

1999 HOUSE HUMAN SERVICES
HB 1027

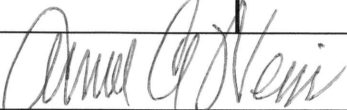
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1027

House Human Services Committee

Conference Committee

Hearing Date 01-13-99

Tape Number	Side A	Side B	Meter #
1		x	47.7--
2	x		18.8
Committee Clerk Signature 			

Minutes:

SUMMARY OF THE BILL: Relating to judicial authority to create a child support contribution trust.

Ms. Jennifer Clark, Legislative Council, spoke neutral on the bill. It has been determined by some people, that money received for child support is at times in excess of the intent. A trust fund set up by the court to be set up for child support. It could possibly used for education, special need, or in anticipation of needs. This process could be used for obligor who has short term high income. She then responded to questions from the committee.

Mr. Dan Biesheuvel, lobbyist for R-Kids of ND, spoke in support of the bill.

(see attached written testimony)

Mr. Ken Hendrickson, representing self, spoke in support of the bill. There are certain cases where money for a child will not get to where it was intended to go. At times people re marry several times and control over funding is weakened.

Mr. Blanine Nordwall, ND Dept. of Human Services spoke against the bill.

(see attached written testimony)

Ms. Sherry Mills Moore, State Bar Association of ND spoke neutral on the bill.

(see attached written testimony)

Ms. Linda Isakson, Children's Caucus, spoke neutral on the bill.

(see attached written testimony)

Chairwoman Price closed the hearing on HB 1027 at 2:10 p.m.

Motion by Representative Devlin to do not pass, Second by Representative Thoreson

By roll vote, 15 yes, 0 no, motion carried.

Representative Kliniske will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill / Resolution No.: HB 1027

Amendment to: _____

Requested by Legislative Council

Date of Request: 12/10/98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: This bill would allow courts to order a portion of the child support contribution for a child to be put into trust for the child's support and welfare. The bill would have no fiscal impact.

2. State fiscal effect in dollar amounts:

	1997-1999		1999-2001		2001-2003	
	<u>Biennium</u>		<u>Biennium</u>		<u>Biennium</u>	
	<u>General</u>	<u>Special</u>	<u>General</u>	<u>Special</u>	<u>General</u>	<u>Special</u>
	<u>Fund</u>	<u>Funds</u>	<u>Fund</u>	<u>Funds</u>	<u>Fund</u>	<u>Funds</u>
Revenues:						
Expenditures:	-0-		-0-		-0-	

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____ -0-
- b. For the 1999-01 biennium: _____ -0-
- c. For the 2001-03 biennium: _____ -0-

4. County, City, and School District fiscal effect in dollar amounts:

	1997-1999			1999-2001			2001-2003		
	<u>Biennium</u>			<u>Biennium</u>			<u>Biennium</u>		
	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>	<u>Counties</u>	<u>Cities</u>	<u>School Districts</u>

If additional space is needed, attach a supplemental sheet.

Signed Brenda M. Weisz

Typed Name Brenda M. Weisz

Date Prepared: December 30, 1998

Department Human Services

Phone No. 328-2397

Date: 1-13-99
 Roll Call Vote #: HB 1027

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House Human Services Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass

Motion Made By Devlin Seconded By Thorsen

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman	X		Bruce A. Eckre	X	
Robin Weisz - Vice Chairwoman			Ralph Metcalf		
William R. Devlin			Carol A. Niemeier		
Pat Galvin			Wanda Rose		
Dale L. Henegar			Sally M. Sandvig	X	
Roxanne Jensen					
Amy N. Kliniske					
Chet Pollert					
Todd Porter					
Blair Thoreson	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Kilinski

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 20, 1999 9:17 a.m.

Module No: HR-05-0874
Carrier: Kliniske
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1027: Human Services Committee (Rep. Price, Chairman) recommends **DO NOT PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1027 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1027

Fact Sheet: Child Support Enforcement Division

What is it? Child Support Enforcement is a joint state, county, and federal partnership to collect child support to ensure that children have the financial support of both their parents, to foster responsible behavior toward children, and to reduce welfare costs.

Who does the division serve? Our primary customers are the children for whom we collect funds for their support and medical care. We also serve custodial and non-custodial parents.

