

2017 SENATE HUMAN SERVICES

SB 2277

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2277
2/1/2017
Job Number 27729

- Subcommittee
 Conference Committee

Committee Clerk Signature

Sandy Baumgardner for Mame JMM

Explanation or reason for introduction of bill/resolution:

A bill relating to child support obligations of incarcerated parents.

Minutes:

#1, #2

V-Chair Larsen: Brought the meeting to order for SB 2277.

Senator Rich Wardner: Introduced the bill. While people are incarcerated and they have child support obligations that this would put it on hold until they got out and get their act together. This is an issue with both males and females. Basically this was motivated because my wife does bible studies at the prison and there are women who have child support obligations and they get out and they have no way of meeting that threshold. They just give up and go back to doing their drug thing and they are back again. Guess who takes care of them? We do. And there is never any payment for child support because they can't do it. It is too huge. In visiting with Jim Fleming from Child Support and Corrections, we think that this is a good bill going forward. They are here to support it and give you some expert testimony. This is all part of the plan to try to help these people, these low-risk offenders who are addicted to drugs. See if we can't help them get back into society and see if they can't be productive again.

Jim Fleming: Director of Child Support Division of Department of Human Services; Testified in support, please see attachment #1. Impute means how they compute the amount. Released inmates are faced with a debt load and makes it really hard to get back on their feet. The system fails the child by making it more that the child will be deprived at adequate support over the long term. We know this will be a hard explanation with the custodial parent that needs the money. There is no money, so it wouldn't be dispersed anyway. By shutting it off they come out of jail without the financial anchor. They can become self-sufficient faster and not be inclined to run from law enforcement or child support upon release. They are more likely to be a law-abiding member of society, get a good job and start making those payments. It is not an easy message to give, but it is an honest one. It would be reestablished when they get out. We would give them a window time of 6 months to impute the obligation. We are in support of this bill.

Senator Anderson: If I am a white collar criminal and I have assets to continue to produce income while I am incarcerated, and continues to pay me, subsection 2 allows you to get some of that money.

Jim Fleming: Senator that is correct. You will get an obligation considering that income.

Senator Kreun: While they're incarcerated, and it doesn't accrue, then it goes back to the original or less that's reevaluated the payment at that point in time. Who pays for child's welfare if there are no payments being made?

Jeff Fleming: The custodian parent would be the primary person responsible for the child's care. If they apply for and receive public assistant benefits those benefits would be paid by the state and largely go uncollected as they do today.

Senator Kreun: When they get out, your agency renegotiations their payment schedules. Does that go down to the child that is effected?

Jeff Fleming: It would. There is a direct connection between the month of child support that accrues and whether the child is on some sort of public assistance for that month.

Senator Kreun: If there is no public assistance and the individual goes on and gets becomes employed, we renegotiate the amount because their income is a little bit less. But it still doesn't qualify for the assistance program. So they then will receive less money.

Jeff Fleming: That is correct. Despite the appearance that it is giving those people a break. What's really going on is if they were an intact family and that parent came back to the home with employment prospects, that family may have less to live on.

Chair J. Lee: Because we have fewer people who don't pay compared to other places because you do a great job with this collection. How many dollars are still owed?

Jeff Fleming: This morning I got a mean number. At the end of January, in just the 4D cases, those are the cases open to child support was \$227,683,022.06, up 1.43 million from the prior month.

Chair J. Lee: We have that outstanding. We have a lot of those families who do have state benefits. This is a partnership to make sure the kids are ok.

Jeff Fleming: This is the right thing for obligors, because it is being fair to them. We have a reputation to try to dispel when we can. The important thing is we have a finite number of staff and these cases take lots of time after they get released without a lot to show for it. We are looking forward to invest our time for more fruitful endeavors when they get out and we are not chasing those uncollectibles. That pays off for other families where we can put that time to use. Every dollar that child support collected goes to families. It avoids more than 3 dollars more than public assistant costs because it promotes family self-sufficiency. So we want to keep that going. It helps avoid costs to those other programs.

