

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CHILD SUPPORT COMMITTEE

Wednesday and Thursday, July 23-24, 1997
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Eliot Glassheim, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Eliot Glassheim, Wesley R. Belter, Linda Christenson, William R. Devlin, April Fairfield, George Keiser, Amy N. Kliniske, Sally Sandvig; Senators Dwight C. Cook, Joel C. Heitkamp, Donna L. Nalewaja, John T. Traynor

Members absent: Representatives Dale L. Henegar, Jim Torgerson

Others present: See Appendix A

Chairman Glassheim appointed Senator John T. Traynor vice chairman.

Mr. Jay E. Buringrud, Assistant Director, Legislative Council, reviewed the Legislative Council supplementary rules of operation and procedure.

CHILD CUSTODY AND VISITATION STUDY

At the request of Chairman Glassheim, committee counsel reviewed a background memorandum on the study directed by House Concurrent Resolution No. 3031--the equity and fairness of the determination and enforcement of child custody and visitation orders.

Chairman Glassheim called on Ms. Marcia O'Kelly, Chairman of the Domestic Law Committee of the Supreme Court Commission on Gender Fairness in the Courts, for comments concerning the commission's report. Ms. O'Kelly said the commission determined there was no gender bias in North Dakota domestic law statutes, although there are some risks of bias in the application of the statutes. She said this risk of bias may be a result of stereotypical thinking.

Ms. O'Kelly said it is a common misperception that women get custody of children in 90 percent of custody determinations, when in reality women get custody of children in approximately 73 percent of the cases and in over 50 percent of the child custody cases where the woman gets custody, the decision was made jointly by the parents. She said it is possible a gender bias factor that may play a role in parents agreeing that the mother get custody is a fear

on the part of the father that the judge will award custody to the mother.

In response to a question from Senator Traynor, Ms. O'Kelly said a primary caretaker is more likely to be a woman, and it is in the best interest of a child to consider who is the primary caretaker. She said there is a possible risk of bias if a judge is an older male from a generation typically accustomed to women automatically filling the role of primary caretaker.

In response to a question from Representative Keiser, Ms. O'Kelly said the fact that attorneys often jockey for positions in front of particular judges for particular issues is inherent in all areas of law brought before the courts and not unique to domestic law issues. She said domestic law often deals with the value of predictable answers versus the value of sensitivity to specific case needs. She said the child support guidelines are an effort to achieve predictable results.

In response to a question from Representative Christenson, Ms. O'Kelly said typically states use studies on gender bias as a jumping off point to do studies relating to other areas of legal bias. She said North Dakota has not formally studied other areas of bias, although she would recommend a study relating to minority bias.

In response to a question from Representative Glassheim, Ms. O'Kelly said mediation is a good post-dispute tool, but mediators must be qualified and funds must be available for mediation programs.

Chairman Glassheim called on Mr. Stephen Podrygula, psychologist, for comments concerning the study. Mr. Podrygula asked the committee to view requests by parties for rights in child custody and visitation issues with some skepticism. He said the committee should focus on the theme that parents' priority should be to their children.

Mr. Podrygula said his comments to the committee would focus on the needs of children in custody and visitation issues. He said some of the findings he brings to the committee are based on a national conference he attended in Los Angeles, entitled *Children Divorce and Custody: Lawyers and Psychologists Working Together*, which was sponsored

by the American Psychological Association and the Family Division of the American Bar Association.

Mr. Podrygula said he will focus on four issues:

1. Child support is concerned with more than money.
2. The psychological aspects of divorce.
3. The general principles that outline problems of divorce.
4. Recommendations to improve divorce situations.

Mr. Podrygula said a child's needs are basically the same whether the parents are divorced or not. He said child support needs to focus on the parents' obligations, and the best interests of a child usually require that both parents support the child. He said child support includes financial support and being involved in activities with the child. He said a good way to view child support is to ask not what your child can do for you, but what you can do for your child.

