NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

FAMILY LAW COMMITTEE

Monday, July 1, 2002
Robert Fawcett Auditorium, Lake Region State College
Devils Lake, North Dakota

Representative John Mahoney, Chairman, called the meeting to order at 9:10 a.m.

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

Members absent: Representatives Lois Delmore, Roxanne Jensen, Lawrence R. Klemin, Sally M. Sandvig; Senator Darlene Watne

Others present: Merle Boucher, State Representative, Rolette

See attached appendix for additional persons present

It was moved by Senator Thane, seconded by Senator Dever, and carried on a voice vote that the minutes of the March 26, 2002, meeting be approved as distributed.

ADOPTION LAW STUDY

Chairman Mahoney called on committee counsel to present five adoption law bill drafts requested by the committee at the previous meeting. She said the substance of the five bill drafts has not changed from the information the committee received from Ms. Julie Hoffman, Administrator of Adoption Services, Division of Child and Family Services, Department of Human Services, at the previous meeting; however, the bill drafts have been placed in proper format.

Committee counsel said the bill draft [30113.0100] relating to the Revised Uniform Adoption Act amends portions of North Dakota Century Code (NDCC) Chapter 14-15. She said in 1971 the North Dakota Legislative Assembly enacted the 1969 version of the Revised Uniform Adoption Act. She said since 1971 the National Conference of Commissioners on Uniform State Laws has declared the Revised Uniform Adoption Act to be obsolete and in 1994 drafted an updated Uniform Adoption Act, which has been enacted in Vermont. She said although a large portion of the amendments in the bill draft are housekeeping in nature or are changes made to reflect the current practice in adoption law, some portions of the bill draft are substantive changes to current adoption law. She said the written information distributed to the committee members at the previous meeting by Ms. Hoffman summarizes the changes in the bill draft section by section. She said substantive changes to the existing adoption law include Section 8 of the Act, which adds the requirement that a petition for adoption include verification by the court that the petitioner's expenses were reasonable. She said Section 8 of the Act goes on to clarify what may be considered a reasonable expense. Additionally, she said, Section 8 of the Act states that fees associated with an adoption may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption.

Committee counsel said Section 16 of the bill draft makes significant changes to the disclosure of identifying and nonidentifying information. Under current law, she said, if an adopted individual seeks identifying information regarding birth parents, refusal of one birth parent to consent to disclosure has the effect of prohibiting disclosure regardless of whether the second birth parent consents to disclosure of identifying information. She said under Section 16 of the Act, the law would be changed to provide that if one birth parent objects to the disclosure of identifying information and the other birth parent consents to the release of identifying information, a child-placing agency may disclose identifying information relating to the consenting birth parent.

Committee counsel presented a bill draft [30111.0100] relating to child relinquishment to identified adoptive parents. She said this bill draft amends portions of NDCC Chapter 14-15.1. She said substantive changes in this bill draft include adding the requirement that a court make specific findings as to the reasonableness of adoption expenses, to parallel the new requirements provided for in the bill draft amending Chapter 14-15.

Committee counsel presented a bill draft [30112.0100] relating to the Uniform Parentage Act, NDCC Chapter 14-17. She said in 1975 the North Dakota Legislative Assembly enacted the 1973 version of the Uniform Parentage Act. She said North Dakota has not adopted the 2000 Revised Uniform Parentage Act. Committee counsel said the amendments in this bill draft are housekeeping in nature, primarily in changing the term natural mother, father, or parent to biological mother, father, or parent.

Committee counsel presented a bill draft [30107.0100] to provide for a paternity registry.

Committee counsel said all 15 sections of this bill draft create new law by creating a paternity registry that does not exist under current law. She said the written information provided by Ms. Hoffman at the previous meeting reviews the purposes of the paternity registry and the process that would be used under a paternity registry.

Committee counsel said the paternity registry would be established and maintained by the State Department of Health Office of Statistical Services. She said under Section 2 the purpose of the registry is to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered and to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children. Additionally, she said, Section 2 provides that the paternity registry does not relieve a mother of any obligation to identify the known father of her child and a man is not required to register with the registry in order to assert paternity and in order to receive notice of termination of parental rights if the man is presumed to be the biological father of a child, has been adjudicated to be the biological father of a child, or has filed an acknowledgment of paternity.

Committee counsel said under Section 3 an individual who has sexual intercourse with an individual of the opposite sex is deemed to have knowledge that sexual intercourse can result in the woman's pregnancy; ignorance of a pregnancy is not sufficient reason for a man to fail to register with the paternity registry to claim paternity of the child born of the pregnancy; and ignorance of the existence of a paternity registry is not sufficient reason for a man to fail to register with the paternity registry to claim paternity of the child born of the pregnancy. She said the effect of the paternity registry is that a registered father is entitled to notice of an action to terminate his parental rights. Additionally, she said, if a man registers with the paternity registry, the alleged mother is given notice that the man has registered.

Committee counsel presented a bill draft [30110.0100] relating to eligibility for certification as a special needs adoption. She said this bill draft has the effect of broadening the class of individuals classified as special needs for adoption purposes. She said the class of children with special needs would be expanded to include children who are at high risk for a physical, an emotional, or a mental handicap.

Chairman Mahoney called on Ms. Hoffman for comments regarding the five adoption law bill drafts and regarding 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.