Senator Clemens: Of that \$227 million, about how many individuals does that represent?

Jeff Fleming: I think it is roughly 20,000. It is records for SB 2281.

Senator Piepkorn: Any programs in prison for job training or opportunities for employment when prisoners do get out? When prisoners do get out it there a support system for drug treatment? Is there any sort of job program to help them make money when they get out?

Jeff Fleming: You've got the Director of DOCR in the room that will be far better to answer that than me. If they're not in the system anymore and their probation has been served, that person will find themselves in contempt of court proceeding. Our child support project does have a program with a project with job service. There is a job service worker available to make a referral to help the person with their job availability.

Chair J. Lee: A requirement for anybody on TANF

Leann Bertsch, Director of North Dakota Department of Corrections and Rehabilitations; I am here to testify in support of SB 2277, please see attachment #2

Chair J. Lee: Closed hearing

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2277
2/1/2017
Job Number 27754

- Subcommittee
 Conference Committee

Committee Clerk Signature

Sandy Baumgartner for Mame G. M.

Explanation or reason for introduction of bill/resolution:

A bill relating to child support obligations of incarcerated parents

Minutes:

Vice-Chair Larsen: Motion do pass on SB 2277

Senator Kreun: Second this is a good deal.

Senator Piepkorn: The staff that worked on this, Mr. Fleming and Leann Bertsch, did a good job on this.

Vice-Chair Larsen: If this leg passes, does this include everybody going out on parole? Does this include people already in or start now? Can we put an emergency clause on it? How hard would that be?

Senator Heckaman: An emergency clause means it starts as soon as it goes through the next house and signed by the governor.

Chair J. Lee: Well in here if we look at it closely again, it says a monthly obligation established and in effect after Dec. 31, of 2017. So it is after this year.

Senator Anderson: Since administrative agency has power to adjust these things, I would guess that once this is in place they might look at some of those and say we will adjust that amount. It is their call. Knowing Jim's approach to that, I am guessing they would look at those if anybody brought it up and address that.

Senator Piepkorn: These criminals could have better timed their crimes knowing that this would be coming down the road. We know how touchy people are about grandfathering around here.

Roll call vote taken, motion passes 7-0-0

Senator Anderson will carry.

Date: 2/1 2017

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2277

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen Larsen Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2277: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2277 was placed on the
Eleventh order on the calendar.

2017 HOUSE JUDICIARY

SB 2277

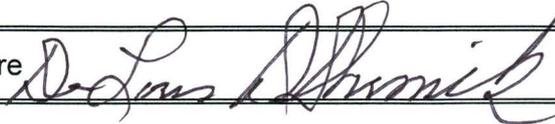
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2277
3/8/2017
28922

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to child support obligations of incarcerated parents.

Minutes:

1,2

Chairman K. Koppelman: Opened the hearing on SB 2277.

Senator Wardner: Introduced the bill. My wife would have these young women in bible class and they would go home and then they would be back. She would ask them why and one of the things was that many of the women had child support payments. She would ask them why? I didn't know that many of the women had child support payments so that is why this one is here. This relates both to men and women. I was surprised that amount of child support they had built up and obligated to pay. It is accruing while they are in prison and it is so large when they get out there is no motivation to pay it back. It is a problem so that is why this bill is here. It is so easy to just go back into the life style that you had before. There are other reasons it is easy for them to just give up and it is much easier to be in prison then to be out on the streets. This bill, if you are incarcerated for more than 180 days there would be no child support being accrued and this would be true for both the women and men.

Representative Paur: Six months seems like a long time if you would still owe?

Senator Wardner: If you are incarcerated for longer term incarcerations. While you are incarcerated it doesn't accrue. If you have a short sentence you are not off the hook.

Representative Paur: How did you come up with six months?

Senator Wardner: Jim Fleming came up with it.

Jim Fleming, Child Support Division Director, DOCR: (#1) (5:44-16:00)

Representative Roers Jones: Does this simply suspend the amount they are accruing while they are incarcerated?

