



Potential Impact

Joint Custody and Shared Parenting & Family Law Initiatives

June 2006

Background:

Two initiated measures, which deal with divorce, family law, joint custody, and shared parenting, are currently being circulated for signatures. This analysis focuses mainly on the "Joint Custody and Shared Parenting" initiative and briefly on the "Family Law Reform" initiative. If either passes, the measure becomes effective in December 2006, prior to the next regular legislative session. This could create a "compliance gap" because legislative action would be required to restore compliance with federal mandates. The measure could not be amended for seven years except by a two-thirds vote in each house of the legislative assembly. *N.D. Const. Art. III, § 8.*

What This Could Mean to North Dakota Children:

If adopted, the initiated measures would make the state's Child Support Enforcement Program noncompliant with federal requirements and **could cause North Dakota to lose about \$70.4 million in federal funding per biennium that now pays for Temporary Assistance for Needy Families (TANF), Foster Care services, and Child Support Enforcement collection and distribution services.**

Joint Custody and Shared Parenting Measure

To receive federal TANF block grant funds (which provide cash assistance to qualifying low-income families and also fund some child welfare services in North Dakota) and to receive federal Child Support Enforcement funds, states **must operate child support programs that comply with federal mandates.**

Compliance Concerns:

- *Replacing guidelines with individualized "parenting plans" introduces inconsistencies and other problems*
 - North Dakota's guidelines consider the average cost of raising a child in this region of the country and the noncustodial parent's income.
 - States are required to determine support consistently using established guidelines.

Federal Comment on the Initiated Measures

Contained in a letter received by the North Dakota Department of Human Services

"Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to ensure that initiated measures are not enacted that would render the state's statutes out of compliance with federal law."

*Thomas Sullivan
Regional Administrator
Administration for Children & Families, federal Department of Health and Human Services*

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Compliance Concerns Continued:

- The federal government requires that the guidelines take into account the income of the noncustodial parent. *45 C.F.R. § 302.56.*
- Federal law does not permit obligations to be based on the needs of the child rather than parental income.
- **The projected \$70.4 million impact** is based upon expenditure estimates for failing to comply with federal mandates, including lost federal TANF funding and Child Support Enforcement funding. State tax dollars would be required to sustain services.
- Cutting federal funds would adversely affect the state's ability to collect support owed to children.
- This could increase the demand for economic assistance programs.
- In North Dakota, 88 percent of child support collections go directly to the families. The rest supplements tax dollars used to pay for Foster Care services or TANF, sustaining children in families that do not receive sufficient support from noncustodial parents.

Other Concerns:

- *Would presume that each parent has equal physical custody of the child*
 - This would impact the court's ability to consider the best interest of the child when determining custody.
 - The measure, as worded, is not limited to children of divorce. A parent would be entitled to have custody of a child 50% of the time even if parent is a stranger to the child.
 - An increase in the number of shared custody cases could

complicate eligibility for public assistance benefits like TANF and Medicaid because the programs look at the actual living conditions of the child, and each parent may claim to be the "custodian" for purposes of obtaining TANF or Medicaid benefits.

- *Measure states that "parents shall develop a joint parenting plan" even if that involves court facilitation. This would replace the state child support guidelines.*
 - Compelled communication may pose risks in domestic violence situations.

Family Law Reform Measure

- *Says that no child support will be owed*
 - Federal law does NOT permit this. *42 U.S.C. § 667; 45 C.F.R. § 302.56.*
- *Prohibits consideration of bonuses, overtime, retirement, or other financial windfalls in excess of a 40-hour work week*
 - Federal law requires that the child support guidelines "take into consideration all earnings and income of the noncustodial parent."
- *Requires jury trials in family law matters*
 - In paternity cases, federal law specifically prohibits this. *42 U.S.C. § 666(a)(5).*

For More Information:

Contact Mike Schwindt, Director, or James C. Fleming, Deputy Director/General Counsel, North Dakota Department of Human Services - Child Support Enforcement Division, at 701-328-3582.

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