What services are provided? Working with the Regional Child Support Enforcement Units, we locate non-custodial parents, establish paternities, establish court ordered child support and medical support, and periodically review and adjust support obligations.

Who can apply for services? Either parent can apply for services. Applicants for TANF, Medi-caid, or Foster Care are referred to us for service.

Are there fees? We do not charge a fee for services.

How is the division funded? The federal government provides 66% of our budget; the state is responsible for the rest. The Regional Child Support Enforcement Units are responsible for their costs, generally relying on local property taxes.

How much is collected? Through the combined efforts of the regional units, the state office, and the federal government, our collections continue to increase at double digit rates each year. In calendar year 1998, we collected \$40.8 million, an 11.65% increase over 1997. In contrast, we collected \$12.1 million in 1990.

Where does the money go? Most of the amounts collected are sent to the families. A portion is retained to repay the federal, state, and county governments for TANF, Foster Care, and Medicaid payments made on behalf of families.

What about the penalty? The division is currently under federal penalty because we did not get FACSES, our Fully Automated Child Support Enforcement System, sufficiently developed to meet federal certification standards. The penalty, a percentage of the federal administrative funds available to us, was \$125,000 for 1998 and \$250,000 for 1999. We expect to become certified during 1999 and recover 90% of the penalty for the year, resulting in a total net penalty of \$150,000.

What does it cost to operate the Child Support Enforcement program statewide? The regional offices and state office spent a combined \$7.6 million in federal fiscal year 1998. Our appropriation request for the state office in the upcoming biennium, as approved in the Governor's budget, is \$6.3 million of which \$106,981 would be general funds.

How many cases are handled? We have about 35,000 cases, each of which involves at least three people — a child, the mother, and the father. These are primarily in-state cases, but by working with other states and other countries, we also serve people across the United States and internationally.

What does the future hold? We expect change in the future. With the continued emphasis at the federal and state level for people to be more self-sufficient, and the TANF imposed 60-month time limit, all levels of government and society will need to collect the amounts due for the support of children. The change in the immediate future involves bringing all case information into FACSES so that it can be certified. The guidelines, which are in the process of amendment, need to be finalized once the Legislature completes its work. The enforcement tool chest will also be revisited to ensure we are using all the appropriate tools to collect what is due. We will continue to work with our customers to ensure that we are providing prompt, courteous and accurate services.

Prepared January 1999 for the North Dakota Department of Human Services. For information call (701) 328-3582.

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1027
January 13, 1999**

Chairman Price and members of the House Human Services Committee, my name is Blaine Nordwall, and I appear on behalf of the Department of Human Services. The department cannot support this bill. We believe the most appropriate action is defeat of House Bill No. 1027.

The department's concerns are:

1. The bill sets no standards for the imposition of a trust. Trust terms could force a child into poverty. Trust terms could adversely affect public assistance benefits for the child's family. Specific federal laws govern treatment of trusts for Food Stamps (7 CFR 273.8(e)(8)) and Medicaid (42 U.S.C. 1396p(d)(4)) eligibility purposes. We could be obliged to deny benefits because of the terms of a trust.
2. The bill does not prevent a trust from shifting the time the child receives trust benefits until the child is an adult. There is no sound public policy that would require child support payment be preserved until no support obligation exists.
3. The final sentence of the bill appears to require the judges to determine that a trust is in the child's best interests, rather than consider if the trust is in the child's best interests.
4. A trust could conflict with both state (N.D.C.C. § 50-09-06) and federal (42 U.S.C. 608(a)(3)) laws requiring assignment of all child support as a condition of receipt of Temporary Assistance to Needy Families benefits.

We have drafted amendments to address specific concerns. A copy of the draft amendments is attached as Exhibit 1. The amendments would not permit trust terms to reduce the monthly amount disbursed on behalf of the child to less than 1/12th of the annual poverty line. The recommended amendments also require final disbursement of trust funds before the child graduates from high school or reaches age 19, consistent with section 14-09-08.2.

A table of current poverty line amounts is attached as Exhibit 2. The poverty line is adjusted in February or March of each year. Finally, Exhibit 3 is the poverty line divided by 12 to represent the monthly amount. The effect under the draft amendments would be to preclude use of a trust if the monthly child support is less than this amount.