Jim Fleming: The obligation expires. Any existing debt is still owed. When they come out; since the old one expired somebody needs to reestablish a new one. It won't automatically revive the old one. At that time, we apply the guidelines to what they make.

Representative Roers Jones: So if the amount has to be reestablished when they are released from custody; does the other parent have some kind of notification when the person is being released and that they have to go through that process again?

Jim Fleming: We are going to notify them when they come out. That is the fairness to us.

Representative Roers Jones: In fairness how do you propose to address the parent who is responsible for taking care of the child and saying we understand this person is in jail and they are not making payments to you because they are incarcerated but you still have full responsibility of taking care of this child. I can see there will be heartburn on the side of that individual because their obligation isn't reduced.

Jim Fleming: That is already a very difficult conversation that we are having. We need to convey is we are not giving them a break. We do work hard to connect the parent, but one of our messages is to understand the dilemma that they have, but to point out even if they accrued at \$10,000 a month; it wouldn't mean we would collect any more.

Representative Vetter: So they are relieved of having to make this payment; do they lose parental rights?

Jim Fleming: The parental rights are not affected by the reprieve from child support.

Chairman K. Koppelman: Discussed parental and child support.

Jim Fleming: The reason the feds went here is if they are in jail for a crime; they are being punished already. It is not the role of the child support program to compound that punishment by beating them over the head with debt you can't collect. The parent that gets out of jail and doesn't have this debt is able to have a healthy relationship with their ex and with their child on the way out.

Representative Vetter: So there is no recourse with a child as far as visitation.

Jim Fleming: They are two separate issues. The child is what is important.

Rep. Magrum: I have an employee now who I collect for an employer. Then your department puts people in jail for getting behind; then now you are saying they are getting behind and we want to forgive them after your department put them into jail for getting behind. That makes no sense. You also take away their driver's license so they can't get to work. Seems to me your whole department needs to be redone because there is a lot of confusion here.

Jim Fleming: I understand where you are coming from. You put them into jail for not paying. When they are in jail for non-payment of child support, it is for willfully not doing something

that they ought to do. As far as driver's licenses; there is a bill on the floor now. Our goal is to minimize when that happens because once you take away a license away it does get in the way of a job. We also give it back liberally if they will put this month's current support on the table and sign an agreement they will pay next months and the months after that. We usually don't hold the employer responsible for that amount.

Rep. Magrum: Taking away the hunting and fishing license so I think we are creating a lot of bitterness in the system. Then when they have the weekend with their son or daughter they cannot even go hunting with them.

Jim Fleming: We have heard that concern before. If they are making an effort to pay their support they get their license back and they are going hunting with the kid.

Representative Johnston: Is this applied case by case basis?

Jim Fleming: It does apply to everyone automatically to stop the obligation. If an inmate owns an apartment building and making \$2000-\$3000 rent from that building a month; that income would warrant a new obligation right away even while they are incarcerated. We will have an obligation based on that real money.

Representative Nelson: What if anything happens in child support if a custodial parent is incarcerated?

Jim Fleming: Often the other parent has custody. It might be some other relative and we make sure the money follows the child.

Rep. Jones: Are we going to drive the person to jail for a year; maybe here we need to pay attention to unintended consequences? Maybe they will just decide it is cheaper for me to go rob something and go to jail for a year and hope the economy turns around so I can come out and we are trying to keep our jails empty and our prisons empty. Have you had some lengthy discussions about that?

Jim Fleming: They can come in and discuss their situation and we can adjust their support. We have lots of methods to address that. We are in the collection business. If the max they can pay is \$300/month, then we want their accrual to be \$300/month so when we collect it all we look like we scored 100% on the test. If they lose their job, we will work with them and get that reduced with the court so they don't have to worry about it.

Chairman K. Koppelman: A lot can happen in three years.

Jim Fleming: It is every three years. There is a list of exceptions so even for the last several years we have exceptions that we can use.