Ms. Hoffman provided information regarding questions posed at the March 26, 2002, committee meeting. She said the five bill drafts would have little impact on the safe havens bill passed in 2001. If a hospital receives a child pursuant to the safe havens law, she said, the hospital would refer that child to county social services for placement. In this instance, she said, the county would seek an order from the court to place the child in foster care and it is likely that the legal case would move quickly to termination of parental rights and adoption since the birth parents would not be identified and would therefore be unavailable for reunification efforts.

Ms. Hoffman said research she has performed regarding the interplay between the proposed paternity registry and the Soldiers' and Sailors' Civil Relief Act indicates that the federal Act comes into play when a reservist is called to active duty or a full-time member of the military is deployed to a foreign field. In an action to terminate parental rights, she said, it would be the petitioner's responsibility to ascertain whether the federal Act applies to any respondents, and if it does apply, the legal action must be suspended until the respondent is available.

Ms. Hoffman said in discussing the paternity registry bill draft with the register at the Division of Vital Records, the register indicated the State Department of Health would not oppose the bill draft and the office's duties under the bill draft would be consistent with current functions of the office.

Ms. Hoffman said regarding changes proposed to NDCC Chapter 14-15 pertaining to fees for adoption services, she believes that if a finding is made by a judge that fees reported are not reasonable, the adoptive parent may have standing to bring a civil action to recoup the unreasonable fees. Additionally, she said, if a judge determines that fees are unreasonable, the judge may order that unpaid fees be reduced to make up for the overpayment. She said the work group requests the guidance of the committee in the public policy matters in the bill drafts and the work group sees these bill drafts as a work in progress and if enacted, they would be monitored and future changes could be considered if necessary.

In response to a question from Representative Niemeier, Ms. Hoffman said in determining the reasonableness of fees, a court has discretion in determining the reasonableness both at the time of relinquishment of the child and at the adoption hearing.

In response to a question from Representative Wrangham, Ms. Hoffman said under the current system when a birth mother goes to a child-placing agency, the agency asks the mother who is or who may be the father of the child. She said the agency works with the identified father or identified potential fathers; however, if a mother does not provide the name of a father, the agency investigates to try to identify the father. She said under the current system a father is given notice either by mail or through publication of an action for an adoption.

In response to a question from Representative Ekstrom, Ms. Hoffman said when she discussed the paternity registry bill draft with Lieutenant Colonel Al Dohrman, North Dakota National Guard, they did not specifically discuss whether the military would be willing to educate and distribute forms for the paternity registry; however, the tone of their conversation indicated that it would not be a problem to provide this education and to distribute forms. Additionally, she said, in her conversations with representatives of the State Department of Health, it did not appear that there would be any significant expense or burden in establishing the paternity registry.

In response to a question from Representative Ruby, Ms. Hoffman said the bill draft expanding the definition of children with special needs for adoption purposes results in part because as children are being placed in foster care more quickly and at a younger age, it is more likely that that child who is less than five years old has a physical, an emotional, or a mental handicap that has not been diagnosed or recognized. She said by expanding the definition of special needs children, the at-risk children would not necessarily be given the full package of benefits associated with being classified as a special needs child, but the classification would allow the adoptive parents to sign a form that would clarify that assistance will be made available if the child does exhibit this handicap at a later date. She said the result of the bill draft would be to let adoptive parents know that special services will be made available if the child develops a need for these services.

In response to a question from Representative Mahoney, Ms. Hoffman said in determining the financial impact of broadening the definition of special needs children, she does not think the change would have a significant negative financial impact, but it would make a big difference for the individual children and adoptive families. She said the result of being classified as a special needs child allows an adoptive family to access federal funds, which in the long run would save state money.

In response to a question from Representative Wrangham, Ms. Hoffman said most foster kids placed for adoptions are special needs children.

In response to a question from Representative Niemeier, Ms. Hoffman said regarding access to identifying information for adoptions, 20 years ago it was more common for birth fathers to not be recorded in the adoption records, but over the years it has become more common to have identifying information in adoption records. She said under the bill draft relating to disclosure of identifying information, hypothetically, if a birth father was disgruntled regarding the release by the birth mother of identifying information of the birth father, that birth father could conceivably bring a civil action against the child placement agency and could try to bring an action against the Department of Human Services. Whether this action would be successful, she said, would not prevent a birth father from actually bringing the action.

In response to a question from Senator Christenson, Ms. Hoffman said the trend in adoptions is to allow for more openness; however, to the extent that the law says information is confidential, the child-placing agency, the department, and the courts are very protective of this information.

In response to a question from Representative Mahoney, Ms. Hoffman said nationally, the trend in adoption is more openness in the sharing of information; however, in North Dakota the current law is that if one parent refuses the release of identifying information, all contact between all the parties is prohibited. She said the openness provided in the bill drafts the committee is reviewing is still less open than the national trend provides. She said it is true that even without the bill draft, some parties can perform their own investigations without contacting child placement agencies or the Department of Human Services. Additionally, she said, approximately 20 or 21 states currently have some form of a paternity registry.

In response to a question from Senator Dever, Ms. Hoffman said in the bill draft relating to the paternity registry, the registry does not remove the obligation of a child-placing agency to request information regarding the father.

In response to a question from Representative Mahoney regarding the possible constitutional issues raised relating to the paternity registry and the hypothetical situation of a 15-year-old father and a premature birth, Ms. Hoffman said if a paternity registry is created in North Dakota, it would be a big change. She said she is not familiar with what constitutional challenges may exist, but she can research this for a future meeting. With the creation of a paternity registry in almost one-half the states, she said, people are becoming more familiar with the idea of a paternity registry. However, she said, there are some real concerns raised in the situation in which a birth mother leaves the state in which conception occurred. She said the intent under the paternity registry bill draft is that a child-placing agency would continue to perform an investigation on the identity of a birth father.

