NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

FAMILY LAW COMMITTEE

Tuesday, March 26, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative John Mahoney, Chairman, called the meeting to order at 9:05 a.m.

Members present: Representatives John Mahoney, Lois Delmore, Mary Ekstrom, Jim Kasper, Lawrence R. Klemin, Carol A. Niemeier, Dan Ruby, Sally M. Sandvig, Dwight Wrangham; Senators Linda Christenson, Dick Dever, Robert S. Erbele, Michael A. Every, Russell T. Thane

Members absent: Representative Roxanne Jensen; Senator Darlene Watne

Others present: See attached appendix

It was moved by Representative Delmore, seconded by Senator Dever, and carried on a voice vote that the minutes of the October 8, 2001, meeting be approved as distributed.

ADOPTION LAW STUDY

Chairman Mahoney called Ms. Julie Hoffman, Administrator of Adoption Services, Division of Child and Family Services, Department of Human Services, for comments regarding adoption statistics and the activities of the informal task force of licensed child placement agency representatives discussing adoption laws. Ms. Hoffman provided written testimony, a copy of which is on file in the Legislative Council office. In calendar year 2000, she said, the Turtle Mountain Tribe adjudicated 20 adoptions through the tribe's affiliation with the AASK program. She said 20 children were in the custody of the tribe and placed with tribal members who, for the most part, had already been caring for these children in a foster care arrangement. Due to staffing problems, she said, this level of placement activity did not continue in 2001. She said the Department of Human Services is hopeful that the current adoption work being done with the Turtle Mountain Tribe will soon result in additional adoption placements and finalizations. She said information regarding any additional adoption that occurred with the Turtle Mountain Tribe which was not affiliated with the AASK program is not available to the Department of Human Services.

Ms. Hoffman reported that in response to the committee's request that the task force include adopted individuals, birth parents, and adoptive parents, the task force has shared its work product with adopted individuals, birth parents, and adoptive parents. She provided a list of the task force members and the individuals consulted, a copy of which is on file in the Legislative Council office. She said the list should be corrected to include Ms. Michelle Vietz, Bismarck, as an individual with whom the task force consulted. She said the task force has spent a great deal of time and energy in preparing a bill draft and the bill draft has been developed by consensus. The bill draft, she said, reflects current practice in adoption as well as makes reasonable steps in moving the state toward more openness in adoption law and adoption practice. She said the changes proposed in the bill draft can be characterized as housekeeping, clarification, or substantive.

Ms. Hoffman began the review of the proposed statutory statements by reviewing North Dakota Century Code (NDCC) Chapter 14-15, the Revised Uniform Adoption Act. She provided a copy of each chapter reviewed, in which the added language is underscored and the deleted language is overstruck, and a copy of a document that summarizes the changes in each section in each chapter being changed, copies of which are on file in the Legislative Council office.

In response to a question from Representative Klemin, Ms. Hoffman said the proposed changes to North Dakota's version of the Revised Uniform Adoption Act are unique to North Dakota. She said she is not aware of any changes to the uniform Act, which was enacted in North Dakota in 1971.

In response to a question from Representative Ruby regarding legislation passed during the 2001 legislative session, Ms. Hoffman said the law that was enacted regarding safe havens for a birth parent to abandon a child would likely result in a child being in the custody of a child-placing agency, which would then relinquish the child for adoption. She said she would do additional research on this matter and report back to the committee at a future date.

In response to a question from Senator Christenson, Ms. Hoffman said the proposed changes to NDCC Section 14-15-03 regarding who may adopt is intended to be a clarification. She said existing law under this section allows a husband and wife together, although one or both are minors, to adopt and the proposed changes do not affect this area. She said a hypothetical situation in which a minor would adopt a child may include a married minor

adopting a younger sibling in the case of the death of the biological parents.

Ms. Hoffman said the proposed changes to NDCC Section 14-15-09 regarding petitions for adoptions are very loosely patterned on Minnesota's law. She said the changes in this section address what types of reasonable expenses related to the adoption may be verified and approved by the court.

In response to a question from Representative Delmore, Ms. Hoffman said the proposed change in language of NDCC Section 14-15-03 would clarify that living expenses allowed to be paid to a birth mother would not include expenses for education of the birth mother.

In response to a question from Representative Klemin regarding whether a court has the authority to deny unreasonable adoption expenses and what recourse a court may have if unreasonable expenses were already paid or gifts were given, Ms. Hoffman said it is her understanding that the court has the authority to deny unreasonable expenses. Additionally, she said, the issue of what to do if unreasonable expenses or gifts were already paid is a difficult area. She said the task force hoped that by putting these provisions into law, the parties to an adoption will follow the law; however, she is not aware of any penalty provisions under NDCC Chapter 14-15.

In response to a question from Senator Christenson, Ms. Hoffman said a typical in-state adoption of an in-state child may cost $10,000; however, a variety of factors could increase this figure.

In response to a question from Senator Dever, Ms. Hoffman said procedurally the parties to an adoption typically become involved in the court system when the child placement agency becomes involved.

In response to a question from Representative Ruby, Ms. Hoffman said under NDCC Section 14-15-09(1)(i)(5), the allowable living expenses of a birth mother could be high; however, in reality, the living expenses of a birth mother are not used very often and the language in this section is designed to guide the court and not make an exhaustive list of what may be considered a reasonable expense.