Chairman K. Koppelman: The six months can be a long time?

Jim Fleming: The benchmark for establishing a child obligation is six months; so the paperwork won't even have the obligation established.

Chairman K. Koppelman: When you calculate these obligations you talk about interest and court fees. How much of that

Jim Fleming: We have waiver authority for the interest. I do not know what happens to the court fees.

Leann Bertsch, Director, ND OCR: (#2) (36:10-39:30)

Rep. Magrum: Where can we look at the study that was conducted by the Center for Policy Research.

Leann Bertsch: If you go on line you can google that.

Representative Jones: When it says there was earnings of \$250,000 on work release. Do you have an idea on how many people were involved in that? How much is that per person?

Leann Bertsch: That unit is a 36 bed unit so that would have been 36 people at that time. They aren't high paying jobs, but it is a good start. If they don't owe child support, then it goes toward paying off fines and fees ahead of time and also puts money in the release aid account so that they have money that they can get their own apartment a have a jump starts on a better life.

Opposition: None

Neutral: None

Hearing Closed

Do Pass motion made by Rep. Satrom; Seconded by Representative Roers Jones:

Discussion:

Representative Vetter: It is hard for me to get around the fact that they are basically getting rewarded for going to prison.

Chairman K. Koppelman: The ideal of child support is to try to attempt to replace some or all of the income or support for that child that is lost through the divorce. Discussed how time has changed on divorce and the whole process.

Representative Jones: Gave an example? About training a horse. These fathers are in a bad place and if they get out and are over loaded they will not put their heart in it ever again.

Rep. Satrom: I appreciated Leann Bertsch's testimony. Even if a parent is a dead beat; the evidence is clear; non-custodial parents are far more likely to pay child support and reengage with their families if payments are manageable. Who wouldn't give up if they came out of this situation \$100,000 of dollars in debt; have no home and no job and they are trying to

start their life. Who would not get depressed and say; you know what I give up; I can't care about these kids. I think this is a great thing.

Chairman K. Koppelman: Rep. Satrom's point is well taken. This is not an easy issue. Reentry is a problem and how do we help these people stay out?

Rep. Magrum: As long as you are putting people in jail for getting behind; I think this bill is useless. Just when they are in jail they will have to start paying again when they get out.

Chairman K. Koppelman: I think Mr. Fleming's office exhausts every option.

Rep. Simons: I have worked with a lot of these people time and time again. I see this bill that will be straight for a year or two. Then all of a sudden the responsibilities will get to them and they go deep. If we reward this bad behavior they will come back to. Why are we as a legislative body doing this? Let the civil courts take care of this. I am voting no.

Rep. Satrom: I disagree with Rep. Simons on this. Before I got into the legislature I was dealing with people on a weekly basis. We have 40 units; I am the guy in Jamestown to talk to if you are a felon about getting housing. I have also paid child support and paid \$110/month and I was homeless for a while and slept in a pickup so I could make the payments. I know what it is like to be behind. I know what it is like to have a load that is good big. I think we need to keep these guys engaged. What about those guys who want to really build a life? I would encourage this.

Rep. Johnston: I am going to vote no on this bill. We are all shackled with our debts, but we slowly paid that back. I am going to vote no on this bill.

Chairman K. Koppelman: The purpose of the bill is to give the court this authority. The default right now is if you are in jail your support continues to accrue.

Jim Fleming: The bill would suspend the accrual by operation of law as opposed to going to the court. We embrace the idea of courts addressing things, but in this instance when you are talking about a category of people in jail with no income there is no fact to be resolved by the court. This is incarceration of 180 days or longer. The feds require we do something.

Representative Jones: Line 7 it says a monthly obligation established under any provision. What would an amendment to this bill do if we were to put in there the word between 2017; it expires to may expire?

Chairman K. Koppelman: That would mean you go to court. It would not accomplish anything.

Representative Nelson: Child support is based on what is owed. We are just saying let's do this automatically. We are just clogging up the courts. We are reducing the workload. This is not rewarding the guy. He doesn't earn money now. I am going to support this because I see this as efficient government.