Ms. Hoffman said she would support clarification in the bill draft that child placement agencies and attorneys continue to be obligated to investigate the identity of a birth father in an adoption action. She said the bill draft is meant to be a tool to use if a birth mother does not name a birth father in an adoption action or if a birth father is not cooperating with adoption actions but refuses to relinquish parental rights.

ADMINISTRATION OF CHILD SUPPORT STUDY

Chairman Mahoney called on committee counsel to present a bill draft [30115.0100] relating to state administration of the child support enforcement

system. Committee counsel said the Legislative Council staff worked closely with the Department of Human Services Division of Child Support Enforcement in drafting the bill draft. She said the intent of the bill draft is to change from a county-administered child support system to a state-administered child support system. Most of the amendments in the bill draft, she said, reflect changes in definitions of terms relating to state and local actors in the child support system. She said specific sections dealing with changes in definitions include Sections 14, 29, 39, and 41.

Committee counsel said substantive changes in the law include Sections 4, 5, 6, and 7, which remove the reference to Section 16 of Chapter 148 of the 1989 Session Laws. She said it appears this 1989 provision of the Session Laws became ineffective October 1, 1993. Committee counsel said Section 40 addresses duties of county commissioners, Section 42 addresses the state's duties, and Sections 44 and 53 address county agency duties.

Committee counsel said Section 50, amending NDCC Section 50-09-15.1, does not correctly reflect the amendment requested by the Division of Child Support Enforcement. She said the amendment to Section 50-09-15.1 should provide for overstriking the last sentence "The state agency, prior to distributing the moneys in the child support incentives account, shall invite comments regarding the distribution of the moneys from representatives of the North Dakota state's attorneys association and regional child support offices and other interested persons" and insert new language immediately thereafter "The balance of the child support incentive paid to the state by the office of child support enforcement may only be spent as appropriated by the legislative assembly to carry out the state plan submitted under chapter 50-09 in conformity with title IV-D."

Committee counsel said Section 52 creates two new sections to NDCC Chapter 50-09. The first section provides that 2001 is the base year for calculating the amount of county payments to be made to fund the state for state administration of the child support program. She said for years on or after January 1, 2004, each county would pay the state an amount equal to the county's expenditures for administration of the child support program for year 2001, minus any child support incentive payments received by the county during the year 2001. Additionally, she said, there is a provision addressing the value of office space provided by a county for the child support enforcement unit. The second section, she said, provides that the Department of Human Services would employ special assistant attorneys general to carry out the state agency's duties in administering the child support enforcement program. She said the salary of each of the special assistant attorneys general would be paid by the state agency, although appointment and the position would be revocable at the pleasure of the Attorney General.

Committee counsel said Section 57 would provide the Legislative Council the authority to correct references to regional child support agencies and to the public authority as they pertain to the provision of child support enforcement services in any measures enacted by the Fifty-eighth Legislative Assembly. She said the Act would become effective on January 1, 2004. Additionally, she said, if the committee were to recommend this bill draft to the Legislative Council, the bill draft should include an amendment to NDCC Section 14-09-08.6 to change the reference from public authority to child support agency, and the bill draft would need to be corrected to account for the omission of Section 51.

Committee counsel said when she discussed the bill draft with representatives of Central Personnel, the representatives suggested the committee consider clarifying whether the intent is that initially all positions and employees be transferred; whether current employees are grandfathered if there are qualification changes; and whether employees will be required to "reapply."

In response to a question from Representative Boucher, who was sitting with the committee as a member of the Legislative Council, Representative Mahoney said under the bill draft the calculation of the amount a county would be required to pay to the state would take into account incentive money previously distributed to the counties. Committee counsel said the bill draft does not provide property tax relief to counties and does not address concerns that may relate to the amount of child support expenses paid by the counties in the year 2001.

Representative Boucher said he is concerned that although the bill draft may be revenue neutral, the child support enforcement program is not cost neutral.

Representative Ekstrom said the current costs for providing child support enforcement services are not uniform from county to county, so what may be a good deal for one county under the bill draft would not be a good deal for another county.

Chairman Mahoney called on Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, for comments regarding the state administration of child support enforcement system bill draft. Mr. Schwindt provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Schwindt briefly reviewed the 1997 SWAP legislation under which counties became fiscally responsible for the administrative cost of the child support enforcement program and the state became fiscally responsible for certain costs related to nursing homes. He said in 2001 the total cost to the counties for providing the administration of the child support enforcement system was $4.2 million plus an additional $300,000 of federal incentive funds, totaling

$4.5 million for the state's child support enforcement program.

Mr. Schwindt reviewed some of the possible efficiencies that may be recognized under a state-administered child support enforcement program, including specialization for tribal cases, specialization for interstate cases, the possibility of a statewide prosecutor to target nonpayment and nonsufficient fund cases, more efficient locater services, increased ease of servicing cases as parties move within the state, and possible consolidation of income withholding orders. Additionally, he addressed some of the possible benefits of providing state-administered customer services. He said even with the provision of a state-administered customer service unit, he would not foresee closing any of the existing eight regional child support enforcement offices due to the need to balance consolidation of services and reasonable access to caseworkers at the local level.