Mr. Podrygula said six criteria the committee may want to use to judge any recommendations it considers making are:

1. Try to minimize parental conflict.
2. Try to maximize the child's access to each parent's unique strengths and assets.
3. Try to minimize loss.
4. Try to make the child's postdivorce adjustment easier.
5. Try to facilitate the parents' postdivorce adjustment.
6. Try to facilitate the family's postdivorce adjustment.

Mr. Podrygula said special emphasis should be given to minimizing parental conflict because research clearly shows this is the best indicator of how well a child will come out of a divorce situation.

Mr. Podrygula said conflict in divorce affects all parties involved. He said research indicates children are negatively affected by conflict within the family and staying together "for the kids" is not best for children.

Mr. Podrygula said a common occurrence in divorce is the differing financial disparity between men and women; men are typically financially better off after divorce and women are typically financially worse off after divorce. He said poverty is a major contributor to stress. He said programs such as the Phoenix program, which is sponsored by the Board of Vocational Education, is a very positive program for dealing with the stress that often accompanies poverty and domestic situations. He said the program helps train single heads of families to be economically self-sufficient. Because divorce is significantly stressful for parents, he said, it is often difficult for the parents to deal with the divorce responsibly.

Mr. Podrygula said divorce and conflicts are proc-

esses and each takes time to adjust. He said he is in support of postdivorce mediation as a tool to deal with this conflict.

Mr. Podrygula said two factors that play a significant role in how successful children are after divorce are how the child was doing before the divorce and the level of conflict before the divorce.

In response to a question from Senator Traynor, Mr. Podrygula said North Dakota custody determination law is basically good; however, the impact of sexual orientation of the parents needs to be addressed. He said studies indicate the sexual orientation of a parent has absolutely no impact on how a child turns out. He said there are some problems with how North Dakota custody determination law is implemented and improvements could be made in the area of mediation training standards, encouraging discreet and safe dropoff centers, and increasing the availability of resources to help educate parents and give parents incentives. He said he opposes what may be a legislative movement to return to "fault" divorces, because these types of divorces increase conflict.

In response to a question from Representative Belter, Mr. Podrygula said the financial inequity between men and women after divorce results from factors such as unequal pay. He said the professional standards of judges and attorneys are relevant to how people get through divorce. He said specialization of attorneys in the area of family law may be one way to address attorneys standards.

In response to a question from Representative Devlin, Mr. Podrygula said in divorce, our legal system does not encourage parents to decrease conflict, and one way parents could be encouraged to work out divorce issues would be to require a parent to have a "ticket" before entering into court; i.e., predivorce training or a parenting plan. He said another way to decrease the conflict that accompanies divorce is to teach conflict resolution skills.

Chairman Glassheim called on Mr. Daniel Biesheuvel, President of R-KIDS, for comments concerning this study. Mr. Biesheuvel provided written testimony regarding the fairness of determination and enforcement of child custody and visitation orders and the fairness of child support guidelines, a copy of which is attached as Appendix B.

In response to a question from Representative Glassheim, Mr. Biesheuvel said the "poor soul" can be distinguished from the "evasive parent" because the "poor soul" is actually trying to pay child support, unlike the "evasive parent." He said other states are going after delinquent parents beyond state lines, and he supports this.

In response to a question from Representative Kliniske, Mr. Biesheuvel said in situations of hardships such as the floods in the eastern part of the

state, a portion of flood relief should have been set aside to assist obligors in meeting their child support obligations. He said the law does not treat businesses in the same way it treats obligees; businesses do not go to jail if they are unable to pay their debts.

Mr. Biesheuvel said he was in support of House Bill No. 1258 (1997), which would have required predivorce counseling. He said premarriage counseling and predivorce counseling would be helpful legislation. He also said the North Dakota domestic law is basically good; however, the administrative rules are not.

In response to a question from Senator Traynor, Mr. Biesheuvel said in his own personal situation in which his kids were moved 1,500 miles from him after the divorce, he and his ex-wife split travel expenses. He also said he supports mediation.

In response to a question from Representative Belter, Mr. Biesheuvel said in order to officially change the amount of child support an obligor is requested to pay, an obligor is required to go to court.

Senator Nalewaja said she sees a real problem with "late alimony" where child support payments are going to benefit the custodial parent and not the children.