House Judiciary Committee

SB 2277

March 8, 2017

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Roll Call Vote: 12 Yes 3 No 0 Absent Carrier: Rep. Roers Jones

Closed.

Date: 3-8-17
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2277**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Satrom Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston		✓			
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum		✓			
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter	✓				

⁰ Total (Yes) 12 No 3

Absent 0

Floor Assignment Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

SB 2277: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2277 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2277

SB 2277
Attch #1
2/1

Testimony
Senate Bill 2277 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 1, 2017

Chairman Lee, members of the Senate Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here to support Senate Bill 2277.

" Well I got a job and tried to put my money away
But I got debts that no honest man can pay"

"Atlantic City", Bruce Springsteen, Nebraska 1982

It may seem strange that the state agency in charge of collecting child support would support a bill to reduce child support obligations, but we consider the purpose of Senate Bill 2277 to be addressing uncollectible child support arrears rather than reducing the amount of money that is actually collected and distributed to families.

As a general rule, able-bodied obligors in North Dakota are expected to work at least 40 hours per week for minimum wage (higher if warranted by the person's occupation or job history). If necessary, income is imputed to a parent at that level for purposes of determining the parent's child support obligation. Until 2011, this rule applied to incarcerated parents, even though they could not earn that income. Starting in 2011, the amount of income that may be imputed to the obligor decreases as the length of the sentence increases (80 percent of minimum wage for the second year of incarceration, 60 percent for year three, 40 percent for year four, and 20 percent for year five). After a parent has been incarcerated for five years, income may not be imputed in any amount.

Even under this phase-down formula, a parent who is incarcerated accrues child support that he or she cannot pay while incarcerated. A child support obligation for one child based on minimum wage for 40 hours a week is \$238. After being incarcerated for 180 days (and thus, in most cases, unable to pay support) the parent would owe \$1,428 in child support arrears plus interest, along with any court costs, restitution, and legal fees from the criminal conviction.

After the bill was drafted with an initial proposed timeframe of one year of incarceration or longer, a new final federal rule was adopted on December 20, 2016. Under the final rule, a state must choose one of the following three options for any parent incarcerated for 180 days or more:

1. Proactively review and seek appropriate modification of the obligation;
2. Notify both parents of the right to request such a review and modification; or
3. Have a "comparable law or rule that modifies a child support obligation upon incarceration by operation of State law." 45 Code of Federal Regulations Section 303.8(c).

Of the three mandated options for parents who are incarcerated under a sentence of more than 180 days, the third option is the approach taken in Senate Bill 2277, and is the most efficient and economical. It avoids the need to consume valuable time of the court, the parents, and the child support program when the outcome is pre-determined because the incarcerated parent has no outside income.

Senate Bill 2277 does not prohibit establishment of a child support

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obligation for an incarcerated parent based on actual income. As recommended by the federal Office of Child Support Enforcement:

If an incarcerated parent has income or assets, these can be taken into consideration in reviewing the order. However, States should not assume an ability to earn based on pre-imprisonment wages, particularly since incarceration typically results in a dramatic drop in income and ability to get a job upon release.

Federal Register Volume 81, No. 244, page 93527 (December 20, 2016)

Not only are these arrears uncollectible during incarceration, the arrears are detrimental to the child because they actually reduce the amount of child support collected from the parent after the parent is released:

[O]nce released, noncustodial parents tend to view the methods employed to collect support and arrearages as a disincentive to seek legitimate gainful employment. Research suggests that using maximum-level income withholding rates and other enforcement mechanisms tend to discourage employment, particularly among individuals in low socioeconomic communities. When combined with the difficulty faced by formerly incarcerated parents in obtaining employment, there is a strong incentive to seek work in the "underground economy" where it is difficult for authorities and custodial parents to track earnings and collect payments. Research demonstrates that when high support orders continue through a period of incarceration and thus build arrearages, the response by the released obligor is to find more methods of avoiding payment, including a return to crime. It is unrealistic to expect that most formerly incarcerated parents will be able to repay high arrearages upon release. To the extent that an order fails to take into account

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the real financial capacity of a jailed parent, the system fails the child by making it more likely that the child will be deprived of adequate support over the long term.