Mr. Schwindt said if the change to state administration occurs, administrative items to consider include salary, classification, and health coverage and leave balances. He said because five of the eight regional units are a part of the county social service boards, they are part of Central Personnel and it is easy to determine that these staffs are properly classified and that the salaries are within the correct pay ranges. However, he said, a review of the other three regional units indicates that all staff are within the appropriate salary ranges except for two individuals who appear to be over the salary range in the amount of $444 and $380 per month. These individuals would stay at their pay levels until the pay ranges caught up with the current amount being paid. He said he would expect that all health care coverage would be provided through the standard state policy and in determining leave balances, the department would look to the process used by the Supreme Court when clerks of court were transferred and when the Department of Human Services was created.

Mr. Schwindt said substantive provisions in the bill draft include creation of a new section of law authorizing the state child support agency to employ special assistant attorneys general who would serve at the pleasure of the Attorney General. He said he has discussed the proposed language with staff in the Attorney General's office and does not expect any objections to come from that office. He said the bill draft would also provide for creation of a new section of law identifying the obligation of the counties to maintain their 2001 payment levels for the child support enforcement program. He said the language in the bill draft comes as close as possible to maintaining a financial status quo for the program. He said the bill draft provides for a delayed effective date of January 1, 2004, which coincides with the annual county budget cycle and gives the Department of Human Services sufficient time to handle the transition to a state-administered program.

In response to a question from Senator Dever, Mr. Schwindt said under the bill draft a family relying on the receipt of child support would not see any immediate changes; however, the program should become more efficient over time due in part to clarity of who is responsible to provide services.

Representative Boucher said the 1997 SWAP issue has glitches. He said in evaluating whether the state or the county should be responsible for paying for the child support enforcement system, he distinguishes between child support enforcement under which the expenses are administrative in nature and the nursing homes under which the expenses are programmatic expenses. He said overall, he supports state administration of the child support enforcement system as it is a part of the state court system; however, he does have concerns that the counties are incurring additional expenses and that the child support enforcement system is an example of devolution, by which the program has gone from the federal level to the state to the counties, in an attempt to "pass the buck."

In response to a question from Representative Boucher, Mr. Schwindt said under the bill draft the state would not be precluded from contracting with counties to provide a child support enforcement system.

Representative Boucher explained he comes from Indian country, which by nature has unique issues. He said on Indian reservations 100 percent of the funding for child support enforcement is federal, whereas child support enforcement services offered off the reservation are funded 66 percent federal and 34 percent state, regardless of whether the recipient of the services is a tribal member. He said he questions why an Indian is not treated the same when the Indian is on the reservation as when the Indian is off the reservation and supports making this change at the federal level.

In response to a question from Representative Boucher, Mr. Schwindt said the child support enforcement system at the federal level was essentially designed as a recoupment mechanism for public services. He said the federal government keeps raising the bar to make the child support enforcement system more effective and uses funding as an incentive to reach these higher benchmarks. He said he understands the federal government is in the process of finalizing administrative rules intended to treat Indians more fairly regardless of whether they receive services on an Indian reservation or off the reservation.

In response to a question from Representative Ekstrom, Mr. Schwindt said the intent under the bill draft is not to cut regions from providing customer services. He said under the bill draft, 2001 is set as a base year; however, the bill draft does not immediately address possible future population shifts and possible future increases in administrative costs.

However, he said, the funding mechanism can be amended in the future to address these issues.

In response to a question from Senator Christenson, Mr. Schwindt said if the child support enforcement system was changed to a state-administered system, he would not expect customers to notice the changes, as it would be business as usual until there was an opportunity to evaluate the system, and it is possible the Legislative Council would be interested in following the progress in the transition.

In response to a question from Senator Dever, Mr. Schwindt said an example of inconsistencies across the state would include training methods and procedures. He said this is not necessarily a fatal consistency, but there are a variety of additional inconsistencies.

In response to a question from Representative Mahoney, Mr. Schwindt said historically, child support enforcement expenses have increased over time; however, if administrative costs increase, efficiencies under the state-administered program may help offset this increase.

In response to a question from Representative Boucher, Mr. Schwindt said although he does not have the specific statistics, there have been consistent increases in child support enforcement collections.

Chairman Mahoney called on Mr. Edward Forde, Director, County Social Services for Benson, Ramsey, and Towner Counties. Mr. Forde provided written testimony, a copy of which is on file in the Legislative Council office. Additionally, Mr. Forde provided written testimony from Mr. Colin Barstad, Administrator, Lake Region Child Support Enforcement Unit, a copy of which is on file in the Legislative Council office.

Mr. Forde said the counties in the Lake Region Child Support Enforcement Unit--Benson, Cavalier, Eddy, Ramsey, Rolette, Towner, and Wells Counties--go on record as supporting state administration of the child support enforcement system if the system is fully state-funded. Additionally, he said, the County Social Service Directors Association, County Social Services Board Members Association, County Commissioners Association, and the North Dakota Association of Counties also go on record in support of a fully state-funded state administration of regional child support system. However, he said, state administration of child support without state funding is largely where the counties perceive they are under the current system. He said although counties currently have control over some elements of the program, they are seldom consulted or involved in or even acknowledged in relation to policy and program development; therefore, to give up the minimal control the counties now have yet still be required to continue funding the child support system while totally being at the mercy of the state would not be a tenable option for the counties.

Mr. Forde said state administration of the child support enforcement system could have some desirable outcomes in terms of resolving some of the discrepancies under the current system as well as equalizing the administrative structure and workload distribution.