Chairman Glassheim called on Ms. Susan Beehler, R-KIDS, for comments concerning this study. Ms. Beehler provided written testimony, a copy of which is attached as Appendix C.

Ms. Beehler said a new study, which was printed by the Associated Press, indicates it is an error to say after divorce men's income increases and women's decreases.

Ms. Beehler said the gender fairness report concerned her in that it provides judges should be responsible for explaining the elements and repercussions of divorce, while Ms. Beehler feels it should be the attorneys' responsibility to explain divorce to the parties. In response to a request from Chairman Glassheim, she said she would provide copies of laws from other states that have dealt with custody visitation and child support guideline issues.

Chairman Glassheim called on Ms. Sherry Mills Moore, a member of the Joint Task Force on Family Law, for comments concerning the study. Ms. Mills Moore provided written testimony, a copy of which is attached as Appendix D.

In response to a question from Senator Traynor, Ms. Mills Moore said she did not think it would matter whether the committee met in locations other than Bismarck; however, changing locations may result in duplicative testimony.

In response to a question from Representative Belter, Ms. Mills Moore said the grievance procedure for legal counsel does not necessarily require relitigation, unless a party claims incompetent counsel. She

said it is common for family law attorneys to have ethical grievances filed against them largely because of the stresses related to divorce. She said lawyers practicing domestic law do not require a specialized license in family law.

In response to a question from Representative Glassheim, Ms. Mills Moore said she did not have any specific recommendations regarding child support for the committee other than encouraging simplicity and predictability of outcome.

In response to a question from Representative Keiser, Ms. Mills Moore said the Joint Task Force on Family Law is not specifically studying the topic of frivolous claims and solutions, although within the last year, case management rules have gone into effect that are intended to force cooperation between parties. She said attorneys practicing in domestic law do not always have the answers to personal problems, and she supports mediation programs, noting they are not available outside Grand Forks and Fargo.

Mr. Tim Mahoney testified as an interested person. He said divorce is a very uncomfortable time for everyone involved, and he recommended that the committee try to "untie the conflict" by creating alternatives for divorce situations, such as mediation, and he said the child support guidelines should consider the income of both parents.

He said parents should share the medical expenses of their children and the custodial parent should be held to some measure of accountability for how child support payments are spent.

Mr. Mahoney said when considering the guidelines the committee should evaluate the situation of when there is a first and second family for child support purposes. He said the committee also should consider the likelihood that an obligor will change jobs several times during a lifetime.

Mr. Mahoney said custody determinations are very personal issues and the professionals that deal with custody law should be well-trained.

Mr. Robert Sundvor testified as an interested person. Mr. Sundvor provided written testimony, a copy of which is attached as Appendix E.

Mr. Jeff Sveen testified as an interested person. Mr. Sveen provided written testimony, a copy of which is attached as Appendix F.

In response to a question from Senator Traynor, Mr. Sveen said the current system causes family breakups due to the ease of the guidelines.

Mr. Bruce Carlisle testified as an interested person. Mr. Carlisle provided written testimony, a copy of which is attached as Appendix G.

In response to a question from Senator Traynor, Mr. Carlisle said the custodial parent should be required to account for how child support money is spent.

Mr. Mike Hahn testified as an interested person. He asked that the committee put humanity in the system. He explained his experiences with child support enforcement and the aid to families with dependent children program.

The committee received written testimony from interested persons Lynn Carlisle, Chad Kalgard, Kim Kalgard, and Barbara Kalgard, a copy of which is attached as Appendix H.

Committee members requested committee counsel to provide information on which parent can claim child support for their income tax purposes--whether a child support obligee must claim child support as income, and whether an obligor can deduct child support obligations for income tax purposes; whether other states require child support obligee accounting; and techniques income share states use to simplify implementation of the income shares model.

CHILD SUPPORT GUIDELINES STUDY

At the request of Chairman Glassheim, committee counsel reviewed a background memorandum on the study directed by House Concurrent Resolution No. 3031--the equity and fairness of the child support guidelines.