Federal Register at page 93527.

In discussing the bill with private attorneys, a question was asked why an incarcerated parent's obligation simply didn't revert back to the amount due prior to the incarceration. Our division had a similar internal discussion when developing the bill. This was addressed in the preamble to the federal rule:

We strongly encourage States to review child support orders after the noncustodial parent is released to determine whether the parent has been able to obtain employment and to set the orders based on the noncustodial parent's ability to pay. States should not automatically reinstate the order established prior to incarceration because it may no longer be based on the noncustodial parent's ability to pay, especially if the noncustodial parent is not able to find a job or find a job similar to pre-incarceration employment. A recent study found that incarceration results in 40 percent lower earnings upon release [footnote omitted]. Instead, the order should be reviewed and adjusted according to the State's guidelines under § 302.56.

Federal Register at page 93539.

In the experience of the Child Support Division, we are fortunate if we can collect current support and prevent further arrears after a parent is released from prison. The arrears that accrue during incarceration are

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seldom collected, and often make it harder for the parent to re-join society and earn sufficient income to pay child support.

Madame Chairman and members of the committee, this concludes my testimony in support of Senate Bill 2277, and I would be glad to answer any questions the committee may have.

Senate Human Services Committee
Senator Judy Lee, Chairperson
February 1, 2017

SB 2277
Attach #2
2/1

Leann Bertsch, Director, North Dakota Department of Corrections and
Rehabilitation
Presenting testimony on SB 2277

My name is Leann Bertsch and I am the Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2277.

Senate Bill 2277 will make sure that arrears don't accumulate endlessly while a parent is incarcerated. This bill proposes a method to reduce the amount of uncollectable child support arrears for incarcerated parents by allowing an existing support obligation to expire by operation of law if the obligor is incarcerated for 180 days or longer. A key rationale for suspending the child support order of incarcerated non-custodial parents is to reduce the amount of arrears at the time of release in order to remove disincentives to participate in the formal economy and encourage payment of support given they participate in the formal economy. Incarcerated parents, with very limited to no ability to pay child support while incarcerated, face the prospect of substantial growth in child support arrears while in prison. A range of concerns motivate calls to modify, or maintain, child support orders for incarcerated parents. Some argue that burdensome arrears are counterproductive and will simply compound post-incarceration challenges contributing to recidivism, while others suggest that it is unfair to excuse incarcerated parents from the obligations faced by other noncustodial parents. A key question is whether child support order modifications will ultimately increase, or decrease, the support available to children.

Research indicates that suspending child support orders of incarcerated parents may not only produce the mechanical effect of reducing their arrears at the time of release, it may also have an effect on the behavior of these parents in ways that are consequential to their children and the custodial parents as well as related systems. Even if a parent is a deadbeat, the evidence is clear: noncustodial parents are far more likely to pay child support, and otherwise reengage with their families, if payments are manageable. In

SB 2277
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2/1

2012 study by the Center for Policy Research, a private nonprofit research organization, parents paid a much higher percentage of their monthly obligations when offered relief from unpayable state-owed debt.

Senate Bill 2277 certainly does not prohibit the establishment of a child support obligation for an incarcerated parent based on actual income. For many parents incarcerated with the DOCR, they will at some point during their sentence have the ability to work at gainful employment, either through the prison industries program or work release. With the additional beds at our minimum custody facility, Missouri River Correctional Center (MRCC), we were able to increase the number of individuals on work release by over 400 percent. During the first 7 months of operating the new temporary transitional modular housing units, the individuals on work release had earnings of over \$250,000. A large percentage of those earnings went to child support.