In response to a question from Representative Klemin regarding proposed changes to NDCC Section 14-15-10(1), Ms. Hoffman said she was not certain what recourse a judge may have if the judge does not agree with fees for services relating to the adoption, but she can research this matter and provide information at a future meeting.

In response to a question from Representative Mahoney regarding the proposed changes to NDCC Section 14-15-16, she said, in part the changes would provide that a nonconsenting party may not stop the disclosure of information between consenting individuals. She said the benefit from these provisions would be that an adopted individual and a birth parent would be able to receive identifying information even if the other birth parent did not consent to this release. However, she said, the drawback to this change in law would be that the birth parent who did consent to release of information may release identifying information regarding the nonconsenting birth parent.

In response to a question from Representative Delmore, Ms. Hoffman said in approaching NDCC Section 14-15-16, the task force struggled with how to balance the rights of all the individuals. She said North Dakota's laws are very strict as far as releasing information and the proposed changes would loosen these restrictions. She said the task force is looking for guidance from the committee on how best to approach this issue.

In response to a question from Senator Christenson, Ms. Hoffman said adoption is basically a function of state law; therefore, even if a party to an adoption lives outside North Dakota, North Dakota's laws typically apply if the adoption takes place within the state.

In response to a question from Representative Mahoney, Ms. Hoffman said the proposed changes to NDCC Chapter 14-15 would be a step in unifying the law regarding sharing of information at the time preceding adoption and the time following adoption.

In response to a question from Representative Klemin, Ms. Hoffman said current law and the proposed changes to NDCC Chapter 14-15 do not provide for sanctions for violation of the law. She said it has been very difficult to prosecute a violation of NDCC Chapter 14-15; however, she said, the task force is open to suggestions.

Ms. Hoffman provided a document containing proposed changes to NDCC Chapter 14-15.1 regarding child relinquishment to identified adoptive parents and a single-page summary of these proposed changes, copies of which are on file in the Legislative Council office. She said one of the primary proposed changes in NDCC Chapter 14-15.1 would be an attempt to clarify for the court and for the agencies dealing with adoptions what reasonable living expenses include and exclude.

Representative Klemin said he has the same concern with the changes made in this chapter as under NDCC Chapter 14-15 regarding what power a judge may have if the judge determines expenses are not reasonable, especially once the expenses have already been paid.

Ms. Hoffman provided a proposed new chapter to NDCC Title 14 which would create a paternity registry and a summary of this proposed new chapter, copies of which are on file in the Legislative Council office. She said the proposed new chapter to the North Dakota Century Code is an attempt by the task force to use the best practice of other states that have paternity registries. She said the task force believes the creation of a paternity registry would benefit some cases in which a birth mother wants to place a child for adoption and does not have the cooperation of the

birth father; however, there is some continued concern about the effect of a registry on the whole adoption practice. She said the work group is looking to the committee for direction on this matter.

In response to a question from Representative Ekstrom, Ms. Hoffman said the proposed registry does not address situations of rape or incest. She said the task force did discuss these matters; however, realistically by the time a person alleges rape and there is a criminal outcome, an adoption would typically already be completed. Additionally, she said, the task force wrestled with the difficulty of defining rape.

In response to a question from Representative Klemin, Ms. Hoffman said in proposing that a father be required to register within three working days after the child's birth, the task force did not consider situations in which the father is in the military and may be out of the country. However, she said, the proposed language does address the issue of a father in a different state. She said the task force would look at the situation in which a father is in the military.

In response to a question from Representative Kasper, Ms. Hoffman said perhaps it would be a better idea to refer to fathers who are outside the state versus a father who resides in another state because a father may be anywhere, including another country.

In response to a question from Representative Ruby, Ms. Hoffman said under the proposed paternity registry, in addition to registering, in order to protect his paternal rights, a father would have to appear in court and establish a substantial relationship with the child.

In response to a question from Representative Delmore, Ms. Hoffman said under the current system a birth father is treated the same as a birth mother when it comes to termination of parental rights.

In response to a question from Representative Niemeier, Ms. Hoffman said before a birth father can successfully stop an adoption, the father may be ordered to take a blood test to prove paternity.

In response to a question from Senator Thane, Ms. Hoffman said the intent of setting the three working days following birth to allow a father to register is to allow adoption proceedings to go forward in a timely manner. However, she said, if the birth father registers he may be able to slow or prevent an adoption just as there would be possible delays under the current system.

In response to a question from Representative Kasper, Ms. Hoffman said under the proposed paternity registry, lack of knowledge of pregnancy is not a defense. She said a father would be obligated to register if he may have fathered a child. She said this paternity registry would necessitate a statewide campaign to educate men of their obligation to register.

Representative Kasper said he is concerned that this proposed paternity registry does not protect the rights of fathers. Ms. Hoffman said that is the very issue that makes her reluctant to advocate for the registry. She said the task force is looking to the committee for guidance on this issue.

In response to a question from Representative Delmore, Ms. Hoffman said the idea of having a paternity registry is a very complicated issue. She said the intent of having a paternity registry is not to lessen the obligation of a child-placing agency to try to identify the birth father. Additionally, she said, typically it is better for a child to be able to find out who the child's birth father is than to not know.

In response to a question from Representative Klemin, Ms. Hoffman said approximately 21 states provide for some sort of paternity registry.

Ms. Hoffman said the task force proposes that NDCC Chapter 14-17, the Uniform Parentage Act, be amended to change the terms "natural mother" and "natural father" to "biological mother" and "biological father." She said this change is intended to be a housekeeping measure and not substantive. She provided a written document illustrating the changes in NDCC Chapter 14-17, a copy of which is on file in the Legislative Council office.

