

Testimony
Department of Human Services
Interim Tribal and State Relations Committee
Representative Marvin Nelson, Chairman
March 2, 2016

Chairman Nelson, members of the Interim Tribal and State Relations Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services. I appear before you to provide information on how we determine whether the amount of child support owed by an obligor is governed by state or tribal law and on how our program approaches the suspension of a driver license of a tribal obligor.

Determining which law governs a case and which court has authority to establish paternity and a support obligation for a child can be complicated in tribal cases because of tribal sovereignty. Many of the cases in our caseload require establishment of the child's paternity. Since the paternity of a tribal child often has implications for tribal membership, this is frequently an area where tribal law and tribal courts have exclusive jurisdiction. If the child is born to married parents or the father has signed a written acknowledgement of paternity, then paternity is not an issue and both the state and tribe may have concurrent jurisdiction, depending on where the parents reside at the time that the action is started. There are many decisions of the United States Supreme Court and the North Dakota Supreme Court guiding this analysis, and that guidance is summarized in [two handouts](#) to this testimony which are used internally in our program.

The lines in the handouts where there is concurrent jurisdiction are highlighted in yellow. For these cases, the choice whether to move forward in state or tribal court depends on many practical considerations.

Our choice of jurisdiction does not include consideration of which jurisdiction's child support guidelines lead to a higher or lower obligation. In reality, a higher obligation might result in slightly more money for the child or the state if the obligation is assigned, but a lower obligation is usually easier to collect. Instead, we consider things such as the workload of the court, which court would be in a better position to enforce the obligation, and whether the tribe has a federally-funded child support program to whom the case can be referred.

Our goal as a program is to overcome the jurisdictional complexities and provide a level of service to tribal children that is comparable to the level of service provided to nontribal children.

With regard to suspension of a state-issued driver license, the key questions for the committee may be "when does Child Support take it away" and "how does an obligor get the license 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 was making regular payments, even if he or she owes past-due child support.

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 the license is suspended. During that time, the obligor has a chance to pay the arrears in full

(which happens on occasion) or contact Child Support and sign a payment plan. If the obligor does not respond, or if the obligor breaches a payment plan, then the license is suspended and the obligor is notified of the suspension.

After a license is suspended, an obligor can get the license reinstated at any time by negotiating a payment plan with Child Support and paying support for the current month. If this is not the first payment plan for the obligor, the law provides for a down payment to motivate the obligor to comply with the plan.

The goal of the license suspension process is not to suspend licenses, but to give delinquent obligors an incentive to make payments. 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 place restrictions on reinstated licenses. If an obligor is willing to pay current support and an affordable amount toward past-due support, we are almost always able to reinstate the license without restrictions.

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

North Dakota Child Support
PATERNITY

February 2016

	Conception Where?	Is CP a member of the tribe?	Does CP reside on the tribe's reservation?	Is NCP a member of the tribe?	Does NCP reside on the tribe's reservation?	Court(s) with jurisdiction
1	On	Y	Y	Y	Y	Tribal
2	On	Y	Y	Y	N	Tribal
3	On	Y	Y	N	Y	Concurrent
4	On	Y	Y	N	N	Concurrent
5	On	Y	N	Y	Y	Tribal
6	On	Y	N	Y	N	Tribal
7	On	Y	N	N	Y	Concurrent
8	On	Y	N	N	N	Concurrent
9	On	N	Y	Y	Y	Tribal
10	On	N	Y	Y	N	Concurrent?*
11	On	N	Y	N	Y	Concurrent
12	On	N	Y	N	N	Concurrent
13	On	N	N	Y	Y	Tribal
14	On	N	N	Y	N	Concurrent?*
15	On	N	N	N	Y	Concurrent
16	On	N	N	N	N	State
17	Off	Y	Y	Y	Y	Tribal
18	Off	Y	Y	Y	N	Concurrent
19	Off	Y	Y	N	Y	Concurrent
20	Off	Y	Y	N	N	State
21	Off	Y	N	Y	Y	Concurrent
22	Off	Y	N	Y	N	Concurrent
23	Off	Y	N	N	Y	Concurrent
24	Off	Y	N	N	N	State
25	Off	N	Y	Y	Y	Concurrent
26	Off	N	Y	Y	N	Concurrent
27	Off	N	Y	N	Y	State
28	Off	N	Y	N	N	State
29	Off	N	N	Y	Y	State
30	Off	N	N	Y	N	State
31	Off	N	N	N	Y	State
32	Off	N	N	N	N	State

* Case law is still not definitive under these facts, but suggests concurrent jurisdiction.

North Dakota Child Support
ESTABLISHMENT/REVIEW AND ADJUSTMENT

February 2016

The grid below assumes that paternity is not an issue in the case because:

1. Child was born during a marriage
2. A valid voluntary paternity acknowledgment has been signed
3. The obligor is the child's mother

The grid below further assumes that at least one of the parties resides in your state or on a reservation in your state, or else neither jurisdiction would have an interest in the case beyond asking another state or Tribal IV-D program for assistance.

	Existing Order?	Does A Party Still Reside in the Jurisdiction that Issued the Last Order?	Does the Opposing Party Reside on the Reservation?	Is the Opposing Party a Tribal Member?	Were There Significant Incidents of Relationship in Jurisdiction of the Moving Party?	Court(s) with jurisdiction
1	No		Y	Y	N	Tribal
2	No		Y	Y	Y	Concurrent
3	No		Y	N		Concurrent
4	No		N	Y		Concurrent
5	No		N	N	Y	Concurrent
6	No		N	N	N	State
7	Tribal	Y				Tribal
8	Tribal	N				State
9	ND	Y	N			State
10	ND	Y	Y			State
11	Other	Y				Other
12	Other	N	Y	Y		Tribal
13	Other	N	Y	N		Concurrent
14	Other	N	N	Y		Concurrent
15	Other	N	N	N		State

A field is left blank on the grid above if the question either does not apply, or does not affect the conclusion.