Research shows that the two most important factors in a former prisoner's successful reentry into the community are employment and positive relationships with family. Both of these are hindered by the aggressive pursuit of child support arrears. The DOCR wants law-abiding citizens who provide support for their children upon release. Senate Bill 2277 helps to reduce a major barrier for reentry by reducing the overwhelming debt that sets people up for failure and re-incarceration.

#1
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3-8-17

Testimony
Senate Bill 2277 – Department Of Human Services
House Judiciary Committee
Representative Kim Koppelman, Chairman
March 8, 2017

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" Well I got a job and tried to put my money away
But I got debts that no honest man can pay"

"Atlantic City", Bruce Springsteen, Nebraska 1982

It may seem strange that the state agency in charge of collecting child support would support a bill to reduce child support obligations, but we consider the purpose of Senate Bill 2277 to be addressing uncollectible child support arrears rather than reducing the amount of money that is actually collected and distributed to families.

As a general rule, able-bodied obligors in North Dakota are expected to work at least 40 hours per week for minimum wage (higher if warranted by the person's occupation or job history). If necessary, income is imputed to a parent at that level for purposes of determining the parent's child support obligation. Until 2011, this rule applied to incarcerated parents, even though they could not earn that income. Starting in 2011, the amount of income that may be imputed to the obligor decreases as the length of the sentence increases (80 percent of minimum wage for the second year of incarceration, 60 percent for year three, 40 percent for year four, and 20 percent for year five). After a parent has been incarcerated for five years, income may not be imputed in any amount.

Even under this phase-down formula, a parent who is incarcerated accrues child support that he or she cannot pay while incarcerated. A child support obligation for one child based on minimum wage for 40 hours a week is \$238. After being incarcerated for 180 days (and thus, in most cases, unable to pay support) the parent would owe \$1,428 in child support arrears plus interest, along with any court costs, restitution, and legal fees from the criminal conviction.

After the bill was drafted with an initial proposed timeframe of one year of incarceration or longer, a new final federal rule was adopted on December 20, 2016. Under the final rule, a state must choose one of the following three options for any parent incarcerated for 180 days or more:

1. Proactively review and seek appropriate modification of the obligation;
2. Notify both parents of the right to request such a review and modification; or
3. Have a "comparable law or rule that modifies a child support obligation upon incarceration by operation of State law." 45 Code of Federal Regulations Section 303.8(c).

Of the three mandated options for parents who are incarcerated under a sentence of more than 180 days, the third option is the approach taken in Senate Bill 2277, and is the most efficient and economical. It avoids the need to consume valuable time of the court, the parents, and the child support program when the outcome is pre-determined because the incarcerated parent has no outside income.

Senate Bill 2277 does not prohibit establishment of a child support

obligation for an incarcerated parent based on actual income. As recommended by the federal Office of Child Support Enforcement:

If an incarcerated parent has income or assets, these can be taken into consideration in reviewing the order. However, States should not assume an ability to earn based on pre-imprisonment wages, particularly since incarceration typically results in a dramatic drop in income and ability to get a job upon release.

Federal Register Volume 81, No. 244, page 93527 (December 20, 2016)

Not only are these arrears uncollectible during incarceration, the arrears are detrimental to the child because they actually reduce the amount of child support collected from the parent after the parent is released:

[O]nce released, noncustodial parents tend to view the methods employed to collect support and arrearages as a disincentive to seek legitimate gainful employment. Research suggests that using maximum-level income withholding rates and other enforcement mechanisms tend to discourage employment, particularly among individuals in low socioeconomic communities. When combined with the difficulty faced by formerly incarcerated parents in obtaining employment, there is a strong incentive to seek work in the "underground economy" where it is difficult for authorities and custodial parents to track earnings and collect payments. Research demonstrates that when high support orders continue through a period of incarceration and thus build arrearages, the response by the released obligor is to find more methods of avoiding payment, including a return to crime. It is unrealistic to expect that most formerly incarcerated parents will be able to repay high arrearages upon release. To the extent that an order fails to take into account

the real financial capacity of a jailed parent, the system fails the child by making it more likely that the child will be deprived of adequate support over the long term.