Ms. Hoffman said the task force recommends amending NDCC Section 50-09-02.2 regarding assistance for adopted children with special needs. She said the definition of a child with special needs would be expanded to include a child who is at high risk for a physical, mental, or emotional disability due to the circumstances of birth, deprivation in developmental years, or the birth parent having a medical or social history. She provided a written document containing the proposed change and the summary of the proposed change, a copy of which is on file in the Legislative Council office.

Ms. Hoffman said in addition to the proposed changes presented today, the members of the task force think NDCC Chapters 14-15 and 27-20 should be addressed in the areas of alignments of statutes related to relinquishment of parental rights. However, she said, the members of the task force believe this topic may go beyond their scope and the task force would welcome the direction of the committee. Additionally, Ms. Hoffman said, the task force would like to provide the committee with suggested changes in NDCC Chapter 50-12 to streamline the process of criminal background checks for families who are seeking to be licensed for foster care and to be approved for adoption. Finally, she said, the task force would like to suggest changes that may clarify the duties of a child-placing agency and limit the work of facilitator agencies.

PRIVACY STUDY

Medical Privacy

Vice Chairman Christenson took the chair. Vice Chairman Christenson called on Mr. Michael J. Mullen, State Department of Health, for comments regarding the relationship between state laws on the privacy of health information and the federal health privacy laws. Mr. Mullen provided a copy of his written testimony, which is on file in the Legislative Council office.

Mr. Mullen provided a brief overview of the history of the federal Health Insurance Portability and Accountability Act (HIPAA). He said on March 21, 2002, Department of Health and Human Services Secretary Tommy Thompson proposed changes to the federal privacy law to ensure strong privacy protection while correcting unintended consequences that threatened patients access to quality health care. Committee counsel distributed a copy of a fact sheet containing a summary of the proposed modifications, a copy of which is on file in the Legislative Council office. Mr. Mullen said he would not provide a detailed analysis of most of the proposed changes at this time in part because the changes are very technical and complex and also because he has not had the opportunity to complete a detailed analysis of the proposals. However, he said, two provisions in the proposed changes are, first, that the proposal would "promote access to care by removing the consent requirements that would potentially interfere with efficient delivery of health care while strengthening requirements for providers to notify patients about their privacy rights and practices." He said the proposed changes are intended to address the concerns that the requirement would interfere with pharmacists filling prescriptions with referrals to medical specialists and hospitals, with providing treatment over the telephone, and with the delivery of emergency medical services. Second, he said, the rules' application to oral communications is modified to make it clear that a doctor may discuss a patient's treatment with other doctors and professionals involved in the patient's care without fear of violation of the rule if the doctor is overheard by another individual. He said as long as the covered entity meets the minimum necessary standards and takes reasonable safeguard to protect personal health information, the incidental disclosure would not be an impermissible disclosure. He said an unofficial 195-page copy of the text of the proposed changes is available at http://www.hhs.gov/ocr/hipaa/whatsnew.html.

Mr. Mullen said under HIPAA, any provision of state law that is contrary to and more stringent than the corresponding federal standard is not preempted; therefore, the effect of the policy is to let the law that is most protective of privacy control, an approach known as the "federal floor" approach.

Mr. Mullen said in reviewing state laws in light of the federal privacy laws, most of the state's laws are general in form and are not explicitly contrary to and more stringent than the federal privacy requirements. Therefore, typically the more specific requirements on disclosure of protected health information set forth in the federal privacy rule will apply because the state's law is not contrary to and more stringent than the corresponding federal standard. Examples, he said, of state privacy law that is general in nature include NDCC Sections 43-15-10(1)(n) and 43-17-31(13) and North Dakota Administrative Code Section 33-07-01.1-20(8).

Mr. Mullen said an informal group, known as the North Dakota HIPAA Coalition, composed of government agencies, associations representing health care providers, individual hospitals and clinics, and health insurers, has been meeting to discuss the implementation of the HIPAA privacy provisions. He said the coalition has become aware of a report commissioned by a private law firm to compare the HIPAA privacy provisions to North Dakota law. He said the coalition is discussing the possibility of obtaining access to this report.

In response to a question from Senator Christenson, Mr. Mullen said in the situation which an individual goes to the pharmacy and signs a list that contains the signatures of previous individuals picking up prescriptions, he is not certain whether this current practice would be a violation of the federal privacy law. He said he will check with pharmacy experts and get back to the committee at a later date.

In response to a question from Representative Kasper pertaining to which state's law would apply in the case of a North Dakota resident who receives medical care in Minnesota and in the instance of a Minnesota resident who receives medical care in North Dakota, Mr. Mullen said he is not able to give a definitive answer regarding which law would apply. However, he said, a provider will likely look at the state law of the state in which the physician is in, keeping in mind that it is the patient's right of privacy and that the patient may try to argue the law of the patient's residence applies.

In response to a question from Representative Mahoney, Mr. Mullen said it would be helpful to have federal clarification regarding which state's laws would apply in the case of a resident of one state receiving medical care in a different state. Mr. Mullen said it is likely that large medical provider organizations will be arguing that only the federal laws apply in the area of medical privacy and that states should not be allowed to have their own laws addressing this issue.

In response to a question from Representative Klemin, Mr. Mullen said he is not ready to make recommendations regarding whether there are state laws that need to be changed to be in compliance with the federal laws because at the federal level they have not stopped making changes to the HIPAA regulations. He said the coalition will be in a better

position to report on this matter to the committee at a future meeting.