Chairman Glassheim called on Mr. William Strate, Director, Child Support Enforcement Agency, Department of Human Services, for comments. Mr. Strate provided written testimony, a copy of which is attached as Appendix I. Mr. Strate encouraged the committee to study visitation and recommended the committee review Utah law regarding this issue.

In response to a question from Senator Nalewaja, Mr. Strate said aid to families with dependent children assigned child support is limited to the amount of benefits received, and after a recipient goes off aid to families with dependent children only the arrears are taken and not the monthly amount of child support.

In response to a question from Representative Belter, Mr. Strate said there was an increase in interest in child support in 1995 due to welfare reform and the public attention this received. Mr. Strate said 1995 was also the last time the child support guidelines were changed and there was also a large amount of state legislation at that time.

In response to a question from Senator Cook, Mr. Strate said, as director, it is his decision whether to allow forgiveness of past due child support amounts if a child is adopted by another person. He said he does not forgive past support in these situations as a general rule, because he does not want an obligor or an obligee to use adoption of a child as a financial incentive.

In response to a question from Senator Nalewaja, Mr. Strate said the IV-D program is not used on

Indian reservations in North Dakota because no tribal government has initiated a system that meets the federal requirements.

In response to a question from Representative Belter, Mr. Strate said although child support amounts are based on projected income instead of actual income, courts have continuing jurisdiction and may go in at any time to increase or decrease the amount of child support.

In response to a question from Representative Sandvig, Mr. Strate said it is a misconception to say that the state gets a monetary kickback for every dollar it collects in child support; however, it is true that for every dollar put into administration of the child support enforcement program, \$3 goes back. He said the bottom line is that the program pays for itself and helps reimburse the government for public benefit programs.

In response to a question from Senator Heitkamp, Mr. Strate said when the state collects arrears for aid to families with dependent children, it goes to the general fund and is used to offset against county, state, and federal funds. He said in North Dakota approximately \$5 million from the last 20 years remains unpaid child support owed to the state.

In response to a question from Representative Glassheim, Mr. Strate said the income shares model was rejected for several reasons, including the income shares model is more costly to administer for both child support enforcement and the private attorneys, there is no good way for the income shares model to account for second families, and the bottom line is essentially the same as the obligor model.

In response to a question from Representative Keiser, Mr. Strate said the Melson Delaware model is probably the most accurate child support model although it is also the most expensive and complex. He said Montana recently adopted the Melson Delaware model.

In response to a question from Representative Belter, Mr. Strate said there is no national trend in terms of what child support model states are using. Mr. Strate said switching models is very expensive and therefore states do not switch models very often; however, historically states have switched from the income shares model and to the income shares model. He said South Dakota just changed to the income shares model.

Chairman Glassheim called on Mr. Robert Freed, South Central Judicial District referee, for comments. Mr. Freed said the child support guidelines are based on a national survey of what a two-parent family typically spends on a child. He said it is an error for the North Dakota guidelines to put medical insurance and noncovered medical expenses on top of child support amounts and to increase child support for child care and the age of the child.

Mr. Freed said referees need leeway in setting child support amounts. He said he is concerned that the North Dakota guidelines do not establish a maximum amount of child support needed to support a child.

Mr. Freed said he is concerned the application of the child support guidelines has the effect of discouraging visitation because obligors are required to pay the full amount of monthly child support obligations even though they may have extended visitation with the child. He said in these situations both parents need to provide a household for the child.

Mr. Freed said he is concerned the guidelines do not adequately address multifamily situations because the guidelines result in an obligor paying more money for two children in two families than two children in one family.

Mr. Freed said a problem with the foster care reimbursement system is that the obligation is determined individually for each child regardless of how many children a family may have in the foster care system.

Mr. Freed said the guidelines do not allow him enough flexibility to address situations where an obligor voluntarily changes circumstances in order to pay a lesser amount of child support.

In response to a question from Senator Heitkamp, Mr. Freed said under the current system it is not possible for referees to determine the amount of support required to raise a child and order that the remaining amount of child support be put into a trust account.

