

2021 HOUSE JUDICIARY

HB 1423

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1423

2/2/2021

Relating to child support obligations and parenting time.

Chairman Klemin called the hearing to order at 11:25 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Discussion Topics:

- Monetary amount
- Custody distribution
- Study

Rep. Matt Ruby: Introduced the bill. Testimony # 4871

Devin Mantz, District 5, Minot: Testimony #4803

Jim Flemming, Child Support Services DHS: Testimony #4946

Additional written testimony: #4819

Chairman Klemin closed the hearing at 11:54.

DeLores D. Shimek
Committee Clerk by Anna Fiest



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
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BISMARCK, ND 58505-0360



Representative Matthew Ruby

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COMMITTEES:
Human Services
Energy and Natural Resources

02Feb21

Good morning Mr. Chairman and committee,

My name is Matt Ruby from District 40 in Minot. HB 1423 seeks to address issues within our custody and child support program. This bill would make two major changes to the way the state handles custody proceedings.

The first change would set the amount of child support due to the custodial parent, in correlation with the amount of custody each parent has. If the custodial has the child 100% of the time, the noncustodial parent will pay the full amount as determined by the state. If both parties have the child half the time, the amount due to the custodial parent would be half of what the state determines in the previous scenario. All agreements between those marks would have the correlated amount. This change would better reflect the amount that the noncustodial often pays that isn't factored in.

The second change would require the judge to accept a predetermined agreement that was agreed upon by both parties' attorneys. Last session we discussed this issue and what we heard from the child support division was that sometimes when an agreement is brought to the court, its often a product of intimidation. What we did here was uphold agreements when each party has an attorney. I think as much as we let judges make determinations about these things, we can trust attorneys to be able to determine if there were intimidation techniques to coerce a more favorable agreement.

Each session we have issues that arise dealing in this part of code and each session we hear from the division that we have the best program. However, even the division brings fixes here and there and I think its time we make some real changes to make these scenarios more fair for both parties. If this isn't the fix you want to do, I have taken the liberty to draft a study resolution. You will probably hear that we studied this in recent interims, but its been 12 years since we looked at the program holistically. Since that interim, we have 113 different legislators of a possible 141. I do believe it's time to look at fixes and I respectfully ask for your support.

Rep. Matt Ruby
District 40

TESTIMONY ON HB 1423

TESTIMONY IS FOR SUPPORT OF HB 1423

Deven Mantz

Minot, ND

District 5

I am here in support of HB 1423. I am directly affected by the child support calculations done here in North Dakota. Many of my friends and family are also directly affected. The way the child support agency calculates child support is outdated and needs to change.

Parents nowadays most often share custody 50-50. Studies have shown over and over that this is the best way to raise children in a split home, if possible. That being said, it costs a lot of money to raise children these days. If both parents are responsible for half the children's expenses, (i.e. daycare, food, sports, and so on) then why is one parent paying the other parent? Are we not equals? Are we not fully capable of taking care of our children?

I have especially had an issue with the child support calculation that was done for myself. My ex and I have split custody (50-50), the thing is, if I were to let her have full custody, I would actually pay less monthly for my children. Yes, that is right, less. We split all the children's expenses down the middle. That being said, if she had full custody, she would have to pay for all those expenses herself. I would owe a set amount, and that would be that. I actually like to have my kids, and want them as often as possible so I wouldn't do that.

My point though isn't that I should scheme to pay less money, rather, why are we incentivizing one parent to think like that? Why are we incentivizing not having our children because it actually costs more to have them an equal amount?

I have a great friend of mine that is forced to go out of town and work to make enough money to live and pay child support. My friend would be able to have his kids in a 50-50 scenario if he was able to work in town. Unfortunately, even if he did have 50-50 custody, he still wouldn't be able to afford to live because child support payments are FAR too high. So instead, he doesn't get to spend as much time with his children as he should be able to, which negatively affects a child for the rest of their life.

The other part to this HB 1423, is to allow parents the right of being able to dissolve having any child support payments at all. If both parents are in agreement, what is it the business of the state to tell them they cannot do that? As the law stands today, that is not legal. This legislation would change that. If both parents have their own lawyer, they should be able to rid

themselves of child support if they so choose. This would make it simpler to co-parent, and the state would save money by not having to deal with the situation or recalculate the payments every 18 months.

This bill would do two (2) things:

1. Allow parents to dissolve child support entirely, as long as both parties have their own lawyers to make sure they know their rights. This would make co-parenting easier and would save the state time and money that is spent on these cases
2. It would take the percentage of custody and decrease the amount of support by that much. If you have 50% custody, your support amount would decrease by 50%. This would allow parents to be there for their children instead of focusing solely on work, just to get by and pay their child support.

Testimony
House Bill 1423 - Department of Human Services
House Judiciary Committee
Representative Lawrence Klemin, Chairman

February 2, 2021

Chairman Klemin and members of the Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). The Department suggests a “do not pass” recommendation on House Bill 1423 because the state’s child support guidelines already consider parenting time in determining the appropriate amount of monthly child support.

The state laws on lines 6 and 7 of the bill that would be superseded need some discussion. Sections 14-09-06.2 and 14-09-31 require consideration of the best interests of the child. Section 14-09-09.32 codifies long-standing caselaw from the North Dakota Supreme Court that parents cannot negotiate away the child’s right to support because the right to support belongs to the child. Section 14-09-09.7 requires that all child support obligations in North Dakota be determined using the state child support guidelines. Not only does section 14-09-09.7 provide for consistency in what parents owe based on their income, it also removes a potentially contentious issue between the parents of a child because the amount of support is generally determined based only on the income of the parent who does not have primary residential responsibility.