In response to a question from Representative Mahoney, Mr. Mullen said preliminary reviews indicate that because North Dakota's medical privacy laws are general in nature, they will not conflict with federal medical privacy law. Chairman Mahoney requested that Mr. Mullen report back to the committee in the future and that this report include information regarding residency and cross-border issues.

Financial Privacy

Chairman Mahoney called on Ms. Charlene Nelson, Casselton, for comments regarding the committee's study of financial privacy. Ms. Nelson provided a list of other states with option requirements for financial information, e-mail correspondence with a Vermont assistant attorney general, e-mail correspondence with a representative of the Attorney General of the state of Arkansas, and an on-line news article regarding financial privacy in the European Union, copies of which are on file in the Legislative Council office.

Ms. Nelson said during the recent special session, Representative Berg contacted her to discuss the possibility of amending North Dakota's privacy law as it pertains to third-party processing and the exportation of North Dakota's law. She said she is concerned that the only individuals accessing the legislators are lobbyists for the banking industry. She said she has contacted the offices of the Attorneys General in Maryland and Maine and was told that states may export interest rates, such as South Dakota's exportation of credit card interest rates; however, other than interest rates, state laws dictate. Additionally, she said, in consulting with legal professionals, she has found that lawyers support her position that North Dakota banks would continue to be allowed to provide automated teller machine services if 2001 Senate Bill No. 2191 becomes void.

Ms. Nelson said if the referral is successful, the legislators may want to consider future legislation that removes the exception allowing sharing of customer information with affiliates. She said such a change would tighten personal privacy protection. She said in support of making our law more protective to the consumer than the federal Gramm-Leach-Bliley Act provides, the European Union has tighter privacy protections and may look favorably upon trading with a state that has high privacy protections. Finally, she said, she would like to see medical privacy, insurance privacy, and securities privacy addressed by the committee and protected.

Representative Mahoney said he wanted to note that legislators do consider the opinions of more than just the bank lobbyists. Additionally, he said, anytime more than one attorney is consulted there will be more than one opinion, so the fact that Ms. Nelson has found an attorney in support of her position does not make that the definitive answer.

Representative Mahoney called on Representative Kasper to testify regarding the financial privacy aspect of the privacy study. Representative Kasper said he will be requesting an Attorney General's opinion addressing financial privacy and how the referral vote on 2001 Senate Bill No. 2191 would affect automated teller machine services, credit card services, and check processing services. Additionally, he said, the opinion should address the possible exportation of North Dakota's financial privacy law. He said he views North Dakota's "opt-in" provision as an economic development draw for the state.

In response to a question from Representative Mahoney, Representative Kasper said he is not considering or working on legislation for the next session, but he is seeking to know the impact of a successful referral of Senate Bill No. 2191.

Chairman Mahoney called on Ms. Marilyn Foss, North Dakota Bankers Association, for comments regarding the financial privacy aspect of the privacy study. Ms. Foss said the determination that interest rates are exportable, such as the case of credit cards in South Dakota, was based on a ruling as a result of litigation. She said there is not any litigation on the privacy issue and on whether the state can export its privacy laws. With these issues of uncertainty, she said, the banks do not want to operate and base their decisions under a cloud of possible litigation. She said the fact that the Attorney General issues an opinion does not prevent a private citizen from litigating a matter and if the state's laws are different from the federal Gramm-Leach-Bliley Act, there will be an atmosphere of uncertainty for banks, regardless of whether there is an Attorney General's opinion claiming to clarify the issue.

In response to a question from Representative Mahoney, Ms. Foss said the fact that the Attorney General has issued an opinion does not limit private litigation. She said Attorney General opinions are intended to protect government officials when they base their actions on an interpretation adopted by the Attorney General.

In response to a question from Representative Kasper, Ms. Foss said since NDCC Chapter 6-08.1 was enacted, she is aware of one court case. However, she said, the fact that the federal government has passed the Gramm-Leach-Bliley Act brings a higher level of uncertainty if Senate Bill No. 2191 becomes void than existed before the federal Act.

In response to a question from Representative Mahoney, Mr. Scott Miller, Assistant Attorney General, stated that in addressing the issue of exportation of the state's privacy law, it will be important to define what qualifies as a financial institution and it may become a question of whether out-of-state branches of North Dakota chartered institutions are considered financial institutions under the state's law.

Chairman Mahoney said the committee will wait to consider taking action on the issue of financial privacy until the Attorney General's opinion is released and the referral vote on Senate Bill No. 2191 has occurred.

Mr. Timothy J. Karsky, Commissioner, Department of Financial Institutions, was unable to attend the committee meeting, but he provided written comments, a copy of which is on file in the Legislative Council office.

ADMINISTRATION OF CHILD SUPPORT STUDY

Chairman Mahoney called on Mr. Jeffrey Ball, MAXIMUS, for comments regarding the State Auditor's performance audit of the North Dakota child support enforcement program. Mr. Ball provided written testimony, a copy of which is on file in the Legislative Council office. He explained that TMR-MAXIMUS, which is now doing business as MAXIMUS, conducted an analysis of the North Dakota child support enforcement program on behalf of the State Auditor's office in the fall of 2000. He said he was one of the members of the team that analyzed the program and was one of the writers of the report submitted to the State Auditor's office. He said after performing the review, MAXIMUS conducted a cost-benefit analysis of many of the recommendations on the behalf of the Department of Human Services. He explained the procedure MAXIMUS used in performing the review.