Chairman Glassheim called on Ms. Beehler for comments concerning the study. Appendix C contains Ms. Beehler's testimony. Ms. Beehler said there is a problem with child support records at the county level being inconsistent with the records of the state level. She also said there is a problem of assignment of child support not being fully explained to aid to families with dependent children recipients. She said the guidelines allow obligors to be put below poverty level. She recommended Wisconsin's system of setting child support.

Ms. Sharon Papineau testified as an interested person. She provided written testimony, a copy of which is attached as Appendix J.

Ms. Patricia Lund testified as an interested person. She provided written testimony, a copy of which is attached as Appendix K.

In response to a question from Representative Belter, Ms. Lund said the system has to be designed in such a way that there are legal consequences for not paying child support. She said prosecutors need to be tougher on enforcing child support obligations.

Written testimony was provided by interested persons Kristy Fremstad, Mike Ahles, and Sue Schosow, copies of which are attached as Appendix L.

Representative Glassheim requested that a state prosecutor be invited to testify at a future committee meeting to explain enforcement issues.

CHILD CARE LICENSING AND CHILD SUPPORT SERVICES STUDY

At the request of Chairman Glassheim, committee counsel reviewed a background memorandum on the study directed by Section 14 of House Bill No. 1041--provision of child support services and child care licensing in this state.

Chairman Glassheim called on Mr. Strate for comments. Mr. Strate provided written testimony, a copy of which is attached as Appendix M. In response to a question from Representative Keiser, Mr. Strate said a IV-D "case" is considered a family unit.

In response to a question from Senator Nalewaja, Mr. Strate said clerks of court are not reimbursed for non-IV-D services by the state, although they are reimbursed through the county.

In response to a question from Representative Keiser, state funds used to pay the clerk of court are primarily from federal moneys.

In response to a question from Senator Traynor, Mr. Strate said in the future he envisions that the clerk of court will continue administering child support.

In response to a question from Representative Keiser, Mr. Strate said the law mandates that all child support payments go through the clerk of court.

In response to a question from Senator Nalewaja, Mr. Strate said it is difficult to recommend how regional units should be organized because one structure is not better or worse than the others.

In response to a question from Representative Keiser, Mr. Strate said federal law allows private firms to charge a fixed fee or to charge a percentage of the amount collected if child support collection is privatized. He said the state is looking into a privatization pilot project of cases that have arrears and the only money owed is money to the state.

In response to a question from Representative Christenson, Mr. Strate said a lot of the negative experiences people have with child support enforcement is because the child support enforcement agency does not have a choice of what cases to pick, and difficult cases are hard on the parties. He said the media loves "deadbeat dads" and in situations where the amount of child support awarded is incorrect that needs to be addressed at the court level and not with the child support enforcement agency. He said inappropriate treatment of consumers by child support enforcement personnel must be addressed at the regional level. He said individual attention is not

a reality when caseworkers are responsible for 1,600 cases.

In response to a question from Representative Glassheim, Mr. Strate said automation is a step toward providing wholesale services versus retail services and the method of organizing caseloads is currently being evaluated by the child support enforcement agency because typically half of a caseload is low maintenance.

In response to a question from Representative Sandvig, Mr. Strate said child support incentive money received by counties is not an unincidental and, in addition, judges do not enjoy child support cases. He said the money is meant to be reinvested in the program. Representative Devlin said in the past the system has never been a good moneymaking deal for counties.

Mr. Terry Traynor, North Dakota Association of Counties, testified as an interested person. Mr. Traynor offered to be a resource.

In response to a question from Senator Traynor, Mr. Traynor said late fees are not being assessed against child support obligors at this time and he is not sure whether this is permissible under the federal regulations.

Ms. Kathleen Ziegelmann, Director, Southeast Regional Child Support Enforcement Unit, testified as an interested person. Ms. Ziegelmann offered the regional child support units as resources. She said late fees are not being assessed against child support obligors at this time; however, child support enforcement is looking into assessing interest when the automated system is implemented.