Mr. Forde said an underlying problem with county financing of the child support enforcement system for the Lake Region Child Support Enforcement Unit is related to how heavily caseloads are impacted from the Turtle Mountain Band of Chippewa in Rolette County and the Spirit Lake Sioux in Benson County. He said the problems associated with this are critical and require immediate attention and action by the Department of Human Services, the Governor's office, and the Legislative Assembly. Specifically, he said, the temporary assistance for needy families (TANF) caseloads from Benson and Rolette Counties represent 85.9 percent of the TANF caseload in the seven counties served. He said although there was an agreement negotiated between the counties and the state in the 1930s, the Department of Human Services has resisted the Lake Region Child Support Enforcement Unit's efforts to bill this portion of the regional unit's expenses to the department. He said provisions in the 1997 SWAP legislation to help accommodate the high caseloads for the reservation counties appear to be in jeopardy due to legislative cuts at the state level. He said the reality is that TANF caseload trends indicate decreasing caseloads in the nonreservation counties while caseload trends are increasing in the reservation counties; therefore, the Ramsey and Benson Counties shares are likely to continue to increase while the others decrease, further adding to this inequity.

Mr. Forde said although Benson and Rolette Counties are struggling to pay their share, the other counties in Lake Region are growing impatient with the additional expenses they have borne related to service to reservation counties. He said Ramsey County is concerned about the fiscal position it is in as a host county responsible for fronting the expenses for regional unit operation, especially if the other participating counties become unable or are unwilling to pay their share or if the Department of Human Services refuses, discontinues, or reduces fiscal relief to the unit for reservation impact.

Chairman Mahoney called on Mr. Arne Berg, Chairman, Ramsey County Social Service Board, for comments regarding the state administration of child support bill draft. Mr. Berg provided written testimony, a copy of which is on file in the Legislative Council office. He said the Ramsey County board of commissioners and the Ramsey County Social Service Board support the state administration of child support with full funding by the state. He said his fiscal concerns are related to the decrease in taxable property resulting from ongoing flooding as well as decreasing population outside the Indian reservations. He said

he does not believe it is right to expect the population in the region to bear the expense of maintaining services to Indian reservations. He said there is concern about the fiscal risk Ramsey County as host county is subject to because it needs to collect over 85 percent of the operating funds from two reservation counties that are struggling to pay. He said he anticipates that with increasing populations and TANF caseloads in the reservation counties, this predicament will only get worse over time.

In response to a question from Representative Mahoney, Mr. Berg said the year 2001 base year in the bill draft is problematic because Lake Region is in the process of shifting how each of the participating counties calculates its contribution. He said in the year 2001 the counties are subsidizing the reservation counties of Benson and Rolette and this would be unfair in establishing an ongoing formula.

Chairman Mahoney called on Mr. Barry Cox, Commissioner, Benson County, for comments regarding the state administration of child support bill draft. Mr. Cox said Benson County is unable to fund its regional obligation through property taxes. He said in Benson County, property is being purchased by the tribe after which the tribe does not pay property tax; therefore, the tax base is decreasing.

In response to a question from Representative Mahoney, Mr. Cox said under the bill draft even using the year 2001 as a base year, the 2001 taxpayers are paying for services the county cannot afford. He said Benson County is receiving subsidies from other counties.

In response to a question from Representative Kasper, Mr. Cox said he is not certain why Benson County is unable to recoup tribal-related child support enforcement expenses from the tribe. He said he has been told that failure by the county to provide child support enforcement services to tribal members is not an option under the law.

In response to a question from Representative Boucher, Mr. Cox said if the state administration of child support enforcement bill draft were implemented, the other counties in the region would stop subsidizing Benson County.

Chairman Mahoney called on Ms. Betty Keegan, Acting County Director, Rolette County Social Services Board, for comments regarding the state administration of child support enforcement bill draft. Ms. Keegan provided written testimony, a copy of which is on file in the Legislative Council office. Ms. Keegan also provided a copy of the region's four-year transition plan to cease subsidizing Rolette and Benson Counties, a copy of which is also on file in the Legislative Council office. Ms. Keegan said the concerns of the Rolette County Social Service Board apply to each county in North Dakota in which an Indian reservation is fully or partially located and are universal as far as the impact upon counties neighboring Indian reservations.

Ms. Keegan said since the inception of the child support enforcement program, a gentleman's agreement among the seven county social service directors in Region 3 has provided some fiscal relief to Benson and Rolette Counties. However, she said, after 30 years of financially bailing out Benson and Rolette Counties, the neighboring counties have decided they will no longer provide financial assistance to reduce the costs of child support enforcement administration for the two counties. She explained a four-year transition plan has been put into place, whereby in yearly increments, the cost of administration of the unit will be shifted from the neighboring counties to Benson and Rolette Counties. She said the critical message she hopes to impart to the committee is the matter of fairness as well as financial impossibility. With this transition, she said, Rolette County is expected to absorb an additional $60,816.94 per year in child support enforcement administration costs at the end of the four-year transition period. She said as 2002 comes to an end, Rolette County social services will have incurred a quarter of a million dollars in the red. She said this is not a result of poor management or poor planning, rather it is a matter of insufficient tax revenues in Rolette County due to costs greater than can be funded through local taxes.

Ms. Keegan said Rolette County social services administers 24.33 percent of the state's TANF caseload. She said the state presently funds 49 percent of the regional child support unit through an effort known as Lake Region Reservation Project; however, the Indian caseload of this regional unit makes up 85 percent of the total caseload with most of these parents and children residing on one of the reservations.

