

2021 SENATE JUDICIARY

SB 2082

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2082
1/6/2021

A BILL for an Act to amend and reenact sections 14-08.1-08, 14-09-08.1, 14-09-08.2, 14-09-09.29, and 14-09-26 and subsection 2 of section 50-09-02.1 of the North Dakota Century Code, relating to clerk of court responsibilities regarding child support.

Chairwoman Larson called the meeting to order at 10:45 AM
Senators present: Myrdal, Dwyer, Luick, Bakke, Heitkamp, Fors, Larson

Discussion Topics:

- potential changes to the court system
- Historical reference to how court clerks were given the role

Sally Holewa ND State Court Administrator provided testimony in favor #58 [10:46]

Sara Behrens ND Supreme Court provided testimony in favor #64 [10:57]

James Fleming Director of the Child Support Division Department of Human Services provided testimony in opposition #104 [11:05]

Hearing closed [11:20am]

Jamal Omar, Committee Clerk

**Senate Bill 2082
Senate Judiciary Committee**

**Testimony Presented by Sally Holewa
State Court Administrator
January 6, 2021**

Good morning Chair Larson and members of the committee. For the record, my name is Sally Holewa and I am the North Dakota State Court Administrator.

SB 2082 was introduced by the Supreme Court for the purpose of transferring child support duties that clerks of court are currently performing to the Child Support Unit of the Department of Human Services. Our staff attorney, Sara Behrens, will present testimony on the specific provisions within the bill. My purpose in appearing today is to discuss the origins of the bill and its intended effect within the court system.

Chief Justice Jensen has set the twin goals of meeting the need of trial judges for better support in their decision-making duties, and reducing the clerk of court shortage without the need for more FTEs. To do this, we must find more efficiencies within the court while also shedding some responsibilities. After meeting with judges and clerks from around the state, he identified increasing the use of initial criminal e-filing and eliminating child support duties as the two areas where change would have the greatest impact on these goals.

In drafting this bill we worked closely with the Child Support unit to write a bill that was as complete as possible. In saying this, I want to be clear that while Mr. Fleming and his staff assisted in this endeavor, they do not support the transfer of duties without a sufficient appropriation and additional authorized FTEs. They also have a concern about

requiring parents to enforce orders without the assistance that they have been receiving from the clerks of court.

The bill does not include a transfer of FTEs. Child support enforcement work is currently done by clerks in all 53 counties. However, there are only 14 counties in the state where the clerks are state employees. The remaining clerk of court staff are county employees. In those 39 counties we have a contract with the county to pay a portion of the clerk's salary and benefits to cover their cost of performing court work. Put quite simply, the state does not own these FTEs so we are not able to transfer them. None of the clerks in the 14 counties where clerks are state employees work full-time on child support duties. Like all other clerk of court duties, the work is spread out across employees so it becomes only a portion of what any given clerk does on a regular basis. We estimate that if the duties were done by dedicated staff it would equate to a total of 8-10 FTEs. This is an issue for us because we currently have an insufficient number of FTEs to adequately staff most of these offices. Of the 14 counties with state-employed clerks, we currently have three that are minimally staffed at 2 FTEs. We have an additional six offices that have staffing shortages that range from 15-31%. Our staffing studies show that within these 14 counties we currently have a shortage of 17 clerks. Part of our strategy to ease that shortage without requesting additional FTEs is to shed duties that we do not feel are properly within the court's responsibility.

Child support enforcement is one of those areas where the clerk's statutory responsibility puts it at odds with the Court's position as a neutral arbiter of disputes because those duties require the clerk of court to actively assist one side (the obligor) in a case. In no other case type do clerks take an active role in assisting just one side of a dispute.

Because they are more familiar with the computer system that tracks child support obligations, and because of their expertise in the subject matter, we believe that Child

Support can carry out these duties more efficiently and more accurately than the clerks of court can.

You may be asking yourself how these duties came to be assigned to clerks to begin with. Mr. Fleming, the director of Child Support, is in the best position to respond to those questions since he has been with the Child Support unit from the beginning. I can give you the shorthand version. The answer to how clerks got to be involved in enforcement goes back to a time before there was a unified court system and before the federal government required state's to create a central child support enforcement unit. Back in the day, the clerk of the county court was responsible for collecting and disbursing child support payments. When the state child support unit was created the state chose not to require all parties use that service unless there was a federal requiring it. For that reason, the statutes were written so many of the duties could be done by either the Child Support unit or the clerks of court. In 1998 the court and the child support enforcement unit agreed on a split of the duties as well as how the federal flow-through dollars for child support enforcement are allocated and we have continued to work closely together since then.