Presented by:

**Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services**

Prepared by the North Dakota
Department of Human Services
1/11/99

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1027

Page 1, line 10, replace "The court shall make a finding that creation of the" with "No trust term may reduce the monthly amount disbursed on behalf of the children to less than one-twelfth of the poverty guidelines for a family size equal to the number of the obligor's children subject to the child support order or delay disbursement of any trust funds to a time after no support obligation could be imposed under section 14-09-08.2. If the court finds that creation of the trust and the terms of the trust are in the child's best interests, the court may approve the terms of the trust."

Page 1, remove line 11

Renumber accordingly

THE 1998 HHS POVERTY GUIDELINES

One Version of the [U.S.] Federal Poverty Measure

There are two slightly different versions of the federal poverty measure:

- the poverty thresholds, and
- the poverty guidelines.

The **poverty thresholds** are the original version of the federal poverty measure. They are updated each year by the **Census Bureau** (although they were originally developed by Mollie Orshansky of the Social Security Administration). The thresholds are used mainly for **statistical** purposes--for instance, preparing estimates of the number of Americans in poverty each year. (In other words, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.)

The **poverty guidelines** are the other version of the federal poverty measure. They are issued each year in the *Federal Register* by the **Department of Health and Human Services (HHS)**. The guidelines are a simplification of the poverty thresholds for use for **administrative** purposes--for instance, determining financial eligibility for certain federal programs. (The full text of the *Federal Register* notice with the 1998 poverty guidelines is [available here](#).)

1998 HHS Poverty Guidelines

Size of Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$ 8,050	\$10,070	\$ 9,260
2	10,850	13,570	12,480
3	13,650	17,070	15,700
4	16,450	20,570	18,920
5	19,250	24,070	22,140
6	22,050	27,570	25,360
7	24,850	31,070	28,580
8	27,650	34,570	31,800
For each additional person, add	2,800	3,500	3,220

SOURCE: *Federal Register*, Vol. 63, No. 36, February 24, 1998, pp. 9235-9238.

(The separate poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966-1970 period. Note that the poverty thresholds--the original version of the poverty measure--have never had separate figures for Alaska and Hawaii.)

Programs using the guidelines (or percentage multiples of the guidelines--for instance, 130 percent of the guidelines) in determining eligibility include Head Start, the Food Stamp Program, the National School Lunch Program, and the Low-Income Home Energy Assistance Program. Note that in general, public assistance programs (Aid to Families with Dependent Children and its block grant successor, and Supplemental Security Income) do NOT use the poverty guidelines in determining eligibility. The Earned Income Tax Credit program also does NOT use the poverty guidelines to determine eligibility.

Number of Children	Annual Poverty Line	Monthly Poverty Line
1	\$ 8,050	\$ 671
2	10,850	904
3	13,650	1,138
4	16,450	1,371
5	19,250	1,604
6	22,050	1,838
7	24,850	2,071
8	27,650	2,304
each additional, add	2,800	233

STATE BAR ASSOCIATION OF NORTH DAKOTA

TESTIMONY ON HB 1027

Sherry Mills Moore

Good Afternoon. I am Sherry Mills Moore, an attorney in private practice in Bismarck, and the Chair of the Family Law Task Force. We come to you neither to support nor oppose **HB1027**, but to offer our view of the impact of this piece of proposed legislation.

HB1027 goes a long way toward removing clarity, certainty, and simplicity from the child support process by granting the court the full discretion to direct the use of the child support funds.

While the guidelines are not perfect, without question they have served to reduce the amount of litigation surrounding domestic relations. I give everyone of my clients a copy of the child support guidelines, show them where on the chart they fit, and the 90% of the time the issue is over. We do not litigate child support, we do not do extensive discovery on the issue, we are not in the court arguing over amount. Except for those cases where the income is in issue or deviations appropriate the question is straightforward and complete. If their only problem is one of child support I first send them to the child support enforcement office whose job it is to seek support, without charge to the client. Any request for trust provisions will require the obligor and the obligee to hire private counsel.