In response to a question from Representative Ekstrom, Mr. Ball said in performing the review, the team interviewed staff members in four of the eight regional child support enforcement units. He said some of the individuals interviewed stated they thought there were some inconsistencies between the eight regional child support enforcement units. He said the proposal of MAXIMUS does not decrease the salary of any county worker who may make more than a counterpart in another region. The goal, he said, is to increase the wages of the individuals working in the lower-paid units. Additionally, he said, the cost figures he used in the cost-benefit analysis are based on the workers after their salaries are more even.

Mr. Ball said as a result of the review, MAXIMUS concluded that going from a county-administered to a state-administered system would make an already above-average program that much better. He said in terms of the number of North Dakota children successfully served and the number of parents who are kept off welfare, plus the dollars recouped by the state in temporary assistance for needy families (TANF) reimbursement, a state-administered child support enforcement program is as close to a win for all concerned parties as there can be.

Mr. Ball provided an overview of the federal child support program, and he provided an overview of the North Dakota child support enforcement program, including the following information:

- In fiscal year 2000, 154 full-time employees were attributable to the North Dakota child support enforcement program.
- The central state child support enforcement office has 32 positions to perform all of the federally mandated functions as well as some state-level enforcement activities.
- The counties in each of the eight regional child support enforcement units pool their resources to pay for the regional child support enforcement staff. The caseload per full-time employee in the regional units varies substantially as do the results under the performance indicators. Performance of the units with lower caseload-to-staff ratios is better than that of units with higher ratios.
- Under the SWAP legislation, the counties continue to provide child support services under state direction, in a manner organized by the counties.
- The regional pool of local matching dollars per case is not consistent among the eight regions, meaning some units spend more to provide child support services than others.
- As a result of the SWAP legislation, there is a net cost to county government to run the child support enforcement program locally.
- Changes in federal requirements are requiring states to centralize an increasing number of functions of child support enforcement.
- The state's automated child support system gives child support caseworkers the power to work any case in the state child support inventory from any location via a computer terminal.
- Although courts and clerks still play an important role in the system, federal law has given many of the administrative enforcement powers to the state child support enforcement agency; therefore, many enforcement activities take place outside the court, leaving judicial resources for the more complex and less routine events.

Mr. Ball provided information regarding North Dakota's performance in key categories compared to the nation and compared to South Dakota, which is an example of a state that has a state-administered child support enforcement program.

National, North Dakota, and South Dakota Preliminary Incentive Data

	National	North Dakota	South Dakota
IV-D PEP	64.9%	65.9%	95.6%
Statewide PEP	101.2%	N/A	N/A
Cases with support orders	62.1%	75.8%	92.6%
Collections on current support	56.1%	67.1%	67.7%
Collections on arrears	57.1%	57.8%	76.3%
Cost-effectiveness	$4.21	$4.61	$6.95

Mr. Ball reviewed the evolution of the child support enforcement program in North Dakota. He said with the automated statewide system in place, the problem now is no longer uniform access to case data but instead how to work a case in a uniform manner. While the state conducts some training at the state level to convey statewide policy and procedures, he said, the reality is that it is regional child support enforcement units that implement this policy. Inconsistencies in policy and procedure, he said, may mean inconsistent service levels and approaches to customers based on the region in which a customer lives. He said this inconsistent approach can lead to complaints of unfair or inequitable treatment. Additionally, he said, while the regional child support units do outstanding work, moving to a state-administered program may produce economies of scale, a more level playing field, and more consistent policy that in turn could produce a more efficient operation. A more efficient operation, he said, can serve more people with the same service delivery level or serve the same number of people at a higher service delivery level.

Mr. Ball said by consolidating certain child support enforcement functions at the state level, such as customer service, interstate case processing, review and adjustment, locate activity, and statewide enforcement, the need for redundancy in knowledge should be diminished and the expertise developed by a specialized unit should be increased. He said a centralized, dedicated training unit could provide consistency in policy implementation and spark exchanges of best practices necessary to continuously improve performance. He said by moving to a state-administered program, in conjunction with the consolidation of various functions, the state would have greater flexibility to distribute resources as needed. He said task forces made up of local caseworkers who are under direct state supervision could be dedicated to cleaning up problem areas throughout the state for all the cases.

Mr. Ball said moving to a state-administered child support enforcement program should not adversely affect delivery of services in rural areas. To the contrary, he said, moving to a state-administered child support enforcement system may lead to better service delivery in rural areas as the experts who can be found in other portions of the state can assist rural caseworkers who may be generalists and not experts in every facet of a fairly complicated program.

Mr. Ball reviewed the costs and benefits of North Dakota moving to a state-administered child support enforcement program. He said MAXIMUS estimates the cost to the state of moving to a state-administered program is about $140,000 in one-time costs and $25,500 per month in ongoing costs. He said with the federal government paying 66 percent, that would mean the state's share is about $48,000 in one-time expenses and $8,500 per month in additional costs. He said he expects increased efficiencies and also increased federal incentive dollars as a result of moving to a state-administered system, which would somewhat offset the added cost in the second year of the state-administered program.

