension program. Fleming said that if an obligor is willing to sign a

plan he/she will get their license back. If this is a second payment plan (i.e., obligor did not comply with first payment plan) the obligor will need to make a down payment.

- Deduction orders – Many case workers will do a lien followed by a demand rather than issuing a deduction order to a financial institution. The deduction order process does work well for seizing lump sums from employers. Employers are required to report lump sums if they are \$1,000 or more and they have received an income withholding order from the program that includes an amount for past-due support. The employer can pay out half of the lump sum to the employee and the program seizes the other half via a deduction order

Schwindt described the PRIDE program. A Job Service ND staff person attends the court hearing and then works with the obligor to address barriers to employment and to assist the obligor with getting a job. Temporary Assistance for Needy Family (TANF) and Job Service ND are the funding sources for this program. The PRIDE program has won numerous national awards.

Schwindt said the program is not using ankle bracelets at this time. The North Carolina Child Support Enforcement program is using them with favorable results. Ankle bracelets are much cheaper than jail.

Where We Are Now (Tab 6) - d

Fleming said the program needs new sources to find people and information.

Current Electronic Data Match and Data Transfer (Tab 7) - e

Schwindt said the program has an agreement with the federally funded Three Affiliated Tribes' child support enforcement program. Standing Rock and Turtle Mountain are looking at applying for federal funding for child support enforcement programs.

Rud asked what the breakdown is between male and female obligors. Fleming said these statistics have not been run because the program is gender neutral.

Schwindt talked about the following data matches:

- New Hire – The majority of new hire reports are made electronically. Electronic reporting is voluntary.
- Electronic Funds Transfer (EFT) – EFT is voluntary. The program would like to see an increase in payments made via EFT.
- Federal Office of Child Support Enforcement insurance match and the Child Support Lien Network – The program matches with both of these sources.

Fleming researched electronic reporting requirements. Only two state agencies have legal requirements. Job Service ND requires employer with over 90 employees to do electronic unemployment compensation (UEC) reporting. This number will be dropping

to 24. Payroll service providers are required to submit sales tax remittals electronically. Senator Lee said legislative concerns have historically been that electronic reporting requirements may be burdensome for smaller businesses. Generally legislators are reluctant to mandate electronic reporting for employers. However, because most employers are now computer based, some of this thinking may have changed. It may be time to look at this again. Fuglesten suggested an option may be for employers to be able to opt out. Fleming said the Tax Department has an opt out provision.

Schwindt said in the future the National Medical Support Notice will be able to be done electronically. ND will be one of first three states to pilot doing the National Medical Support Notice electronically.

Schwindt said that 80% of newborns born out of wedlock in ND have a Voluntary Paternity Acknowledgment.

Potential Sources of Address, Income, and Asset Information (Tab 8) - f

Fleming discussed the following potential sources of information:

- Financial Institution Data Match – There are 146 financial institutions in ND and 141 are participating in the Financial Institution Data Match program. (Post meeting note: Currently there are 150 financial institutions in ND. 146 have signed agreements.)
- Cell phone companies – The federal Office of Child Support Enforcement is working with these companies regarding access.
- Unclaimed property – The program matches with unclaimed property.
- Lottery intercept – There is a mechanism in place that allows the lottery division to check to see if a lottery winner at a certain dollar threshold has a child support obligation. The program can then seize the winnings. In response to questions from the group Fleming said that because they are on reservations, Indian casinos are generally beyond our authority and tribal law governs. The program is developing its partnership with Three Affiliated Tribes so this may be a possibility in the future

In response to questions from the group regarding the program's relationships with the tribes, Fleming said there have been encouraging developments. The program is making strides with the Three Affiliated Tribes' child support enforcement program. The program is able to ask them to establish and enforce orders. Schwindt said that when tribes receive federal funding there are some requirements that the federal Office of Child Support Enforcement places on the tribal program.

Program attorneys are going into tribal court on the Spirit Lake and Standing Rock reservations. The program currently is not appearing in tribal court at Turtle Mountain. A quarter of Temporary Assistance for Needy Families referrals come from Turtle Mountain.

Schwindt said the Spirit Lake Nation is having payments go through the State Disbursement Unit. Fleming said the program has worked cooperatively with the Three Affiliated Tribes' program on income withholding and freezing and seizing financial institution assets.

Fleming said cases where the program lacks jurisdiction aren't included in all of the program's statistics. Federal performance measures don't include these 3,600 lack of jurisdiction cases.

Lien Registry (Tab 9) - g

Fleming talked about liens on personal and real property:

- Personal property – The law provides full faith and credit for liens across state lines. The problem is the lien only freezes the asset. There is not full faith and credit for seizing assets so only half of the problem has been solved.
- Real property – Currently to place a lien on real property the program has to docket the arrears with clerk, who adds it to the judgment docket. The docketing is on a per county basis. The program may not be aware of property in a county and accordingly, the arrears are not docketed in that county. Also, if arrears are increasing, the program has to keep docketing them. The Wisconsin Child Support Enforcement program has developed a model that allows online look up by social security number to determine if a seller owes arrears. The group talked about some of the potential hurdles to overcome with this model (e.g., will the people who need to do this checking have the person's social security number). Senator Lee said a closing agent will have the social security number so this should be doable. Representative Weisz expressed concerns about it not being tied to the abstract. Agricultural real estate is generally handled by attorneys.

Haake asked what legislation addresses liens on insurance proceeds. Fleming said insurance proceeds are covered under the definition of what an account is.

Security and Data Limitations (Tab 10) - h

Schwindt said the program has access to a significant amount of sensitive and confidential information and accordingly has a multitude of data security requirements it must meet. The program is extremely careful about how it uses and stores confidential information.

