



North Dakota Legislative Council

Prepared for the Judiciary Committee
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SPOUSAL SUPPORT STUDY - BACKGROUND MEMORANDUM

House Bill No. 1254 (2021) directs the Legislative Management to study the types of spousal support ordered by the district court and the desirability and feasibility of providing statutory guidance for awards of spousal support. The study must include input from practicing attorneys in the area of family law and the Department of Human Services' Division of Child Support Enforcement and a review of the frequency and duration of spousal support awards entered in the state.

BACKGROUND

North Dakota Century Code Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state, including chapters dealing with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Chapter 14-05 provides the law governing divorce and Section 14-05-24.1 sets forth the law as it relates to spousal support, providing "... the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section. The court may modify its spousal support orders." District courts are the state trial courts of general jurisdiction and hear civil, criminal, domestic relations, small claims, and probate cases. In some districts, judicial referees have been appointed to preside over juvenile, judgment enforcement, and domestic relations proceedings other than contested divorces.

Section 14-05-24.1 was enacted in 2001 through the passage of Senate Bill No. 2046 and was amended in 2015 by House Bill No. 1399 to require the termination of spousal support, except rehabilitative spousal support, upon the remarriage of the spouse receiving support and unless otherwise agreed to by the parties, or upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabitating with another individual in a relationship analogous to a marriage for at least 1 year.

According to the 2020 North Dakota Court System Annual Report, there were 6,557 domestic relations case filings in 2020, of which 34 percent were divorce cases, 28 percent were protection or restraining orders, 24 percent were support proceedings, 4 percent were paternity, 5 percent were adoption, 5 percent were parenting responsibility filings, and less than 1 percent were termination of parental rights. There were 2,241 total divorce filings in 2020 compared to 2,302 in 2019. Support proceedings decreased by 19.3 percent with 1,542 cases filed, and protection or restraining order filings decreased by 10.5 percent with 1,834 cases filed.

Other States

Although North Dakota, Montana, South Dakota, and Minnesota do not have a mathematical formula to control the amount and length of spousal support or whether it should be awarded, Minnesota and Montana have specific statutory factors for the court to consider when determining spousal support payments. Some of the factors include the financial resources of the party seeking support, the time necessary to acquire sufficient education or training for employment, the standard of living during the marriage, the length of the marriage, the time that a party was absent from the workforce to the extent any education, skills, or experience has become outdated and earning capacity diminished, any earnings, seniority, retirement benefits, and the age and health of the seeking party.

Several states provide a mathematical formula for determining spousal support. In California, for example, the formula for the calculation of spousal support is 40 percent of the difference between the parties' net incomes without dependent children and 30 percent with dependent children. Illinois has a similar formula used by the court after the court considers a list of factors similar to Minnesota and Montana to make a determination of whether support is appropriate.

Previous Studies

In 1995 the North Dakota Supreme Court, at the request of the State Bar Association of North Dakota, established a task force to study family law issues. The Joint Family Law Task Force consisted of members

appointed by the State Bar Association of North Dakota and by the Supreme Court. The task force was assigned to review family law procedures and related matters presently used by the judicial system in North Dakota; evaluate the need for changes to ensure accessibility to the system and responsiveness of the system; assess the impact of court unification on the process; and evaluate the effectiveness of the process for clients, attorneys, and the courts. The Joint Family Law Task Force completed its work in April 1998 and concluded the task force had completed as many of its goals as were practicable. The task force, in its final report, stated the scope of what remains will require a cooperative effort among the judiciary, the State Bar Association of North Dakota, and the Legislative Assembly.

Senate Concurrent Resolution No. 4032 (1999) directed the study of the family law process in the state with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The study further directed in conducting the study, the Legislative Council (now the Legislative Management) consider conducting meetings with the Joint Family Law Task Force of the State Bar Association. Although the 1999-2000 interim Judiciary Committee considered guidelines for spousal support and reviewed whether a more predictable and consistent solution could be developed, the committee concluded while some states included arbitrary time limits for spousal support or establish "years of marriage" demarcation for purposes of setting support, no state had adopted a comprehensive and fair set of guidelines.

The 1999-2000 interim Judiciary Committee also reviewed the guidelines adopted by the Superior Court of Arizona in Maricopa County which apply to marriages of at least 5 years and included some financial restrictions regarding the postdivorce income of the two parties. If the parties meet the threshold, a mathematical formula for calculating spousal support is used. However, the guidelines do not create a presumption of support but rather serve as a starting point. Although the guidelines were discussed by the interim committee, district judges expressed concern about the limited use of the guidelines and whether spousal support guidelines would provide a fair and reasonable alternative for the calculation of spousal support. The committee ultimately recommended the creation of a new section regarding spousal support, which is codified as Section 14-05-24.1.

Section 2 of Senate Bill No. 2361 (2005) directed a study of the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce effects education. The 2005-06 interim Judiciary Committee completed the study and recommended a bill to reduce the cost of a marriage license fee by \$25.

SUGGESTED STUDY APPROACH

The committee may wish to proceed with the study by seeking input from attorneys who are practicing family law attorneys, the Supreme Court, and district court judges regarding the desirability and feasibility of providing statutory guidance for awards of spousal support.