In response to a question from Senator Cook, Ms. Ziegelmann explained the steps preceding the issuance of a warrant for nonpayment of child support. She said there is usually a finding of contempt of court; payment is ordered; if payment is not made to the clerk of court, an order to show cause is issued; and an order of attachment is issued forcing the obligor to attend the hearing.

In response to a question from Senator Nalewaja, Ms. Ziegelmann said customer service has been a priority in the Fargo office over the last five years. She said seminars are offered on a regular basis regarding policy and procedure in the office. She said automation should improve problems with time lags and tracking of obligors.

In response to a question from Senator Heitkamp, Ms. Ziegelmann said there are regional variations between each of the eight regional units, including different needs, constituents, and economies.

Chairman Glassheim called on Ms. Corinne Bennett, Administrator, Early Childhood Services, Department of Human Services, for comments. Ms. Bennett provided written testimony, a copy of which is attached as Appendix N.

In response to a question from Senator Nalewaja, Ms. Bennett said family members of early childhood service providers are checked by the department for sex offender status. She said 68 providers are voluntarily registered with the carecheck registry, and 150 applications are being processed. She said regional administration of early childhood services would make it more difficult for the public to have access to early childhood service information and therefore it would be necessary to make special accommodations.

Chairman Glassheim called on Ms. Betty Keegan, Director, Rolette County Social Services, for comments. Ms. Keegan provided written testimony, a copy of which is attached as Appendix O. She said contrary to North Dakota statute, counties have paid for 100 percent of the administrative costs of early childhood services.

Ms. Keegan said concerns and recommendations regarding early childhood services licensing include inadequate availability of early childhood services facilities in light of welfare reform; proposed training hours for early childhood providers will make it more difficult to keep early childhood providers and recruit new early childhood providers; a person issuing the license at the regional level often has less training than the person making the evaluation at the county level; and a licensing division should be created which addresses early childhood services and foster care for children and adults.

In response to a question from Representative Kliniske, Ms. Keegan said early childhood specialists are shared between some counties.

In response to a question from Senator Nalewaja, Ms. Keegan said the license fee charged by the county is a token amount used by the county for training of early childhood specialists. She said further evaluation would be required to determine whether there have been complaints with nonlicensed and registered early childhood services providers.

In response to a question from Representative Belter, Ms. Keegan said there is a shortage of child care providers in North Dakota for a variety of reasons, including the high turnover of providers and the low wages providers are paid.

In response to a question from Representative Glassheim, Ms. Keegan said the regional center duties could be done by the counties if the law is changed.

In response to a question by Senator Traynor, Ms. Keegan said the impact of the flood in the Red River Valley is still being felt. She said some special accommodations have been made to help child care services, although availability of the services will become a larger concern as the University of North Dakota and other schools start. Ms. Bennett said state grant money and Bush Foundation money in the

amount of \$350,000 was provided to Grand Forks to rebuild the child care system after the flood.

Chairman Glassheim called on Mr. Matt Walsh, Regional Director, West Central Human Service Center, for comments concerning the study. Mr. Walsh provided written testimony, a copy of which is attached as Appendix P. He said regional duties for child care licensing including oversight, and the amount of time spent on this duty varies significantly from region to region.

In response to a question from Representative Belter, Mr. Walsh said although parents have an oversight duty, they often assume someone else is providing this service.

Committee counsel was requested to obtain copies of laws from Wisconsin, Michigan, Utah, and Nebraska regarding child support enforcement, child support guidelines, visitation, and custody; obtain a copy of the National Child Protection Act; arrange to have a member of the judiciary testify regarding mediation and its role in child custody and visitation issues; review how neighboring states fund child care licensing without requiring license fees; invite a

private practice family law attorney to provide a personal perspective relating to the equity and fairness of child custody and visitation and the child support guidelines; and invite a representative of the Department of Human Services to testify regarding the basis for choosing an obligor model for the child support guidelines.

Chairman Glassheim said the tentative dates for future meetings will be September 30, 1997, November 24, 1997, February 9, 1998, April 13, 1998, June 22, 1998, and September 28, 1998.

Chairman Glassheim adjourned the meeting at 5:00 p.m.

Jennifer S. Clark
Committee Counsel

ATTACH:16