Lines 9 through of the 12 propose that parents can agree to an amount of child support that is contrary to amount determined under the state child support guidelines. Federal law requires North Dakota to adopt child support guidelines that apply in all cases, and can only be rebutted by a “finding [by the court or administrative tribunal] on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State.” 42 United States Code Section 667(2)(b).

Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

45 Code of Federal Regulations 302.56(g). Simply put, federal law and regulations do not allow parents to negotiate their own child support obligation that is contrary to the amount determined under the state child support guidelines or to require the court to accept the parties' agreement.

Failure to follow the federal mandates in this area would lead to disallowance of North Dakota's state child support plan and a loss of eligibility for federal funds for the child support program. Because having an approved child support plan is a condition of receiving TANF block grant funds, TANF funds are also at risk. The Department was not asked for a fiscal note on this bill, but a similar fiscal note for another bill that would lead to federal noncompliance (House Bill 1406) reveals a loss of federal funds of \$74,735,058 for the 2021-23 biennium and more than \$75 million per biennium in the future.

As required in North Dakota Century Code Section 14-09-09.7(1), North Dakota's child support guidelines "[i]nclude consideration of extended periods of time a minor child spends with the child's obligor parent." The Child Support Guidelines Drafting Advisory Committee reviews and proposes improvements to the child support guidelines every four years. The adjustment for parenting time was expanded by the Advisory Committee in 2018. If the court order provides for 100 overnights per year or more of parenting time, the parent who owes child support gets an annualized reduction in his or her child support obligation in an amount equal to 32% of the daily child support obligation per day of parenting time. The Child Support Guidelines Drafting Advisory Committee based the 32% reduction on research showing that the child-rearing costs of a parent with residential responsibility are reduced by 32% (primarily the cost of food) when the child is spending time with the parent who owes

child support. This methodology ensures that a portion of support is available to help offset the fixed costs of raising the child, particularly if the parent who owes child support does not use all of the parenting time that is scheduled in the court order.

North Dakota's child support guidelines also authorize the court to take into account a parent's travel expenses when exercising parenting time in appropriate situations.

Mr. Chairman and members of the Committee, it is not unusual for parents to be unhappy over the amount of child support they have to pay. The important underlying fact to remember is that the amount a parent owes under the guidelines is based on his or her net income and the number of children to whom the parent owes a duty of support, similar to what parents would spend if they were living together. This leads to the following breakdown of active North Dakota child support obligations as of November 2020:

Current Monthly Child Support	Number of Obligations	% of Total	Cumulative
Up to \$50	161	1.2%	1.2%
\$51 - \$100	423	3.1%	4.3%
\$101 - \$150	788	5.8%	10.1%
\$151 - \$200	1,323	9.7%	19.8%
\$201 - \$300	2,829	20.8%	40.5%
\$301 - \$400	2,160	15.8%	56.4%
\$401 - \$500	1,962	14.4%	70.8%
\$501 - \$750	2,657	19.5%	90.3%
\$751 - \$1000	834	6.1%	96.4%
\$1001 - \$2000	436	3.2%	99.6%

\$2001 - \$3000	41	0.3%	99.9%
\$3001 - \$4000	14	0.1%	100.0%
More than \$4,000	1	0.0%	100.0%
Total	13,629		
Mean	\$422.53		
Median	\$368.00		

The average one-child order under the North Dakota child support guidelines in cases established by our program is \$422.53 per month. The amount drops to \$392.70 if you include a per-child average for support orders covering two or more siblings. If you include the orders that are not being enforced by our program, the amounts increase slightly to \$449.71 and \$422.15. To the parent paying support, this may be a large amount, but in reality, this amount often does not cover half of the cost of raising a child. At best, the guideline amount of support can be described as a contribution toward the child's support, with the parent with residential responsibility being liable for the rest of the child's actual expenses. This disparity would only increase further if the current reduction for parenting time was increased, at the risk of the parent with residential responsibility no longer being able to maintain a home for the child. The Department believes the current child support guidelines do a good job of balancing the best interests of the child and the parent's ability to pay child support.

Mr. Chairman, this concludes my testimony, and I would be happy to answer any questions you may have.

Testimony in support of HB 1423

Robb LaBonte

Minot, ND
District 38

I am writing this in support of HB 1423. I believe the current system of figuring child support is an outdated one that is not cost effective for the state and also unjust on many parents who are apart of this system. I have 3 children myself, two of them I have a 50/50 custody agreement and roughly a 40/60 with the other. I do agree with monetary support for all children but the current spreadsheet for figuring out what needs to be paid makes it very tough on my household situation. I currently pay 50% of my monthly income in child support, which makes it tough to make ends meet on our home front with still having to pay for the children's living conditions, food, and other amenities. I believe in a 50/50 situation both parents income should be considered and the children should be taken care of by each house hold evenly and a monetary tier system put in place for an unbalanced custody agreement or something of the like.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1423

2/9/2021

Relating to child support obligations and parenting time.

Chairman Klemin called the meeting to order at 3:43 PM

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Roers Jones

**Do Not Pass Motion Made by Rep. Paur
Seconded by Rep. Karls**

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	N
Rep. Christensen	N
Rep. Cory	Y
Rep T. Jones	N
Rep Magrum	N
Rep Paulson	N
Rep Paur	Y
Rep Roers Jones	AB
Rep B. Satrom	Y
Rep Vetter	N
Rep Buffalo	Y
Rep K. Hanson	Y

7-6-1 Carrier: Rep. Karls

Stopped 3:47

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1423: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1423 was placed on the Eleventh order on the calendar.