Mr. Ball provided the following cost estimates for a state-administered child support enforcement program:

Cost Estimates for Recommendations		
Category	**One-Time**	**Monthly**
Statizing	$139,270	$25,434
Centralized functions	136,575	68,748
Administrative hearings and expedited process	0	0
Fully automated child support enforcement system (FACSES)	40,000	0
Training/support of regional offices	16,925	5,467
Universalization	44,295	22,319
Total	$377,065	$121,968

Mr. Ball said if the costs of the regional budgets are taken over by the state, moving to a state-administered program would cost approximately $416,174 in one-time costs and $454,858 in new monthly costs. The total for all recommendations, he said, when adding the regional budget to the state expenditure ledger is $653,969 in one-time costs and $551,392 in monthly costs.

Mr. Ball reviewed the savings associated with moving to a state-administered program. He said the regional units receive 75 percent of 99 percent of the federal incentives, which would return to the state under a state-administered system. He said last year that amount of federal incentives would have been $630,000. He said the state's share of the TANF recoupment would be solely retained by the state after moving to a state-administered system because enforcement is done at the state level.

Mr. Ball provided information regarding improved performance results due to moving to a state-administered program. His estimates are:

Incentive income to state if change to state-administered system in fiscal year 2002	$2,546,000
State share if incentives were distributed according to current formula (1% of incentives to education; 75% of 99% to local government and 25% to state)	$630,000
Difference in state share of incentives	$1,916,000
Annual cost of recommendations	$1,746,000
Annual state share of costs (34%) (federal government pays 66% of costs)	$594,000
Net annual revenue to state	$2,293,000
Additional dollars to families due to recommendations	$11,862,000
Collection impact of recommendations annually	
Collection difference	
Current and past-due collections fiscal year 1999	$42,771,000
Collections with recommendations implemented	$65,249,000

Total projected additional collections due to recommendations	$22,478,000
Projected additional current TANF collections (3.6% of total)	$809,000
Projected additional former TANF collections to state (22% of 38%)	$1,879,000
Projected additional former TANF collections to families (78%)	$6,662,000
Projected additional collections for families never on TANF	$5,190,000
Projected yearly recouped additional TANF dollars	$3,133,000
Federal medical assistance percentage share going to the federal government of recouped TANF	$2,162,000
State share of recouped TANF due to recommendations	$971,000
Incentive difference in fiscal year 2002 due to recommendations	$1,916,000
Savings to state due to recommendations	$2,887,000
Additional dollars to families due to recommendations	$11,862,000

Mr. Ball said he estimates one-time costs of $654,000, of which the federal government pays 66 percent, leaving state startup costs at $222,000. He said the ongoing costs of the regional units in the enhanced state program, incorporating all of the MAXIMUS recommendations except administrative process, would be $6.62 million, of which the federal government would pay 66 percent, leaving $2.25 million in state costs. He said added revenue to the state would be about $2.9 million of TANF recoupment and incentive gains. The state, he said, has projected additional revenue of $650,000 by following the recommendations. He said this amount offsets the share of the total match for the state-administered staff. Additionally, he said, MAXIMUS projected an estimated $11.8 million in increased collections for families. Overall, he said, moving to a state-administered child support enforcement program would mean more federal dollars flowing to North Dakota in increased incentives and federal matching. He said the increased state share of costs is more than offset by an increase in state-share TANF recoupment.

In response to a question from Representative Ekstrom, Mr. Ball said although some states use a hybrid system of child support enforcement, and he believes it might be possible for North Dakota to use a hybrid approach as an intermediate step in moving to a state-administered program, a better approach is for the state to move to a state-administered program in a single step.

In response to a question from Representative Delmore, Mr. Ball said most of the county-administered programs in the country are based in high-population states. He said states with populations similar to North Dakota have moved to state-administered programs. North Dakota's system is not broken, he said, but the state could make steps to improve the program and improve performance.

In response to a question from Representative Niemeier, Mr. Ball said under the current system the federal incentives go to the state and then the state determines how or if to distribute any of this federal incentive money to the regions or counties. He said if the current system were adequately staffed, it is likely that there would be some shifts of services to Bismarck.

In response to a question from Senator Christenson regarding the fact that constituents complain that the child support enforcement workers are mean and rude, Mr. Ball said moving to a state-administered program in and of itself would not affect personalities; however, if the system had a customer service unit, these professionals should provide better customer service.

In response to a question from Representative Sandvig, Mr. Ball said moving to a state-administered program is a way to increase the state's resources.

In response to a question from Representative Mahoney, Mr. Ball said he is not certain what the net savings to counties would be if the child support enforcement program were state-administered.

In response to a question from Senator Dever, Mr. Ball said if a change to a state-administered program was accomplished by using a telephone system located in Bismarck, he believes this would have a negative effect of faceless bureaucrats and would result in decreased customer service.

In response to a question from Representative Ruby regarding his concern that the federal government has historically attached conditions any time it provides money to the state governments, Mr. Ball said federal strings will exist regardless of who administers the child support enforcement program.

In response to a question from Representative Wrangham, Mr. Ball said it is difficult to generalize regarding which system would provide better customer service; however, ideally a centralized customer call system would help increase customer service and customer satisfaction.

Chairman Mahoney called on Ms. Kathy Ziegelmann, Regional Child Support Administrators, for comments regarding the study of state administration of the child support enforcement program. Ms. Ziegelmann provided written testimony, a copy of which is on file in the Legislative Council office.

Ms. Ziegelmann reviewed the structure and duties of the regional child support enforcement units. She said each unit has its own cooperative agreement with the state's child support enforcement agency and with each county's social service board, state's attorney, clerk of court, and sheriff's department. She said in the Minot, Bismarck, and Fargo units, the county social service boards have delegated the duty to supervise the regional unit to the state's attorney's office in the host county. In the other five units, she

said, supervision is provided by the host county's social service department or a representative board.