When the child support dispute is removed from the arena everyone benefits. Parents who are in the process know that the decisions is the same for all others in their position and it matters not who is their attorney, what frame of mind the court is in at the time of the hearing, how they have behaved during their parenting or marriage. The question is clean and it is simple. Mine is not a mere bureaucratic preference for boxes and forms but a view that the certainty of the guidelines is a significant benefit to the parents and the children. The trickle down is important because every family who can be kept out of the courtroom dispute has more resources both financial and emotional to go about the business of raising their children.

HB1027 will change that. If the obligor feels the support is higher than the obligee needs, they will seek to establish a trust. And there goes any certainty or uniformity. The child of one parent whose support is \$500 per month may see only \$250 for his current needs while another child will receive the full \$500 per month. Dispute will arise over need for the trust, terms of the trust, the cost of the trust, who is to serve as the trustee, and compliance with the trust. Single parents have enough to worry about without adding to the mix a need to justify expenditures. By the time the child

support decision is being made, the court and/or the parents have decided the children's best interest requires the obligee to have their custody. This decision runs contrary to not allowing that parent to allocate the child support as the obligee deems fit. Too often in the haste to assure college funds, if that were the purpose of the trust, obligors rob the children of their ability to get through their minority. Before we can worry about college we need to have the children get through kindergarten.

In summary, although this bill is short and seems innocuous enough the repercussions will be large. If I can answer any questions I would be happy to try to answer them. If any arise in the future you may either contact Sandi Tabor or call me at my office at 222-4777.



Children's Caucus

House bill 1027
House Human Services Committee

Chairperson Price and Members of the Committee;

Linda Tsakson

The Children's Caucus has traditionally not taken a position on child support bills. This session, however, has provided some revisions to child support laws that will affect the lives of children. House Bill 1027 could do just that. Our concerns regarding this bill are the problems that might be create by taking a portion of child support away from already tight living budgets. ^{How} is available to identify what portion of child support is for the welfare of a child? ^{who} Is rent considered, is food considered, is transportation considered? We are concerned about the basic needs of children being met if a significant portion of child support is put into trust each month leaving the supporting parent in financial stress.

In light of the efforts of many to make divorce a less adversarial process, adding this section to law might make it even more difficult to achieve that goal. Contribution to trust seems to be one of the factors to be considered within the mediation process.

The Children's Caucus will remain neutral on the trust bill before you, but ask that careful consideration be given to first meeting the basic needs of children.

Respectfully Submitted:

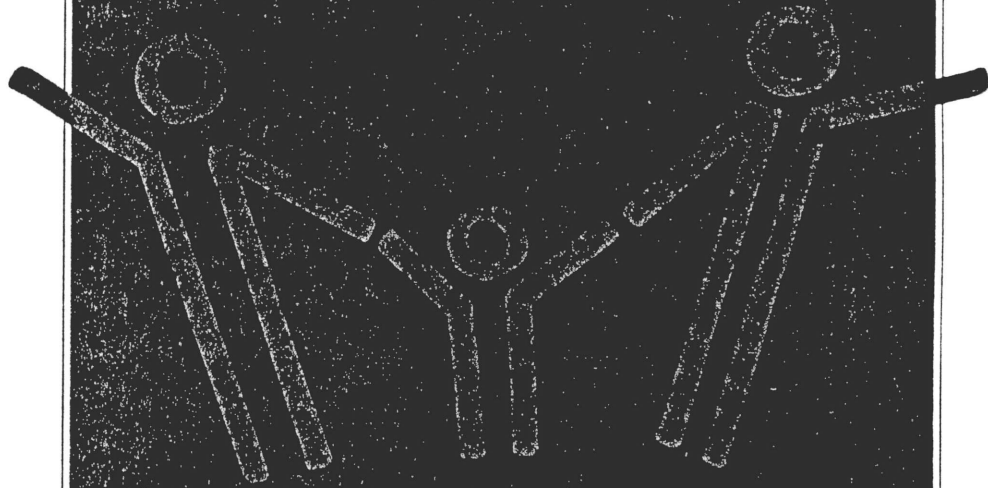
Linda Isakson
Children's Caucus

OFFICE OF CHILD SUPPORT ENFORCEMENT

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370 L'Enfant Promenade, SW
Washington, D.C. 20447

*This document
is filed
with RB 1407*

*Giving Hope and Support to
America's Children*



Handbook on Child Support Enforcement



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
Office of Child Support Enforcement