Ms. Keegan offered the following recommendations for the committee's consideration:

1. State administration of the child support program with 100 percent state funding.
2. Immediate 100 percent full state funding of child support efforts on behalf of the eight Indian counties and administration of those eight counties only if 100 percent of funding is provided by the state.

Representative Boucher said two of the townships in Rolette County are part of the reservation; however, additional Indian trust land is located off the reservation. He said this trust land is nontaxable. Additionally, he said, it is illegal to deny an Indian social services simply because the Indian has chosen not to receive these services on the reservation.

In response to a question from Representative Kasper, Ms. Keegan said civil rights law prevents the counties from turning away applicants for services based upon race. She said tribal governments are aware of the large size of tribal caseloads in Rolette and Benson Counties.

In response to a question from Representative Mahoney, Ms. Keegan said although the state funds

49 percent of the operating costs for Rolette County, with the current financial status of the Department of Human Services, there are indications that next biennium the county will receive only 95 percent of this amount.

Chairman Mahoney called on Mr. Bob Leonard, Rolette County Commissioner and County Social Services Board member, for comments on the state administration of child support enforcement bill draft. Mr. Leonard provided written testimony, a copy of which is on file in the Legislative Council office. Mr. Leonard addressed the amount of Rolette County property that is reservation land or trust land and the tax value of taxable property in Rolette County. He said the situation in Rolette County will not be improving anytime soon because as the Native American population increases, the tribe buys additional taxable real estate on which to locate home sites and moves that same real estate from taxable to nontaxable status. Therefore, he said, it is likely the county's revenue will continue to decline while social service costs continue to grow in proportion to the economically stressed but growing Native American population. He explained that currently Rolette County levies 22.35 mills for social services, which is the maximum allowed by law; however, an additional 28 mills would need to be levied to meet the county's social service obligation. He said without fiscal relief, there will come a day when Rolette County will be forced to close its county social service doors due to lack of operating funds.

Chairman Mahoney called on Ms. Kathy Ziegelmann, Regional Child Support Administrators, for comments regarding the state administration of child support enforcement bill draft. Ms. Ziegelmann said the directors for the eight regional child support enforcement units have had the opportunity to review the bill draft. She said concerns with the bill draft include whether state administration of the program would allow for sufficient funding to provide quality services and whether state administration would have the necessary checks and balances between the state and local actors. She said most of the improved deficiencies that would be gained by going to a state-administered program would be able to be recognized under the county-administered program if sufficient funds were made available to the counties. She said overall, the position of the regional administrators is to take a neutral stance on the bill draft.

Chairman Mahoney called on Mr. Wade Williams, Legislative Relations, North Dakota Association of Counties, for comments regarding the state administration of child support enforcement bill draft. Mr. Williams provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Williams said many county commissioners have historically viewed child support enforcement as a state function. He said of all the social service programs, child support enforcement is the most heavily regulated by state and federal agencies and county boards have had very little to say about the management of the program. Therefore, he said, when human service fiscal responsibilities were realigned in 1997, the original SWAP proposal placed the child support program and fiscal responsibility for child support enforcement totally with the state. Unfortunately, he said, this proposal created such a negative fiscal effect on the state's budget that the legislation was amended to place the full cost of the eight regional child support enforcement units, less the incentive payments, with the counties. He said as a result of the 1997 SWAP legislation, he estimates $8 million in county property tax is collected each biennium to pay for the child support enforcement services, services in which county boards have very little control.

Mr. Williams said most of the costs of the child support enforcement system are personnel-related and due to the increasing caseloads and increasing regulations, there has been a corresponding growth in the number of personnel required to run the program. He said the proposal to change to a state-administered system comes at a time when the Department of Human Services is dealing with a deficit and is facing even greater fiscal issues in the next legislative session. The bill draft, he said, reflects this fact, as it proposes to take away the little control counties now have with no reduction in their fiscal responsibilities. He said counties are concerned that moving to a state-administered child support enforcement program may mean state funding reductions for the counties or county cost increases in other programs. He said while the thought of using year 2001 costs as a base year is attractive to some people, the potential for the county portion to grow in the future is a large concern and that is one reason counties will find it difficult to support the bill draft.

Representative Boucher said he views the child support enforcement system as a judicial matter that should be administered by the judicial system.

In response to a question from Representative Boucher, Mr. Williams said he agrees that the child support enforcement system is not per se a service as other social services provided by the social service centers.

Representative Mahoney said child support enforcement can be viewed as a service because the enforcement of child support orders assists in the care of children.

In response to a question from Representative Mahoney, Mr. Williams said although the North Dakota Association of Counties has not taken a formal survey of each county, informal discussions with approximately 20 to 25 counties indicate there is opposition to the bill draft unless there is 100 percent state funding.

Representative Kasper asked whether the committee could study whether the state could require the Indian tribes to financially participate in funding the child support enforcement system. Chairman Mahoney said that issue is larger than the committee's charge; however, the committee can make some inquiries on this issue.

Representative Kasper asked whether the state can stop the tribes from purchasing nonreservation property and taking it out of the state tax rolls. Chairman Mahoney said this issue goes beyond the scope of the committee's study.

Representative Ekstrom said she views the study as going nowhere this interim. She said she is not certain what the state's financial obligation would be if child support enforcement were changed to a state-administered program.

Representative Ruby said he is interested in knowing whether it would be possible for the regions to charge child support obligors a fee for using the child support enforcement program.