Ms. Ziegelmann said each unit operates somewhat differently, depending on the needs of the region. She said each regional unit operates out of an office in the host county's courthouse or a private office building. She said an administrator is responsible for the management of the unit and supervision of the staff. The administrator, she said, primarily ensures compliance with program policies and procedures; supervises and coordinates the work of all staff in the unit and in the several counties in which the unit operates; handles all personnel issues and interviews; meets with custodial and noncustodial parents, attorneys, county officials, and legislators; prepares for and attends monthly administrator meetings; participates in the legislative process; prepares state regional budgets; conducts regular staff meetings; participates in development and implementation of the state's strategic plan; and promotes public relations. She said there are 120 full-time employees in the eight regional child support enforcement offices.

Ms. Ziegelmann testified regarding the typical duties of child support enforcement attorneys, investigators for state analysts, and support staff. She said the role of other parties to the cooperative agreement is defined by the agreement itself and any independent arrangements made to increase efficiency. She said the sheriff's department provides service of process for the regional units, the state's attorneys in the counties within a region have a legal responsibility to assist the child support office in the collection of child support, and each region has a separate arrangement with the state's attorney of the counties within the region. For example, she said, in the southeast region the child support enforcement attorneys are all assistant state's attorneys for the host county and are appointed assistant state's attorneys in the other counties in the region.

Ms. Ziegelmann said the regional child support enforcement units have been providing child support enforcement services with local administration to the people of North Dakota for over 25 years. She asked why the state administration of the child support enforcement program was being considered when it appears that local administration is working very well. She said it appears that the performance audit report is one of the catalysts for the discussion of state administration of the system. However, she said, the audit was performed during the conversion to the new automated system; therefore, the audit is not a fair representation of how the regions are operating today. She said if a performance audit were conducted today, auditors would see a much different picture--regional office staff are proficient in the use of the automated system, the regional offices have implemented more administrative procedures, and the regions have made great strides in the efficient operation of the units. Additionally, she said, during the audit four of the eight regional units were not included. She expressed concern that the findings and conclusions of the audit report were not made available to the regional units in order to comment on the draft.

Ms. Ziegelmann said the regional administrators are concerned that many of the conclusions of the audit were not substantiated. She said there is concern that recipients will not be provided the services they need on the local basis if the system is changed to a state-administered program.

Ms. Ziegelmann expressed concern regarding the funding of a state-administered program. She said even though counties are paying 100 percent of the administrative costs of the regional units and the state is receiving the federal reimbursements plus incentives, the state office continues to struggle to obtain the staff and resources needed to do the state's job. She said the question then becomes how will the state funding affect the regional units. For years, she said, the state office has requested funding sufficient to operate this program efficiently, and effectively yet the staffing and technology needs have not always been met. She raised the following questions if the system is changed to a state-administered program: Will resources be adequately allocated? Will state administration result in betterment of the program as a whole and the individual served? When the state assumes responsibility for eight regional offices, including 120 staff members, will the regional units' needs be met? Will regional or state staff be cut to the detriment of the program?

Ms. Ziegelmann said local administration of the child support enforcement program provides the checks and balances necessary to ensure policies and procedures will work in the regional units. She said policy decisions are made in cooperation with local and state input as required by the cooperative agreement. Under state administration, she questioned whether decisions affecting the regional units will be made without regional involvement.

In response to a question from Representative Kasper, Ms. Ziegelmann said the four regions that were interviewed for the report are located in Fargo, Bismarck, Minot, and Williston.

In response to a question from Representative Mahoney, Ms. Ziegelmann said the report refers to inconsistencies from region to region; however, she is not certain what the inconsistencies are. She said centralization is not the same as state administration. She said some centralization has already been done, especially with the automated system.

In response to a question from Representative Ekstrom, Ms. Ziegelmann said the automated system is relatively new and still needs some tweaking. She said the regions' perspective of the automated system is different from the perspective of the state or the counties.

Chairman Mahoney called on Mr. Clarence Daniel, Boards of County Commissioners, for comments regarding the committee's study of state administration of the child support enforcement system. Mr. Daniel said the counties are in support of state administration.

Chairman Mahoney called on Mr. James Fleming, Assistant Attorney General, for comments regarding the committee's study of state administration of the child support enforcement system. Mr. Fleming said the Attorney General is following the study because state administration of the child support enforcement system would make the provision of child support services a state function. He said the Attorney General would prefer adding the employees of the child support enforcement system to the Department of Human Services and providing that the attorneys are special assistant attorneys general, instead of direct employees of the Attorney General's office. He said the Attorney General perceives state administration in the child support enforcement program as a local program that keeps the local level offices, seeking minimal change.

Mr. Fleming said from a legal perspective there may be some efficiencies that would result from changing to a state-administered child support enforcement program. For example, he said, state administration would allow for certain employees to become specialists in areas such as tribal practice and interstate practice. Overall, Mr. Fleming said, the Attorney General is neither in support of nor opposed to changing to a state-administered child support enforcement program.

In response to a question from Representative Mahoney, Mr. Fleming said it is possible that there would need to be an adjustment in the SWAP legislation if the state took on the child support enforcement program.