In particular, since Mr. Fleming became the director of the unit, we have partnered with the department to shift some responsibilities from the clerks to child support as they were able to absorb them. I would like to share two specific examples of this partnership. Between 2009 and 2011 we worked with Mr. Fleming to eliminate, reduce or reassign the responsibility for responding to computer system-generated alerts regarding child support cases. Through that effort we were able to reduce the number of alerts that clerks had to respond to by an average of 181,000 alerts per year. This equates to a time savings of approximately 3,000 hours of clerk time per year, or the equivalent of 1.5 FTE. This past year, Mr. Fleming initiated a change that to-date has resulted in child support taking over the data entry of child support court orders for 28 counties. With this change, we went

from clerks entering 100% of the orders to child support entering 71% of the orders. This change has resulted in a noticeable time savings for the clerks in those 28 offices. .

While it would be ideal to continue to voluntarily transition duties as resources allow, the fact is that unless more resources are allocated to child support, any transition will be so incremental and occur so gradually that it will never have enough impact to ease the clerk of court shortage. Because we believe that these duties are not appropriate for court staff, and that child support is in the best position to do this work most efficiently we are advocating for the transfer of duties to them along with adequate funding and staff to absorb the work.

Senate Bill 2082
Senate Judiciary Committee
Testimony Presented by Sara Behrens
January 6, 2021

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill No. 2082. Ms. Holewa gave an overview of the bill and I will provide a summary of each section. Mr. Fleming can provide any information regarding technical aspects of the system.

Section 1: The automated system under section 50-09-02.1 is a shared child support system.

Section 1 removes the clerk of court from use of the system from certification of records within that system. Currently, the clerk of court or the child support agency can provide the certification.

Section 2: This section changes slightly when the notice of arrears is sent. Rather than the clerk having the option to send it out on its own, the clerk will send the notice when requested to do so by either the obligee or the child support agency. This section of the bill also removes the outdated requirement that a certified copy of an order be required to transcribe a support order from one county to another. Prior to electronic orders and the Odyssey system, an actual certified paper copy was transcribed to another county. Now, one county simply sends the electronic order to the other county for filing. No paper copy is actually sent. Because it is one county to another, certification is not needed.

Section 3: This section amends subsection 3 of section 14-09-08.2. When the person to whom the support is owed files the affidavit to extend child support where a child is still in school past age 18, they must also send a copy to the child support agency. It also amends subsection 4 of

section 14-09-08.2 to clarify that the court must determine that both conditions (attending high school and residing with the person to whom support is owed) are met.

Section 4: This section amends section 14-09-09.29 to provide the authority for the child support agency to handle the case management activities that would be transferred. It includes orders that address only spousal support because these are monitored on the child support system because in some cases there is animosity between ex-spouses and the payments are made through the state disbursement unit to alleviate those tensions and disputes.

Section 5: This section removes subsection 3 of section 14-09-26 which is obsolete and has not been an issue in over 20 years. The remaining subsections are retained to avoid any issues with some very old cases with remaining arrears.

Section 6: This section removes the clerks from use of the child support data processing system in light of the assignment of responsibilities in section 4.

Department of Human Services
Senate Judiciary Committee
Senator Diane Larson, Chairman

January 6, 2021

Chairman Larson and members of the Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Department). Although the Department agrees with much of Senate Bill 2082, we need to oppose the bill as it is currently written because of the lack of an appropriation to cover the costs of performing the work that would be transferred to the Department.

We understand that certification of records is rarely necessary, and so we have no concerns or fiscal impact in **Section 1** of the bill.

Section 2 proposes two changes. First, it removes the option of a court to start a contempt proceeding for nonpayment of child support on its own initiative rather than waiting for a request from a parent or child support. We understand that this happens fairly infrequently in most counties. Second, it removes the need to obtain a certified copy of a support order to “transcribe” the order for enforcement in another county. Now that court orders are maintained electronically in a public database, certification is an outdated and unnecessary process. The Department has no concerns or fiscal impact in this section of the bill.