Representative Niemeier said she thinks there is additional work that needs to be done before the committee could pursue the state administration of child support enforcement bill draft. Additionally, she said, the alternative may be to work with the child support enforcement regions to implement some of the efficiencies listed by Mr. Schwindt.

Representative Mahoney said because the funding for the administration of the child support enforcement system under the bill draft would be coming from the state, it seems to follow that having the state administer the program would be more efficient. He said there appear to be inequities under the current system, including the issue of how to fund counties with Indian reservations. He said if the bill draft were pursued, the committee would need to consider reevaluating the 2001 base year formula to account for those counties that are currently paying extra to fund Indian counties.

Representative Ekstrom said the counties in the state which are experiencing growth are the Indian counties. She said Indians are residents of this state and deserve to receive services just like any other resident of the state.

Representative Wrangham said moving to a state-administered child support enforcement system does not necessarily solve the problems raised regarding Indian reservations.

Senator Dever said the committee may want to consider the equity of how child support enforcement services are paid for Indian counties and whether there would be a way to spread the cost of child support enforcement services provided to Indian counties over the entire state.

Representative Boucher said it is important to remember that the Indian population is counted in the federal census and that the census figures are used to establish the amount of federal funding the state receives.

PRIVACY STUDY

Medical Privacy

Chairman Mahoney called on Mr. Michael J. Mullen, Assistant Attorney General, for comments regarding the status and activities of the state Health Insurance Portability and Accountability Act task force and regarding application of state medical privacy laws across state borders. Mr. Mullen provided written testimony, a copy of which is on file in the Legislative Council office. He addressed whether there are any privacy laws related to the practice of pharmacies keeping a clipboard signature log of individuals who pick up prescriptions. He said he understands a typical signature log at a pharmacy may include the following six elements:

1. Date.
2. Prescription number.
3. Pharmacy identification number.
4. Patient identification number.
5. Name or number of third-party payer.
6. Name of person receiving the prescription.

Mr. Mullen said it is important to note that a signature log would not identify the name of the drug and it appears that Blue Cross Blue Shield of North Dakota, Medicare, and North Dakota Medicaid do not require patients or the patients' representatives to sign a signature log to obtain filled prescriptions. He said federal law does not appear to address whether a signature log is permitted under the federal privacy rule; however, he said, he would be willing to perform additional research on this matter if the committee would like additional information.

Mr. Mullen said the Attorney General's office is comparing North Dakota law to the federal privacy rule to determine whether state law provides less privacy protection than the federal privacy law, the same protection as the federal privacy law, or more privacy protection than the federal privacy law. He said the nature of the Health Insurance Portability and Accountability Act is that if a state law provides less privacy protection than the federal privacy law, the state law is superseded by the federal privacy law; if state law provides the same privacy protection as the federal privacy law, then a covered entity can comply with both North Dakota law and the federal privacy law; and if a state law provides greater privacy protection than the federal privacy law, the parties must conform to the higher privacy provisions under state law. He reviewed a variety of state laws that are being analyzed to determine how they may be affected under the Health Insurance Portability and Accountability Act.

Mr. Mullen said questions of how the Health Insurance Portability and Accountability Act and state privacy laws impact the care of nonresident patients relates to conflicts of law matters or choice of law

matters. He said the federal Health Insurance Portability and Accountability Act regulations regarding preemption of state law do not directly address this issue. He said some health care facilities follow the practice that the privacy laws of the place in which the health care facility is located determine the privacy rights of the patient. However, he said, it is possible that some health care providers may choose to protect the confidentiality of health information based on the law of the state in which the patient resides. He said if health care providers choose to follow the law of the state in which the patient resides, the health care facility would be required to train its staff on the privacy laws of several states and to carefully check and verify the state of residence of each patient.

In response to a question from Representative Mahoney, Mr. Mullen said the Attorney General's office is in the process of identifying state laws addressing medical information privacy. He said after reviewing these state laws, the Attorney General will formulate recommendations with respect to any laws in conflict with the federal law. However, he said, even if the North Dakota Legislative Assembly does not take any action to amend the state's medical privacy laws that may provide less medical information privacy than the federal law, the federal Health Insurance Portability and Accountability Act law will apply.

In response to a question from Senator Dever, Mr. Mullen said in the case of an individual being diagnosed with HIV and determining whether the patient's spouse may be notified of the HIV status, Mr. Mullen said the State Department of Health has a program in place to notify and counsel AIDS and HIV-positive individuals and there is a criminal penalty for exposing others to AIDS or HIV.

Chairman Mahoney requested that Mr. Mullen provide the committee with a copy of a bill draft addressing any possible state law conflicts with the Health Insurance Portability and Accountability Act if that information is available before the end of the interim.

Financial Privacy

Chairman Mahoney called on Mr. Timothy J. Karsky, Commissioner, Department of Financial Institutions, for comments regarding the financial privacy study and the June 11, 2002, referral vote on Senate Bill No. 2191. Mr. Karsky provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Karsky said he does not believe the Attorney General's opinion dated May 22, 2002, addresses all the issues concerning how the state's financial privacy law will be applied to financial institutions that are not only in North Dakota but also throughout the United States and how this law will be applied to customers of these financial institutions. He said he plans on addressing these issues with the State Banking Board at its regularly scheduled meeting on July 18, 2002. He said he will propose that the State Banking Board adopt a policy that North Dakota's privacy laws will not be exported to other states based upon the recommendation of and information received from the Attorney General. Additionally, he said, he will request that the State Banking Board adopt a policy that would protect North Dakota residents who conduct business with financial institutions that are located out of state. He said policies adopted by the board would not have the same effect as law and could be challenged in court and if successful could subject the financial institutions to penalties. Mr. Karsky said if the Legislative Assembly is interested in clarifying NDCC Chapter 6-08.1 relating to financial privacy, he recommends that the exemptions provided in the federal privacy law be incorporated into the code. He said the Legislative Assembly may want to consider looking at the definition of customer and of financial institutions as provided in this chapter.