Chairman Mahoney called on Mr. Daniel Kruckenberg, Minot, for comments regarding the study of administration of the child support enforcement program. Mr. Kruckenberg said he knows both sides of the child support system, as he pays child support to his first ex-wife and he receives child support from his second ex-wife. He explained to the committee the problems he is having with the Tax Commissioner taking his wife's state tax refund to pay for child support arrears. He said the Tax Department and the child support enforcement system need to communicate better. He said he gets frustrated with the child support system because he pays his child support obligation, but his second ex-wife does not pay her obligation to him. Additionally, he said, the child support formula does not work. He said he is not certain whether moving to a state-administered child support enforcement program would help the system or not.

Representative Mahoney said he recognizes there are problems with the child support enforcement system when it comes to the situation in which obligors run from their child support obligation. He said he is a member of a committee of the North Dakota Supreme Court which is trying to create pro se forms to help parties bring actions without the assistance of an attorney. He clarified that the committee's study is limited to whether to change to state administration of the child support enforcement program.

Chairman Mahoney called on Mr. Mike Schwindt, Child Support Enforcement Division, Department of Human Services, for testimony regarding the committee's study of state administration of the child support enforcement system. Mr. Schwindt provided written information, including a comparison of the current system versus a state-administered child support enforcement system, general funding needed to move to a state-administered program, potential funding sources, potential benefits to state administration, and potential concerns related to state administration. A copy of Mr. Schwindt's written information is on file in the Legislative Council office.

Mr. Schwindt said if the child support enforcement program is changed to a state-administered program, the change should be budget-neutral. He said as a result of the automated system, there has been an attempt to increase the amount of information provided to customers. He said although this provision of information to customers could be improved, it is getting better all the time.

In response to a question from Representative Mahoney, Mr. Schwindt said the data he provided regarding the general funds needed to move to a state-administered program of $7.8 million for the counties is an actual cost for the counties after any incentive money received is subtracted. He said one big reason for moving to a state-administered program may be that federal law requires incentive money be spent on the child support enforcement system. He said if moving to a state-administered system is viewed alone, it would result in a $7.8 million windfall for counties; however, this benefit would not be realized by the counties if the SWAP legislation is revisited and modified.

Chairman Mahoney called on Ms. Carmen Karsch, Richardton, for comments regarding the committee's study of state administration of the child support enforcement program. Ms. Karsch said she supports moving to a state-administered program because it would increase the education of caseworkers if it were a state system and if the regions have to answer to the state. She discussed her experiences with the child support enforcement system, including being called a "tax burden on the state of North Dakota" and told "if you don't like it, here's the door" by workers in the regional office. She said the state child support enforcement office has been very user-friendly and she has had good experiences as far as the state office returning telephone calls.

Chairman Mahoney called on Mr. Gordy Smith, State Auditor's office, to provide testimony regarding the committee's study of state administration of the child support enforcement system. Mr. Smith said he was the audit manager for the audit of the child support enforcement system which resulted in the performance audit report dated September 14, 2000. He said the audit was intended to review aspects of the state's child support enforcement program and was not intended to review every element of the program. He said there are no unsubstantiated conclusions in the report because the report does not contain conclusions. He said the report may contain findings made by the consultants but does not contain findings made by the State Auditor's office.

Mr. Smith said the State Auditor's office did an audit of the child support enforcement system in 1994 and as part of that audit, the office did find inconsistencies statewide. For example, he said, there were some regions that were more or less litigious and there were some regions that had a specialized position such as an investigator that was very effective. He said the 2000 audit of the Department of Human Services child support enforcement system was done because child support enforcement was found to be an especially high-risk division of the Department of Human Services. He said MAXIMUS, the consultant, was paid by the State Auditor's office to perform the review.

In response to a question from Representative Niemeier, Mr. Smith said the price paid to MAXIMUS for the consultation was approximately $98,000 and at least 2,500 man-hours were involved in performing the audit.

In response to a question from Representative Mahoney, Mr. Smith said he is not able to comment on the fiscal impact of changing to a state-administered child support enforcement program because he does not know the necessary financial information. However, he said, if rural states are organized with the state-administered child support enforcement system, there would likely be a benefit of North Dakota organizing its system in a similar way.

Chairman Mahoney requested that committee counsel work with the Attorney General's office to draft legislation that would provide for a state-administered child support enforcement program. He said as part of this project, he would like to receive fiscal information on the impact of implementing the state administration of child support enforcement legislation.

Chairman Mahoney called on Mr. Terry Traynor, North Dakota Association of Counties, for comments regarding the committee's study of state administration of the child support enforcement system. Mr. Traynor said the association is in favor of moving to a state-administered child support enforcement program. He said the child support enforcement program costs $4 million annually out of local property tax. He said the SWAP legislation was done because at the time counties were relieved of paying nursing homes. The reality, he said, is that counties do not have that much control over the child support enforcement program because there are so many state and federal regulations.

Representative Ekstrom requested the committee receive information at a future meeting regarding how the pay scales of different employees would be affected under the state administration of child support enforcement.

Representative Ruby said he would like to receive additional information at a future meeting regarding how changing to a state-administered child support enforcement program would improve service to customers. Specifically, he said, whether there are specific efficiencies associated with the state-administered program.

Senator Dever requested information for a future meeting that would provide a chart of how the newly created state-administered child support enforcement program would be organized.

Chairman Mahoney requested that committee counsel work with the adoption task force to draft a committee bill draft of the proposed legislation presented to the committee.

No further business appearing, Chairman Mahoney adjourned the meeting at 3:30 p.m.

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Jennifer S. N. Clark
Committee Counsel

ATTACH:1