Impending Programmatic Changes (Tab 11) - i

Schwindt said that the program is doing health insurance matches. There is a need to tie coverage to a child because sometimes a child is covered but the custodial parent is not aware of it. Senator Lee said health care reform will affect medical support. Schwindt said that medical support guidelines being worked on.

How Do We Move Forward? (Tab 12) –

Schwindt said that Pennsylvania's collection of current support is in the high 80s percent. The ND program is not collecting at that level. Representative Weisz asked if the Pennsylvania guidelines are a factor (e.g., do they have lower support payments for income than ND does). Schwindt said there is a study done every four years regarding the guidelines. He will check to see if that answers that question.

How Do We Go About Accomplishing It? (Tab 13) - k

Schwindt talked about three areas with room for improvement: cases with orders, current support, and files with arrears. Schwindt said South Dakota is at 94% for cases with orders.

Schwindt said that cost avoidance also plays a role. When child support comes in regularly there are fewer families at the poverty level and this reduces public assistance costs, which results in savings for tax payers.

Suggestion for Future Steps in Focus Areas (Tab 12) - 3

Schwindt asked where the group goes from here.

Senator Lee said the State Disbursement Unit has worked out well. It is convenient for employers to be able to remit income withholding payments to a single entity.

Fuglesten said the group got a lot of information to be absorbed. There is a lot of misunderstanding on the part of the public about the program. A public education program would help get accurate information out.

Representative Weisz asked how the program can improve getting orders established. Schwindt said locate is key. The number one reason that orders aren't established is that the person can't be located. Cell phone companies and utilities are potential sources of locate information.

Senator Lee said the task force came out of the legislature and was charged with addressing business interests. Representative Weisz said the group was established to address concerns about mandates and security. Goetz said that reimbursement was another concern. Senator Lee said the group is to represent different interest groups and talk through issues. Rud asked if any other group besides the ND Chamber of Commerce had chosen not to participate. Schwindt said the Commerce Department declined to participate and the ND Chamber of Commerce did not respond to their invitation. Rud suggested the ND Chamber of Commerce be encouraged by the business community to participate. Senator Lee suggested that perhaps a business group other than the ND Chamber of Commerce should be invited (e.g., Bismarck Chamber of Commerce). The ND Chamber of Commerce has not always been comfortable speaking for the business community because there is not always

consensus within that community (e.g., urban vs. rural concerns). Haake said that urban and rural business would be equally affected by recommendations coming out of this group. Senator Lee suggested inviting the state Chamber of Commerce first and if they decline then perhaps the Bismarck Chamber of Commerce.

Haake suggested the group not break into subgroups, as each area brings new and differing ideas and issues to the table, and many of those present may not have even thought of some of these things. He suggested it would therefore be of benefit for all task force members to hear from the others, as it is a learning experience for most of the group.

When asked, Schwindt said he could provide some starting points for discussion.

Senator Lee suggested that others be invited to be observers for certain topics. Generally, these individuals would observe but they could provide comments at the end of the meetings. Invited visitors could be asked to email or mail an RSVP so the appropriate size room for the meeting could be secured. She would prefer not to have subgroups because of the expansion in size that would result and because she would not be a party to all of the discussions.

Fuglesten said there may be common issues that will affect all the groups. If not all members are part of all the groups they may miss something. Haake said there appears to be a lot of interweaving.

Public education was discussed. Senator Lee said that \$280 million support is owed and taxpayers are paying for this via the public assistance programs. Rud suggested that public education about the program be provided. People should be made aware that there are \$280 million dollars in unpaid support. Haake said that the program and the social welfare programs need to collaborate. Schwindt said that they do and an example is a current Burleigh county pilot regarding foster care. This involves suspending child support for good cause for six months if reunification with the family is the goal. So far this pilot is showing promising results and legislation may be requested during the next legislative session. The State would lose money but families would be reunited and would not face a negative financial effect. Haake said the \$280 million in unpaid child support should be advertised. Perhaps other agencies that would be benefited could contribute to the cost of a public education program. Senator Lee said that, unfortunately, money does not end up being budgeted for public relations. Schwindt said he would like to do public meetings. One set of meetings would be for custodial parents and the other would be for noncustodial parents. Unfortunately, there has not been staff time for this. Representative Weisz said the program tends to be perceived negatively by both custodial and noncustodial parents. Employers also have misunderstandings about the program and that influences how they react.

Goetz asked how many obligors just can't pay. Schwindt said not many. Generally, it is a matter of finding the resources. Representative Weisz asked if the program has looked at the 15% who owe most of the debt and if there are any commonalities (e.g.,

incarcerated or out of state). There was discussion about the need to address these 15% vs. the other 85%. Senator Lee said it is important to address the 85% so obligors don't fall behind early on.

The group suggested that Schwindt draft some steps to move forward (i.e., to bring forth ideas the program has about how to make improvements). At the next meeting the group will discuss these ideas. Schwindt said that he would like to see the group generate a document by September 1, 2010. This would allow recommended legislation to be introduced during the next legislative session, if needed.

The group suggested that more information about new hire reporting requirements be provided to the employer community. Some suggestions were contacting associations, sending out targeted mailing, and including information with mailing such as payroll tax returns. Rud said an article could be included in the ND Retail Petroleum Marketers Association newsletter. Reiersen will contact his office for particulars.

Suggested Subject Areas and Subgroups (Tab 13) - 4

Housekeeping - 5

Next Meeting - 6

Schwindt asked members to check their calendars to see if December 1, 2, or 3, 2009, will work for the next meeting. Members were asked to send Fleming an email regarding which days they cannot meet.