In response to a question from Representative Ekstrom, Mr. Karsky said the ruling made by the Federal Trade Commission provides that North Dakota law offers greater privacy protection than the federal privacy law.

Chairman Mahoney said he received a letter from Ms. Marilyn Foss, North Dakota Bankers Association, explaining she is unable to attend this meeting, but she did want to convey her concerns over the issue of exportation of North Dakota law. Chairman Mahoney distributed to committee members a copy of a bill draft [30119.0100] that he had drafted to deal with any concerns raised by returning to the state's old financial privacy laws as a result of the referral vote on Senate Bill No. 2191. He explained that under the bill draft the definitions of customer would be amended to provide a customer is not limited to residents of the state of North Dakota and that the definition of financial institution would be limited to organizations that are physically located in North Dakota. Additionally, he said, as a housekeeping measure the definition of person is removed because that definition is defined under the general provisions in the code. He said the bill draft would also provide an exception that would clarify that the state's financial privacy law would not limit disclosure of customer information by a financial institution to a nonaffiliated party as provided under the federal law for transactions requested by, in connection with, at the direction of, or with the consent of the customer.

Chairman Mahoney called on Mr. Joel Gilbertson, North Dakota Independent Banks, for comments regarding the financial privacy study. Mr. Gilbertson said he supports the vote of the people on the referral of Senate Bill No. 2191; however, he does have some concerns over whether state law adequately addresses when a financial institution can share customer information with a third party in the course of providing services that a customer has requested.

He said he would support incorporating language from the federal law pertaining to exceptions under Section 502(e) of the Financial Services Modernization Act. If the Legislative Assembly codified these exceptions in the federal law, he said, it would help to address liability concerns of the banking industry. He said he would be happy to review the bill draft and make comments at a future meeting.

In response to a question from Senator Dever, committee counsel said if the Legislative Assembly chooses to amend NDCC Chapter 6-08.1, this may be done by a simple majority. She said the two-thirds majority for a period of seven years' requirement would only have applied if Senate Bill No. 2191 had been upheld by a yes vote in the referral.

Representative Kasper distributed a copy of a bill draft he had requested to address concerns that may be raised if Senate Bill No. 2191 became void in the referral vote. He said his bill draft is identical to the chairman's bill draft, and as a result of Legislative Council confidentiality policies, neither he nor Chairman Mahoney were aware of the other individual's bill draft.

It was moved by Representative Kasper, seconded by Senator Thane, and carried on a roll call vote that the committee adopt as a committee bill draft Representative Mahoney's bill draft representing concerns raised by the referral vote on Senate Bill No. 2191. Representatives Mahoney, Ekstrom, Kasper, Niemeier, Ruby, and Wrangham and Senators Dever, Erbele, Every, and Thane voted "aye." No negative votes were cast.

Senator Dever distributed a copy of a bill draft [30120.0100] he requested to create new law that would restrict the information that would be allowed to be included on an electronically printed credit card receipt. He said under this bill draft an electronically printed receipt may not include on the copy provided to the customer more than the last five digits of the credit card account number nor print the expiration of the credit card. He said exceptions to this rule would be that the restrictions would not apply to transactions in which the sole means of recording the customer's credit card number is by handwriting or by an imprint copy of the credit card. The effective date of this bill draft, he said, would vary based upon whether the cash register was put into use before December 31, 2003. This bill draft, he said, is based on California and Washington law. He said he shared a copy of the bill draft with several organizations, including the North Dakota Retailers Association, Petroleum Association, Grocers Association, and Hospitality Association, with no concerns being voiced at this time.

Senator Thane said the bill draft seems to have merit.

It was moved by Senator Thane, seconded by Senator Dever, and carried on a voice vote that the committee adopt the bill draft as a committee bill draft. Representatives Mahoney, Ekstrom, Kasper, Niemeier, Ruby, and Wrangham and Senators Dever, Erbele, Every, and Thane voted "aye." No negative votes were cast.

Chairman Mahoney requested that the committee receive testimony by interested persons regarding this bill draft at a future meeting.

Senator Thane stated he is concerned that the adoption law bill drafts do not address in vitro fertilization and whether a genetic father would be listed on a birth certificate. He questioned whether this should be addressed in law or whether this is an area that is missing in state law.

Representative Mahoney said under current law it is possible for birth certificates to include the name of only one parent.

Representative Ekstrom said if the committee considers putting all five adoption law bill drafts into one bill draft, she would encourage that the paternity registry bill draft be kept separate.

Representative Wrangham requested that the bill draft relating to eligibility for certification as a special needs adoption be kept as a separate bill draft.

Chairman Mahoney said for now all five bill drafts would be kept separate.

Senator Dever explained to the committee that a constituent had requested that NDCC Section 14-17-05(1)(b) be amended by removing ", but in no event later than five years after the child's birth". He said the section is being amended in the bill draft relating to the Uniform Parentage Act and asked the committee whether the committee would be interested in making this change in this bill draft.

No further business remaining, Chairman Mahoney adjourned the meeting at 3:45 p.m.

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Jennifer S. N. Clark
Committee Counsel

ATTACH:1