Federal Register at page 93527.

In discussing the bill with private attorneys, a question was asked why an incarcerated parent's obligation simply didn't revert back to the amount due prior to the incarceration. Our division had a similar internal discussion when developing the bill. This was addressed in the preamble to the federal rule:

We strongly encourage States to review child support orders after the noncustodial parent is released to determine whether the parent has been able to obtain employment and to set the orders based on the noncustodial parent's ability to pay. States should not automatically reinstate the order established prior to incarceration because it may no longer be based on the noncustodial parent's ability to pay, especially if the noncustodial parent is not able to find a job or find a job similar to pre-incarceration employment. A recent study found that incarceration results in 40 percent lower earnings upon release [footnote omitted]. Instead, the order should be reviewed and adjusted according to the State's guidelines under § 302.56.

Federal Register at page 93539.

In the experience of the Child Support Division, we are fortunate if we can collect current support and prevent further arrears after a parent is released from prison. The arrears that accrue during incarceration are

seldom collected, and often make it harder for the parent to re-join society and earn sufficient income to pay child support.

Mr. Chairman and members of the committee, this concludes my testimony in support of Senate Bill 2277, and I would be glad to answer any questions the committee may have.

House Judiciary Committee
Representative Kim Koppelman, Chairperson
March 8, 2017

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**Leann Bertsch, Director, North Dakota Department of Corrections and
Rehabilitation
Presenting testimony on SB 2277**

My name is Leann Bertsch and I am the Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2277.

Senate Bill 2277 will make sure that arrears don't accumulate endlessly while a parent is incarcerated. This bill proposes a method to reduce the amount of uncollectable child support arrears for incarcerated parents by allowing an existing support obligation to expire by operation of law if the obligor is incarcerated for 180 days or longer. A key rationale for suspending the child support order of incarcerated non-custodial parents is to reduce the amount of arrears at the time of release in order to remove disincentives to participate in the formal economy and encourage payment of support given they participate in the formal economy. Incarcerated parents, with very limited to no ability to pay child support while incarcerated, face the prospect of substantial growth in child support arrears while in prison. A range of concerns motivate calls to modify, or maintain, child support orders for incarcerated parents. Some argue that burdensome arrears are counterproductive and will simply compound post-incarceration challenges contributing to recidivism, while others suggest that it is unfair to excuse incarcerated parents from the obligations faced by other noncustodial parents. A key question is whether child support order modifications will ultimately increase, or decrease, the support available to children.

Research indicates that suspending child support orders of incarcerated parents may not only produce the mechanical effect of reducing their arrears at the time of release, it may also have an effect on the behavior of these parents in ways that are consequential to their children and the custodial parents as well as related systems. Even if a parent is a deadbeat, the evidence is clear: noncustodial parents are far more likely to pay child support, and otherwise reengage with their families, if payments are manageable.

In 2012 study by the Center for Policy Research, a private nonprofit research organization, parents paid a much higher percentage of their monthly obligations when offered relief from unpayable state-owed debt.

Senate Bill 2277 certainly does not prohibit the establishment of a child support obligation for an incarcerated parent based on actual income. For many parents incarcerated with the DOCR, they will at some point during their sentence have the ability to work at gainful employment, either through the prison industries program or work release. With the additional beds at our minimum custody facility, Missouri River Correctional Center (MRCC), we were able to increase the number of individuals on work release by over 400 percent. During the first 7 months of operating the new temporary transitional modular housing units, the individuals on work release had earnings of over \$250,000. A large percentage of those earnings went to child support.

Research shows that the two most important factors in a former prisoner's successful reentry into the community are employment and positive relationships with family. Both of these are hindered by the aggressive pursuit of child support arrears. The DOCR wants law-abiding citizens who provide support for their children upon release. Senate Bill 2277 helps to reduce a major barrier for reentry by reducing the overwhelming debt that sets people up for failure and re-incarceration.