Section 3 amends the section of state law creating the process for extending child support beyond age 18 if the child is still attending high school. Currently, the clerk of court in each county receives a computer-generated alert a month before the child turns 18 and mails a blank affidavit to the parent with primary residential responsibility for the child. If the affidavit is completed and returned, the clerk mails a copy of the signed affidavit to the parent who owes child support. The affidavit automatically extends the duration of the court-ordered child support obligation until

the child graduates or turns 19, whichever occurs first. Page 3 line 22 would make this a responsibility of the Department instead of the clerks of court. The Department is uncomfortable becoming involved in determining when a court order expires, but our greater concern is with the fiscal impact of mailing blank affidavits to every parent with residential responsibility of a child nearing the age of 18, mailing completed affidavits to parents who owe child support, and adding expiration dates for the obligations on the state's payment records.

Section 5 removes some obsolete language, and we have no concerns or fiscal impact from that section.

Section 4 and **Section 6** relieve the clerks of court of the responsibility to use the statewide automated child support data processing system and transfer that responsibility to the Department. Functionally, what this means is that clerks of court will no longer be entering court order information in the system, lowering child support obligations as provided in the court order when an older sibling emancipates, accepting and recording any demographic updates provided by parents, or initiating occasional corrections and updates to the payment ledgers in roughly 20,000 child support cases that are not currently being enforced by the Department. This is a significant amount of work for which the bill currently does not provide an appropriation and which is not included in either the Governor's budget or the appropriation bill for the Department.

Section 4, page 4, lines 18-21 also codifies the payment processing services in spousal support cases that have been voluntarily provided by the Department to the court for more than 20 years at no charge. This relieved the court from maintaining a payment receipt and disbursement system in each county for a fairly small number of spousal support payments that are due each month.

In June 2020, the Department agreed to pilot the entry of court order information by Department team members instead of the clerks of court, in recognition of a

significant data entry error rate by the clerks of court. It has been clear for some time that the clerks do not derive value from the data they are entering. The pilot has expanded to 28 counties, and we are now entering just under one-third of the total new and amended child support orders across the state.

The Department and court are currently working to finalize the fiscal note for the bill. Multiple additional full-time equivalent positions would be needed. For entering orders in all cases and for other work in the roughly 35,000 cases in North Dakota that are being enforced by the Department under Title IV-D of the Social Security Act, the federal government reimburses the state for 66% of its allowable expenses, including roughly \$1.8 million per biennium in court costs. For the other cases that are not being enforced under Title IV-D, the work being transferred is not eligible for federal funding and therefore is performed at 100% state expense.

As shown by our pilot program, we share the court's interest in making improvements in efficiency and customer service for parents in a child support case. However, the amount of work being transferred cannot be managed with our existing resources.

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2082
1/20/2021

A BILL for an Act to amend and reenact sections 14-08.1-08, 14-09-08.1, 14-09-08.2, 14-09-09.29, and 14-09-26 and subsection 2 of section 50-09-02.1 of the North Dakota Century Code, relating to clerk of court responsibilities regarding child support.

2:05 PM Chairwoman Larson calls the hearing to order. Present are Chair Larson, Vice Chair Dwyer, Senators Bakke, Fors, Heitkamp, Luick, and Myrdal.

Discussion Topics:

- Clerk of court responsibilities
- Child support
- Divorces
- Fiscal impact of the bill

James Fleming [2:05], Director of Child Support Division for the Department of Human Services, offers oral testimony in favor of amending the bill.

Senator Luick [2:24] moved to adopt the amendment. [LC 21.8060.01001]

Senator Dwyer [2:24] seconded the motion.

Motion passes 7-0-0. [2:24]

Senators	Vote
Chair Larson	Y
Vice Chair Dwyer	Y
Senator Bakke	Y
Senator Fors	Y
Senator Heitkamp	Y
Senator Luick	Y
Senator Myrdal	Y

Senator Luick [2:25] motioned for a DO PASS AS AMENDED.

Senator Myrdal [2:25] seconded the motion.

Motion passes 7-0-0. [2:25]

Senator Luick will carry.

2:27 PM Senator Larson adjourned the meeting

Jamal Omar, Committee Clerk

Senators	Vote
Chair Larson	Y
Vice Chair Dwyer	Y
Senator Bakke	Y
Senator Fors	Y
Senator Heitkamp	Y
Senator Luick	Y
Senator Myrdal	Y

21.8060.01001
Title.02000

Adopted by the Judiciary Committee

January 20, 2021

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1/20
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2082

Page 3, line 2, overstrike "certified copy of any"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2082: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the Sixth order on the calendar.

Page 3, line 2, overstrike "certified copy of any"

Renumber accordingly

2021 SENATE APPROPRIATIONS

SB 2082

2021 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2082
2/1/2021
Senate Appropriations Committee

A BILL for an Act to amend and reenact sections 14-08.1-08, 14-09-08.1, 14-09-08.2, 14-09-09.29, and 14-09-26 and subsection 2 of section 50-09-02.1 of the North Dakota Century Code, relating to clerk of court responsibilities regarding child support
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Chairman Holmberg opened the hearing at 9:00 a.m.

Senators present: **Holmberg, Krebsbach, Wanzek, Bekkedahl, Poolman, Erbele, Dever, Oehlke, Rust, Davison, Hogue, Sorvaag, Mathern, and Heckaman.**

Discussion Topics:

- Impact on Court System
- Impact on Child Support

Jim Fleming, Director of Child Support Division, Department of Human Services, testified in opposition and submitted testimony #4486.

Sally Holewa, State Court Administrator, Supreme Court, testified in favor.

Chairman Holmberg closed the hearing at 9:36 a.m.

Rose Laning, Committee Clerk

Senate Bill 2082 - Department of Human Services
Senate Appropriations Committee
Senator Ray Holmberg, Chairman

February 1, 2021

Highlights of Fiscal Impact

- The court will save \$1.42 million per biennium in work performed in full-service (Title IV-D eligible) cases, leading to a reduction in federal reimbursement of \$934,947 and available general funds of \$481,640 that will no longer be spent by the court on child support work and would be available to pay clerks to do other work.
- The court will save an additional \$70,002 per biennium in general funds that will no longer be spent by the court on child support work performed in limited service (nonIV-D) cases that are not eligible for federal reimbursement and would be available to pay clerks to do other work.
- Total general funds currently included in the court's budget proposal that would no longer be earmarked for child support work: \$551,642.
- DHS-Child Support would need 3.5 FTE and a small amount of operating expenses to take over the work. This is based on data pulled from our computer system on the volume of transactions that would be transferred and estimates of time per transaction.
- After determining the amount of the transferred work that would be eligible for federal reimbursement, DHS-Child Support would need \$308,126 in general funds and \$209,662 in federal funds to do the work.
- Combining the impact to both agencies, this "nets" to need for new general fund of \$308,126 and statewide reduction in federal funds of \$725,285 (\$934,947 less for the court and \$209,662 more for DHS-Child Support).

2021 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2082
2/17/2021
Senate Appropriations Committee

Relating to clerk of court responsibilities regarding child support.
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Senator Holmberg opened the committee work at 8:40 a.m.

Senators present: **Holmberg, Krebsbach, Wanzek, Bekkedahl, Poolman, Erbele, Dever, Oehlke, Rust, Davison, Hogue, Sorvaag, Mathern, and Heckaman.**

Senator Wanzek moved DO NOT PASS on SB 2082.
Senator Rust second.

<i>Senators</i>		<i>Senators</i>	
<i>Senator Holmberg</i>	Y	<i>Senator Hogue</i>	Y
<i>Senator Krebsbach</i>	Y	<i>Senator Oehlke</i>	Y
<i>Senator Wanzek</i>	Y	<i>Senator Poolman</i>	Y
<i>Senator Bekkedahl</i>	Y	<i>Senator Rust</i>	Y
<i>Senator Davison</i>	Y	<i>Senator Sorvaag</i>	Y
<i>Senator Dever</i>	Y	<i>Senator Heckaman</i>	Y
<i>Senator Erbele</i>	Y	<i>Senator Mathern</i>	Y

Roll Call Vote – 14-0-0. Motion carried.

Senator Heckaman will carry the bill.

Senator Holmberg closed the committee work at 10:18 a.m.

Rose Laning, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2082, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2082 was placed on the Eleventh order on the calendar.